



COMPLIANCE REVIEW REPORT
**STATE WATER RESOURCES CONTROL
BOARD**

Compliance Review Unit
State Personnel Board
July 10, 2020

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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 authorities' personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training, 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.

Pursuant to Government Code section 18502, subdivision (c), the SPB and the California Department of Human Resources (CalHR) may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." SPB and CalHR, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

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.

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the State Water Resources Control Board (SWRCB) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Finding
Examinations	Examinations Complied with Civil Service Laws and Board Rules
Examinations	Permanent Withhold Actions Complied with Civil Service Laws and Board Rules
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed and Were Not Timely ¹
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time ²
Equal Employment Opportunity	Complainant Was Not Notified of the Reason for Delay in Decision Within the Prescribed Time Period
Personal Services Contracts	Unions Were Not Notified of Personal Services Contract
Mandated Training	Ethics Training Was Not Provided for All Filers
Mandated Training	Supervisory Training Was Not Provided for All Supervisors ³
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors ⁴

¹ Repeat finding. July 12, 2016, SWRCB's compliance review report (Report) identified that SWRCB did not prepare, complete and/or retain 20 required probation reports of performance.

² Repeat finding. The Report identified that SWRCB failed to retain required personnel records such as position advertisements, Notices of Personnel Action (NOPA), and employment applications.

³ Repeat finding. The Report identified that SWRCB did not provide basic supervisory training to 13 of 28 new supervisors within 12 months of appointment.

⁴ Repeat finding. The Report identified that SWRCB did not provide sexual harassment prevention training to 5 of 94 new supervisors, and 25 of 360 existing supervisors, within the proscribed timeframe.

Area	Finding
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Hiring Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Incorrect Authorizations of Bilingual Pay
Compensation and Pay	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Positive Paid Employees Exceeded the Nine Month Limitation in Any Twelve Consecutive Month Period
Leave	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records
Leave	Leave Reduction Plans Were Not Developed for Employees Whose Leave Balances Exceeded Established Limits
Leave	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Department Does Not Maintain a Current Written Nepotism Policy
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisals Were Not Provided to All Employees

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

- Red = Very Serious
- Orange = Serious
- Yellow = Technical
- Green = In Compliance

BACKGROUND

The SWRCB was created by the Legislature in 1967. Its overall mission is to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and to ensure proper water resource allocation and efficient use for the benefit of present and future generations. The joint authority of water allocation and water quality protection enables the SWRCB to provide comprehensive protection for California's waters.

The SWRCB consists of five full-time Board Members, each filling a different specialty position. Each Board Member is appointed to a four-year term by the Governor of California and are then confirmed by the Senate. The five-member State Water Board allocates water rights, adjudicates water right disputes, develops statewide water protection plans, establishes water quality standards, and guides the nine Regional Water Quality Control Boards located in the major watersheds within California.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the SWRCB's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes⁵. The primary objective of the review was to determine if the SWRCB's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

A cross-section of the SWRCB's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the SWRCB provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the SWRCB's permanent withhold actions documentation, including

⁵ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

A cross-section of the SWRCB's appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the SWRCB provided, which included NOPA's, Request for Personnel Actions (RPA's), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The SWRCB did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the SWRCB did not make any additional appointments during the compliance review period.

The SWRCB's appointments were also selected for review to ensure the SWRCB applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the SWRCB provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: hiring above minimum (HAM) requests, bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments. During the compliance review period, the SWRCB did not issue or authorize, red circle rate requests and arduous pay.

The review of the SWRCB's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The SWRCB's PSC's were also reviewed.⁶ It was beyond the scope of the compliance review to make conclusions as to whether the SWRCB's justifications for the contracts were legally sufficient. The review was limited to whether the SWRCB's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The SWRCB's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that

⁶If 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.

all supervisors, managers, and CEAs were provided leadership and development training and sexual harassment prevention training within statutory timelines.

The CRU also identified the SWRCB's employees whose current annual leave, or vacation leave credits, exceeded established limits. The CRU reviewed a cross-section of these identified employees to ensure that employees who have significant "over-the-cap" leave balances have a leave reduction plan in place. Additionally, the CRU asked the SWRCB to provide a copy of their leave reduction policy.

