

# **COMPLIANCE REVIEW REPORT**

## **WILDLIFE CONSERVATION BOARD**

Compliance Review Unit  
State Personnel Board  
June 30, 2015

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## **INTRODUCTION**

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in four areas: examinations, appointments, equal employment opportunity (EEO), and personal services contracts (PSC's) to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

## **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of Wildlife Conservation Board (WCB) personnel practices in the areas of examinations, appointments, EEO, and PSC's from December 1, 2013, through November 30, 2014. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	The Equal Employment Opportunity Questionnaires Were Not Separated from All Applications	Very Serious
Appointments	Probationary Evaluations Were Not Provided for All Appointments	Serious

Area	Finding	Severity
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

## **BACKGROUND**

The WCB was created by legislation in 1947 to administer a capital outlay program for wildlife conservation and related public recreation. Originally created within the California Department of Natural Resources, and later placed with the California Department of Fish and Wildlife, the WCB is a separate and independent Board with authority and funding to carry out an acquisition and development program for wildlife conservation. The primary responsibilities of the WCB are to select, authorize, and allocate funds for the purchase of land and waters suitable for recreation purposes and the preservation, protection, and restoration of wildlife habitat. The WCB approves and funds projects that set aside lands within the state for such purposes, through acquisition or other means, to meet these objectives. The WCB can also authorize the construction of facilities for recreational purposes on property in which it has a proprietary interest. The three main functions of the WCB are land acquisition, habitat restoration, and development of wildlife oriented public access facilities.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing WCB examinations, appointments, EEO program, and PSC's from December 1, 2013, through November 30, 2014. The primary objective of the review was to determine if WCB personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

All WCB examinations and appointments were reviewed. The CRU examined the documentation that the WCB provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the WCB EEO program included examining written EEO policies and procedures; the EEO officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC). The CRU also interviewed appropriate WCB staff.

WCB PSC's were reviewed.<sup>1</sup> It was beyond the scope of the compliance review to make conclusions as to whether the WCB justifications for the contracts were legally sufficient. The review was limited to whether WCB practices, policies, and procedures relative to PSC's complied with applicable procedural requirements.

On June 2, 2015, an exit conference was held with the WCB to explain and discuss the CRU's initial findings and recommendations, and to provide the WCB with a copy of the CRU's draft report. On June 26, 2015, the CRU received and carefully reviewed the WCB's departmental response, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications (MQs) for determining the fitness and qualifications of employees for each class of position and for applicants for

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<sup>1</sup>If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the MQs. (*Ibid.*) Every applicant for examination shall file an application in with the department or a designated appointing power as directed in the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the WCB conducted two examinations. The CRU reviewed both examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Public Land Management Specialist IV	Promotional	Education & Experience <sup>2</sup>	11/5/2014	2
Senior Land Agent (Specialist)	Promotional	Education & Experience	2/14/2014	4

#### **FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules**

The WCB administered two promotional examinations to create eligible lists from which to make appointments. The WCB published and distributed examination bulletins containing the required information for both examinations. Applications received by the WCB were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the MQs for admittance to the examination. The WCB notified applicants as to whether they qualified to take the examination, and those applicants who met the MQs were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The

<sup>2</sup> In an Education and Experience (E&E) examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examinations that the WCB conducted during the compliance review period. Accordingly, the WCB fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

### Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the WCB made seven appointments. The CRU reviewed all of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Office Technician	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Senior Land Agent	Promotional	Permanent	Full Time	1
Administrative Assistant	Reinstatement	Permanent	Full Time	1
Seasonal Clerk	Temporary Authorization Utilization	Temporary	Intermittent	1
Public Land Management Specialist IV	Transfer	Permanent	Full Time	2

### **FINDING NO. 2 – Equal Employment Opportunity Questionnaires Were Not Separated From All Applications**

<b>Summary:</b>	Out of seven appointments reviewed, three appointment files included applications in which EEO questionnaires were not separated from the STD 678 employment application. Specifically, the Public Land Management Specialist IV had three EEO questionnaires that were not removed; the Administrative Assistant I had one EEO questionnaire that was not removed; and the Seasonal Clerk had four EEO questionnaires that were not removed from the STD 678 employment application.
<b>Criteria:</b>	Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."
<b>Severity:</b>	<u>Very Serious.</u> The applicants' protected classes were visible, subjecting the agency to potential liability.
<b>Cause:</b>	In the past, the applications were addressed directly to the hiring supervisor. The hiring supervisor did not remove the EEO questionnaires and separate them from the candidates' applications.
<b>Action:</b>	It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the WCB submit to the CRU a written corrective action plan that the department will implement to ensure that future EEO



questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

**FINDING NO. 3 – Probationary Evaluations Were Not Provided for All Appointments**

**Summary:** The WCB did not prepare, complete, and/or retain required probationary reports of performance for five of the seven appointments reviewed by the CRU, as reflected in the table below.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Office Technician	Certification List	1	2
Staff Services Manager I	Certification List	1	3
Senior Land Agent	Promotional	1	3
Public Land Management Specialist IV	Transfer	2	3
Total		5	11

**Criteria:** A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of

progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

**Severity:** Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

**Cause:** The WCB had no process in place for monitoring compliance with probationary evaluation requirements.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the WCB to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code § 19172. Copies of any relevant documentation should be included with the plan.

### Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the CalHR by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment, and other employee complaints, the position requires separation

from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the WCB EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate WCB staff.

**FINDING NO. 4 – Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Regulations**

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the WCB's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Executive Director of the WCB. The WCB also provided evidence of its efforts to promote EEO in its hiring and employment practices.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new

state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify the SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the WCB had one PSC that was in effect. The contract was subject to Department of General Services (DGS) approval, and thus our procedural review, and is listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
MIG Inc.	Consulting Services	2/15/2013 – 9/30/2014	\$125,310	Yes

#### **FINDING NO. 5 – Personal Services Contracts Complied with Procedural Requirements**

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes *specific and detailed factual information* that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

It was beyond the scope of the review to make conclusions as to whether WCB's justifications for the contract were legally sufficient. The WCB provided specific and detailed factual information in the written justification as to how the contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the WCB's PSC's complied with procedural requirements.

#### **DEPARTMENTAL RESPONSE**

The WCB's response is attached as Attachment 1.

### **SPB REPLY**

Based upon the WCB's written response, the WCB will comply with the CRU recommendations and findings and provide the CRU with a corrective action plan.

It is further recommended that the WCB comply with the afore-state recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.