The CRU reviewed the SWRCB's Leave Activity and Correction Certification forms to verify that the SWRCB created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the SWRCB's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the SWRCB's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the SWRCB employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of SWRCB positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

Moreover, the CRU reviewed the SWRCB's policies and processes concerning nepotism, workers' compensation and performance appraisals. The review was limited to whether the SWRCB's policies and processes adhered to procedural requirements.

The SWRCB declined to have an exit conference. The CRU received and carefully reviewed the SWRCB's written response on July 2, 2020, 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 for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, subd. (a).) 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 minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) 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, June 1, 2019, through November 30, 2019, the SWRCB conducted 15 examinations. The CRU reviewed five of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) A, Director, Office of Public Participation	CEA	Statement of Qualifications ⁷	10/18/19	14
Principal Water Resource Control Engineer	Departmental	Training and Experience (T&E) ⁸	Continuous	1
Senior Water Resource Control Engineer	Open	T&E	Continuous	6
Supervising Water Resource Control Engineer (Supervisory)	Open	T&E	Continuous	1

⁷ In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

⁸ The Training and Experience examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values.

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Supervising Water Resource Control Engineer (Supervisory)	Open	T&E	Continuous	2

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

The CRU reviewed one departmental promotional and four open examinations which the SWRCB administered in order to create eligible lists from which to make appointments. The SWRCB published and distributed examination bulletins containing the required information for all examinations. Applications received by the SWRCB were accepted prior to the final filing date. Applicants were 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 examination results listed the names of all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examinations that the SWRCB conducted during the compliance review period.

Permanent Withhold Actions

Departments are granted statutory authority to permit withhold of eligibles from lists based on specified criteria. (Gov. Code, § 18935.) Permanent appointments and promotions within the state civil service system shall be merit-based, ascertained by a competitive examination process. (Cal. Const., art. VII, § 1, subd. (b).) If a candidate for appointment is found not to satisfy the minimum qualifications, the appointing power shall provide written notice to the candidate, specifying which qualification(s) are not satisfied and the reason(s) why. The candidate shall have an opportunity to establish that s/he meets the qualifications. (Cal. Code Regs., tit. 2, § 249.4, subd. (b).) If the candidate fails to respond, or fails to establish that s/he meets the minimum qualification(s), the candidate’s name shall be removed from the eligibility list. (Cal. Code Regs., tit. 2, § 249.4, subd. (b)(1), (2)), (HR Manual, section 1105.) The appointing authority shall promptly notify the candidate in writing, and shall notify the candidate of his or her appeal rights. (*Ibid.*) A permanent withhold does not necessarily permanently restrict a candidate from retaking the examination for the same classification in the future; however, the appointing authority may place a withhold on the candidate’s subsequent eligibility record if the candidate still does not meet the minimum qualifications or continues to be unsuitable. (HR Manual, Section 1105). State agency human resources offices are required to maintain specific withhold documentation for a period of five years. (*Ibid.*)

During the period under review, June 1, 2019, through November 30, 2019, the SWRCB conducted 10 permanent withhold actions. The CRU reviewed five of these permanent withhold actions, which are listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Accountant Trainee	9PB31	7/26/19	8/29/19	Failed to Meet Minimum Qualifications
Attorney III	9PB08	8/3/19	10/29/19	Failed to Meet Minimum Qualifications
Engineering Geologist	8PB70	9/28/19	11/13/19	Failed to Meet Minimum Qualifications
Information Technology Specialist I	7PB35	7/31/19	8/29/19	Failed to Meet Minimum Qualifications
Water Resource Control Engineer	1PB09	1/3/19	8/14/19	Failed to Meet Minimum Qualifications

FINDING NO. 2 – Permanent Withhold Actions Complied with Civil Service Laws and Board Rules

The CRU found no deficiencies in the permanent withhold actions undertaken by the department during the compliance review period.

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.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250, subd. (b).) Interviews shall be conducted using job-related criteria. (*Ibid.*) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250, subd. (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (*Ibid.*) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250, subd. (e).)

For the purposes of temporary appointments, an employment list is considered not to exist where there is an open eligible list that has three or fewer names of persons willing to accept appointment and no other employment list for the classification is available. (Cal. Code Regs., tit. 2, § 265.) In such a situation, an appointing power may make a temporary appointment in accordance with section 265.1 (*ibid.*) A Temporary Authorization Utilization (TAU) appointment shall not exceed nine months in a 12-month period. (Cal. Const., art. VII.) In addition, when a temporary appointment is made to a permanent position, an appropriate employment list shall be established for each class to which a temporary appointment is made before the expiration of the appointment. (Gov. Code, § 19058.)

During the period under review, March 1, 2019, through August 1 2019, the SWRCB made 200 appointments. The CRU reviewed 36 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
Associate Accounting Analyst	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Fractional (1/2 Time)	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	2
Engineering Geologist	Certification List	Permanent	Full Time	2
Environmental Scientist	Certification List	Permanent	Full Time	1
Environmental Scientist	Certification List	Permanent	Fractional (9/10 Time)	1
Information Technology Manager I	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Limited Term	Full Time	1
Scientific Aid	Certification List	Temporary	Intermittent	10
Senior Water Resource Control Engineer	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	2

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Supervising Water Resource Control Engineer (Supervisory)	Certification List	Permanent	Full Time	1
Water Resource Control Engineer	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	2
Associate Personnel Analyst	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	1
Staff Services Manager I	Transfer	Permanent	Full Time	1
Water Resource Control Engineer	Transfer	Limited Term	Full Time	1
Water Resource Control Engineer	Transfer	Permanent	Full Time	2

FINDING NO. 3 – Probationary Evaluations Were Not Provided for All Appointments Reviewed and Were Not Timely

Summary: The SWRCB did not provide 9 probationary reports of performance for 8 of the 36 appointments reviewed by the CRU. In addition, the SWRCB did not provide eight probationary reports of performance in a timely manner, as reflected in the tables below. This is the second consecutive time this has been a finding for the SWRCB.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Associate Governmental Program Analyst	Certification List	2	2
Senior Water Resource Control Engineer	Certification List	1	1
Staff Services Manager II (Supervisory)	Certification List	2	2
Supervising Water Resource Control Engineer (Supervisory)	Certification List	1	2
Associate Personnel Analyst	Transfer	1	1
Staff Services Analyst (General)	Transfer	1	1

Classification	Appointment Type	Number of Appointments	Total Number of Late Probation Reports
Accounting Officer Specialist	Certification List	1	1
Associate Governmental Program Analyst	Certification List	1	1
Engineering Geologist	Certification List	1	1
Office Technician (Typing)	Certification List	1	1
Water Resource Control Engineer	Certification List	1	1
Associate Governmental Program Analyst	Transfer	1	1
Associate Personnel Analyst	Transfer	1	1
Staff Services Manager I	Transfer	1	1

Criteria:

The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not specifically excepted from the probationary period. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) A report of the probationer's performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code Regs., tit. 2, § 599.795.) A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board's record retention rules require that appointing powers retain all probationary reports for five years from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

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 SWRCB states that despite establishing a new process for completion, managers and supervisors did not complete probation reports, and in some cases did not complete probation reports timely.

Corrective Action: Within 90 days of the date of this report, the SWRCB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with the probationary requirements of Government Code section 19171 and California Code of Regulations, title 2, section 599.795. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

FINDING NO. 4 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: Of the 36 appointments reviewed, the SWRCB did not retain 2 NOPAs and 1 entire recruitment file, including the hired applicant's application. This is the second consecutive time this has been a finding for the SWRCB.

Criteria: As specified in section 26 of the Board's Regulations, appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointments for a minimum period of five years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Regs., tit. 2, § 26.)

Severity: Technical. Without documentation, the CRU could not verify if the appointments were properly conducted.

Cause: The SWRCB states that one recruitment file went missing due to a temporary relocation of personnel files, and the NOPAs were not

retained due to staff not following established retention procedures.

Corrective Action: Within 90 days of the date of this report, the SWRCB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations, title 2, section 26. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*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, subd. (a).)

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).)

FINDING NO. 5 – Complainant Was Not Notified of the Reason for Delay in Decision Within the Prescribed Time Period

Summary: The SWRCB provided evidence that one discrimination complaint related to a disability, medical condition, or denial of reasonable accommodation was filed during the compliance review period of January 1, 2019, through December 31, 2019. The complaint

investigation exceeded 90 days and the SWRCB failed to provide written communication to the complainant regarding the status of the complaint.

Criteria: The appointing power must issue a written decision to the complainant within 90 days of the complaint being filed. (Cal. Code Regs., tit. 2, § 64.4, subd. (a).) If the appointing power is unable to issue its decision within the prescribed time period, the appointing power must inform the complainant in writing of the reasons for the delay. (*Ibid.*)

Severity: Very Serious. Employees were not informed of the reasons for delays in decisions for discrimination complaints. Employees may feel their concerns are not being taken seriously, which can leave the agency open to liability and low employee morale.

Cause: The SWRCB states that a member of the EEO staff was new and unaware of this specific requirement.

Corrective Action: Within 90 days of the date of this report, the SWRCB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of California Code of Regulations, title 2, section 64.4, subdivision (a). Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 Regs., 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, but are not limited to, 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 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 period under review, June 1, 2019, through November 30, 2019, the SWRCB had two PSC's that were in effect. The CRU reviewed both of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
California Certified Unified Program Agencies Forum	Training Services	2/3/20-5/1/22	\$30,000	Yes	Yes
Eaton Interpreting Services Inc.	Interpreter Services	10/6/19-9/30/20	\$8,500	Yes	No

FINDING NO. 6 – Unions Were Not Notified of Personal Services Contract

Summary: The SWRCB did not notify unions prior to entering into one of the two PSC's.

Criteria: The contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted. (Gov. Code, § 19132, subd. (b)(1).)

Severity: Serious. Unions must be notified of impending personal services contracts in order to ensure they are aware contracts are being proposed for work that their members could perform.

Cause: The SWRCB states that a revised PSC process did not specify who would send out the union notification prior to execution of the contract.

Corrective Action: It is the contracting department's responsibility to identify and notify any unions whose members could potentially perform the work to be contracted prior to executing the PSC. The PSC's reviewed during this compliance review involved interpreter services, a function which a rank-and-file civil service classification could perform. Within 90 days of the date of this report, the SWRCB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & 19995.4, subd. (b).)

Additionally, the training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or CEA position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biennial basis. (*Ibid.*)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the SWRCB's mandated training program that was in effect during the compliance review period, December 1, 2017, through November 30, 2019.

FINDING NO. 7 – Ethics Training Was Not Provided for All Filers

Summary: The SWRCB did not provide ethics training to 35 of 558 existing filers. In addition, the SWRCB did not provide ethics training to 8 of 74 new filers within 6 months of appointment.

Criteria: New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

Severity: Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

Cause: The SWRCB states that despite notification of this requirement, not all filers completed the training as required.

Corrective Action: Within 90 days of the date of this report, the SWRCB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that all filers are provided ethics training within the time periods prescribed. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

FINDING NO. 8 – Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs

Summary: The SWRCB did not provide basic supervisory training to 12 of 51 new supervisors within 12 months of appointment; did not provide manager training to 3 of 4 new managers within 12 twelve months of appointment; did not provide CEA training to 5 of 6 new CEAs within 12 months of appointment; and did not provide biennial leadership training to 64 of 279 existing supervisors, managers, and/or CEAs. This is the second consecutive time this has been a finding for the SWRCB.

Criteria: Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. Upon completion of the initial training, supervisory employees shall receive a minimum 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subds. (b) and (c).)

Upon initial appointment of an employee to a managerial position, each employee must receive 40 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subd. (d).)

Upon initial appointment of an employee to a CEA position, each employee must receive 20 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subd. (e).)

Severity: Very Serious. The department does not ensure its leaders are properly trained. Without proper training, leaders may not properly carry out their leadership roles, including managing employees.

Cause: The SWRCB states that training contract issues caused a temporary delay on enrollment for supervisor training.

Corrective Action: Within 90 days of the date of this report, the SWRCB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that new supervisors are provided supervisory training within twelve months of appointment. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

FINDING NO. 9 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The SWRCB did not provide sexual harassment prevention training to 27 of 88 new supervisors within 6 months of their appointment. In addition, the SWRCB did not provide sexual harassment prevention training to 36 of 353 existing supervisors every 2 years. This is the second consecutive time this has been a finding for the SWRCB.

Criteria: Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subd. (a).)

Severity: Very Serious. The department does not ensure that all new and existing supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

Cause: The SWRCB states that despite notification of this requirement, not all supervisors were able to attend the training sessions.

Corrective Action: Within 90 days of the date of this report, the SWRCB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that supervisors are provided sexual harassment prevention training within the time periods prescribed. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee’s salary rate⁹ upon appointment depending on the appointment type, the employee’s state employment and pay history, and tenure.

Typically, agencies appoint employees to the minimum rate of the salary range for the class. Special provisions for appointments above the minimum exist to meet special recruitment needs and to accommodate employees who transfer into a class from another civil service class and are already receiving salaries above the minimum.

During the period under review, March 1, 2019, through August 1, 2019, the SWRCB made 200 appointments. The CRU reviewed 23 of those appointments to determine if the SWRCB applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	\$4,344
Associate Accounting Analyst	Certification List	Permanent	Full Time	\$5,543
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$5,710

⁹ “Rate” is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$5,149
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,975
Engineering Geologist	Certification List	Permanent	Full Time	\$8,009
Engineering Geologist	Certification List	Permanent	Full Time	\$9,597
Environmental Scientist	Certification List	Permanent	Full Time	\$3,668
Information Technology Manager I	Certification List	Permanent	Full Time	\$8,999
Office Technician (Typing)	Certification List	Limited Term	Full Time	\$3,189
Scientific Aid	Certification List	Temporary	Intermittent	\$2,269
Scientific Aid	Certification List	Temporary	Intermittent	\$2,269
Senior Water Resource Control Engineer	Certification List	Permanent	Full Time	\$10,896
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$4,136
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	\$7,988
Supervising Water Resource Control Engineer (Supervisory)	Certification List	Permanent	Full Time	\$12,341
Water Resource Control Engineer	Certification List	Permanent	Full Time	\$8,293
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	\$6,228
Associate Personnel Analyst	Transfer	Permanent	Full Time	\$6,446
Staff Services Analyst (General)	Transfer	Permanent	Full Time	\$5,179
Staff Services Manager I	Transfer	Permanent	Full Time	\$6,866
Water Resource Control Engineer	Transfer	Limited Term	Full Time	\$6,344
Water Resource Control Engineer	Transfer	Permanent	Full Time	\$8,014

FINDING NO. 10 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the salary determinations that were reviewed. The SWRCB appropriately calculated and keyed the salaries for each appointment and

correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges. (Cal. Code Regs., tit. 2, § 599.681.) However, in many instances, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria. (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, March 1, 2019, through August 1, 2019, the SWRCB employees made 41 alternate range movements within a classification. The CRU reviewed 14 of those alternate range movements to determine if the SWRCB applied salary regulations accurately and correctly processed each employee's compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Attorney	B	C	Full Time	\$6,760
Attorney	C	D	Full Time	\$7,826
Attorney	A	B	Full Time	\$6,118
Engineering Geologist	C	D	Full Time	\$8,276
Engineering Geologist	B	C	Full Time	\$7,507
Environmental Scientist	B	C	Full Time	\$5,641
Environmental Scientist	A	B	Full Time	\$4,457
Environmental Scientist	A	B	Full Time	\$4,457
Personnel Specialist	B	C	Full Time	\$6,896
Water Resource Control Engineer	B	C	Full Time	\$8,014
Water Resource Control Engineer	C	D	Full Time	\$9,576
Water Resource Control Engineer	B	C	Full Time	\$7,503
Water Resource Control Engineer	A	B	Full Time	\$7,409
Water Resource Control Engineer	C	D	Full Time	\$8,415

FINDING NO.11- Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU determined that the alternate range movements the SWRCB made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Hiring Above Minimum Requests

The CalHR may authorize payment at any step above-the minimum limit to classes or positions to meet recruiting problems, or to obtain a person who has extraordinary qualifications. (Gov. Code § 19836.) For all employees new to state service, departments are delegated to approve HAMs for extraordinary qualifications. (Human Resources Manual Section 1707.) Appointing authorities may request HAMs for current state employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

Extraordinary qualifications may provide expertise in a particular area of a department's program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.¹⁰ (Gov. Code § 19836 subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section

¹⁰ Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

1707.) The salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

Appointing authorities may request/approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be competitive with the employee's salary in the exempt appointment. (*Ibid.*) For example, An employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment up to the maximum of the salary range for the civil service class. (*Ibid.*)

During the period under review, March 1, 2019, through August 1, 2019, the SWRCB authorized 12 HAM requests. The CRU reviewed five of those authorized HAM requests to determine if the SWRCB correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates' extraordinary qualifications, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Attorney	Certification List	New to State	Range C	\$8,323
Engineering Geologist	Certification List	New to State	Range D	\$9,597
Water Resource Control Engineer	Certification List	New to State	Range B	\$6,100
Water Resource Control Engineer	Certification List	New to State	Range B	\$6,100
Water Resource Control Engineer	Certification List	New to State	Range B	\$7,364

FINDING NO. 12 – Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found that the HAM requests the SWRCB made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages 10 percent or more of the total time worked. According to the Pay Differential 14, the 10 percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, March 1, 2019, through August 1, 2019, the SWRCB issued bilingual pay to 15 employees. The CRU reviewed 10 of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base	No. of Appts.
Accountant Trainee	R01	Full Time	1
Associate Governmental Program Analyst	R01	Full Time	1
Engineering Geologist	R09	Full Time	1
Executive Assistant	R04	Full Time	1
Public Participation Specialist, Department of Health Services	R01	Full Time	3
Water Resource Control Engineer	R09	Full Time	3

FINDING NO. 13 – Incorrect Authorizations of Bilingual Pay

Summary: The CRU found 19¹¹ errors in the SWRCB's authorization of bilingual pay:

¹¹ Several files were missing multiple documents.

Classification	Description of Findings	Criteria
Accountant Trainee	Department failed to supply supporting documentation (Bilingual Pay Authorization Form STD 897 and Oral Fluency Certification) demonstrating the need for bilingual services.	Government Code, section 7296 and Pay Differential 14
Associate Governmental Program Analyst	Department failed to supply supporting documentation (Bilingual Pay Authorization Form STD 897) demonstrating the need for bilingual services.	Government Code, section 7296 and Pay Differential 14
Engineering Geologist	Department failed to supply supporting documentation (Bilingual Pay Authorization Form STD 897, Duty Statement with bilingual skills marked for at least 10% and Oral Fluency Certification) demonstrating the need for bilingual services.	Government Code, section 7296 and Pay Differential 14
Executive Assistant	Department failed to supply supporting documentation (Bilingual Pay Authorization Form STD 897 and Duty Statement with bilingual skills marked for at least 10%) demonstrating the need for bilingual services.	Government Code, section 7296 and Pay Differential 14
Public Participation Specialist, Department of Health Services	Department failed to supply supporting documentation (Bilingual Pay Authorization Form STD 897, Duty Statement with bilingual skills marked for at least 10% and Oral Fluency Certification) demonstrating the need for bilingual services.	Government Code, section 7296 and Pay Differential 14
Public Participation Specialist, Department of Health Services	Department failed to supply supporting documentation (Bilingual Pay Authorization Form STD 897) demonstrating the need for bilingual services.	Government Code, section 7296 and Pay Differential 14
Water Resource Control Engineer	Department failed to supply supporting documentation (Bilingual Pay Authorization Form STD 897, Duty Statement with bilingual skills marked for at least 10% and Oral Fluency Certification) demonstrating the need for bilingual services.	Government Code, section 7296 and Pay Differential 14

Classification	Description of Findings	Criteria
Water Resource Control Engineer	Department failed to supply supporting documentation (Bilingual Pay Authorization Form STD 897 and Oral Fluency Certification) demonstrating the need for bilingual services.	Government Code, section 7296 and Pay Differential 14
Water Resource Control Engineer	Department failed to supply supporting documentation (Bilingual Pay Authorization Form STD 897 and Oral Fluency Certification) demonstrating the need for bilingual services.	Government Code, section 7296 and Pay Differential 14

Criteria: For any state agency, a “qualified” bilingual employee, person, or interpreter is someone who CalHR has tested and certified, someone who was tested and certified by a state agency or other approved testing authority, and/or someone who has met the testing or certification standards for outside or contract interpreters as proficient in both the English language and the non-English language to be used. (Gov. Code, § 7296 subd. (a)(3).) An individual must be in a position that has been certified by the department as a position which requires the use of bilingual skills on a continuing basis averaging 10 percent of the time spent either conversing, interpreting or transcribing in a second language and time spent on closely related activities performed directly in conjunction with specific bilingual transactions. (Pay Differential 14.)

Severity: Very Serious. Failure to comply with the state civil service pay plan by incorrectly applying compensation rules in accordance with CalHR’s policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay.

Cause: The SWRCB states there was no process in place to track bilingual pay.

Corrective Action: Within 90 days of the date of this report, the SWRCB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Pay Differential 14 and Government Code section 7296.

Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or, recruitment and retention. (Classification and Pay Manual Section 230.)

California State Civil Service Pay Scales Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, March 1, 2019, through August 1, 2019, the SWRCB issued pay differentials¹² to 400 employees. The CRU reviewed 30 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Associate Sanitary Engineer	261	\$300
Associate Sanitary Engineer	261	\$300
Engineering Geologist	432	\$250
Engineering Geologist	432	\$250
Engineering Geologist	432	\$250
Engineering Geologist	432	\$250
Engineering Geologist	432	\$250

¹² For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Engineering Geologist	432	\$250
Executive Assistant	52	\$355
Executive Assistant	52	\$347
Principal Water Resource Control Engineer	433	3%
Research Scientist IV (Epidemiology/Biostatistics)	434	3%
Sanitary Engineer	261	\$200
Sanitary Engineer	261	\$200
Sanitary Engineer	261	\$200
Sanitary Engineer	261	\$200
Sanitary Engineer	261	\$200
Sanitary Engineer	261	\$300
Senior Sanitary Engineer	261	\$300
Senior Sanitary Engineer	261	\$300
Senior Water Resource Control Engineer	433	3%
Supervising Water Resource Control Engineer (Supervisory)	433	3%
Water Resource Control Engineer	432	\$250
Water Resource Control Engineer	432	\$250
Water Resource Control Engineer	432	\$250
Water Resource Control Engineer	432	\$250
Water Resource Control Engineer	432	\$250
Water Resource Control Engineer	433	3%
Water Resource Control Engineer	433	3%
Water Resource Control Engineer	433	3%

FINDING NO. 14 – Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the pay differentials that the SWRCB authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

Out-of-Class Assignments and Pay

For excluded¹³ and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and

¹³ “Excluded employee” means an employee as defined in section 3527, subd. (b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

According to the Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU provisions and the California Code of Regulations, title 2, section 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires. (Classification and Pay Guide Section 375.)

During the period under review, March 1, 2019, through August 1, 2019, the SWRCB issued OOC pay to three employees. The CRU reviewed all of these OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Associate Sanitary Engineer	R09	Senior Sanitary Engineer	3/1/19 – 3/30/19
Information Technology Specialist I	R01	Information Technology Supervisor II	3/1/19 – 4/30/19
Senior Water Resource Control Engineer	S09	Supervising Water Resource Control Engineer (Supervisory)	3/1/19 – 6/30/19

FINDING NO. 15 – Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the OOC pay assignments that the SWRCB authorized during the compliance review period. OOC pay was issued appropriately to employees performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment.

Leave

Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting time is used in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days¹⁴ worked and paid absences,¹⁵ is counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1,500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Generally, permanent intermittent employees may work up to 1,500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2,000 hours in any calendar year.

¹⁴ For example, two hours or ten hours counts as one day.

¹⁵ For example, vacation, sick leave, compensating time off, etc.

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June), regardless of the number of state employers, without reinstatement, loss or interruption of benefits.

At the time of the review, the SWRCB had 188 positive paid employees whose hours were tracked. The CRU reviewed 23 of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Tenure	Time Frame	Time Worked
Engineering Geologist	Retired Annuitant	7/1/18-6/30/19	956 Hours
Research Data Specialist II	Retired Annuitant	7/1/18-6/30/19	960 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1599.6 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1554 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1451 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1547 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1529.5 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1705 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1427 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1628.8 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1594.3 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1380 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1369.7 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1473 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1498 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1490 Hours
Seasonal Clerk	Temporary	12/1/18-11/30/19	1487 Hours
Seasonal Clerk	Temporary	12/1/18-11/30/19	1542 Hours
Seasonal Clerk	Temporary	12/1/18-11/30/19	1570 Hours
Seasonal Clerk	Temporary	12/1/18-11/30/19	1522 Hours
Seasonal Clerk	Temporary	12/1/18-11/30/19	1511 Hours
Seasonal Clerk	Temporary	12/1/18-11/30/19	1413 Hours
Student Assistant - Engineering and Architectural Sciences	Temporary	12/1/18-11/30/19	1636 Hours

FINDING NO. 16 – Positive Paid Employees Exceeded the Nine Month Limitation in Any Twelve Consecutive Month Period

Summary: The SWRCB did not consistently monitor the actual number of days and/or hours worked in order to ensure that positive paid

employees did not exceed the 189-day or 1,500-hour limitation in any 12-consecutive month period. Specifically, the following 18 employees exceeded the 1,500-hour, or 189-day, limitation:

Classification	Tenure	Time Frame	Time Worked	Time Worked Over Limit
Scientific Aid	Temporary	12/1/18-11/30/19	1599.6 Hours	99.6 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1554 Hours	54 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1547 Hours	47 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1529.5 Hours	29.5 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1705 Hours	205 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1628.8 Hours	128.8 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	1594.3 Hours	94.3 Hours
Scientific Aid	Temporary	12/1/18-11/30/19	214 days	25 Days
Scientific Aid	Temporary	12/1/18-11/30/19	190 days	1 Day
Scientific Aid	Temporary	12/1/18-11/30/19	194 Days	5 Days
Scientific Aid	Temporary	12/1/18-11/30/19	200 Days	11 Days
Seasonal Clerk	Temporary	12/1/18-11/30/19	215 Days	26 Days
Seasonal Clerk	Temporary	12/1/18-11/30/19	1542 Hours	42 Hours
Seasonal Clerk	Temporary	12/1/18-11/30/19	1570 Hours	70 Hours
Seasonal Clerk	Temporary	12/1/18-11/30/19	1522 Hours	22 Hours
Seasonal Clerk	Temporary	12/1/18-11/30/19	1511 Hours	11 Hours
Seasonal Clerk	Temporary	12/1/18-11/30/19	244 Days	55 Days
Student Assistant - Engineering and Architectural Sciences	Temporary	12/1/18-11/30/19	1636 Hours	136 Hours

Criteria:

If any employee is appointed to an intermittent time base position on a TAU basis, there are two controlling time limitations that must be considered. The first controlling factor is the constitutional limit of nine months in any 12 consecutive months for temporary appointments that cannot be extended for any reason. (Cal Const., art VII § 5.) Time worked shall be counted on a daily basis with every 21 days worked counting as one month or 189 days equaling nine months. (Cal. Code Regs., tit. 2, § 265.1 subd. (b).) Another controlling factor limits the maximum work time for student, youth, and seasonal classifications to 1,500 hours. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Severity: Serious. The number of days or hours an individual may work in a temporary appointment is limited in the state civil service. TAU appointments are distinguished from other appointments as they can be made in the absence of an appropriate employment list. Intermittent appointments are not to be used to fill full-time or part-time positions. Such use would constitute illegal circumvention of these eligible lists

Cause: The SWRCB states time worked was calculated incorrectly for all intermittent employees based on a calendar year only.

Corrective Action: Within 90 days of the date of this report, the SWRCB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 265.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation; extreme weather preventing safe travel to work; states of emergency; voting; and when employees need time off to attend special events. (*Ibid.*)

During the period under review, September 1, 2018, through August 31, 2019, the SWRCB placed 690 employees on ATO. The CRU reviewed 22 of these ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Associate Governmental Program Analyst	2/4, 2/5, 2/11, 2/14 and 2/26/19	40.5 hours
Engineering Geologist	2/4, 2/5, 2/11, 2/15 and 2/26/19	40 hours

Classification	Time Frame	Amount of Time on ATO
Engineering Geologist	2/13/2019	8 hours
Engineering Geologist	12/7/2018	48 hours
Engineering Geologist	11/19/18 - 11/21/18	27 hours
Engineering Geologist	2/4, 2/5, 2/15 and 2/26/19	35 hours
Environmental Scientist	2/4, 2/5, 2/11, 2/15 and 2/26/19	41 hours
Environmental Scientist	2/4, 2/5, 2/11, 2/15 and 2/26/19	37 hours
Information Technology Associate	2/4, 2/5, 2/11, 2/15 and 2/26/19	40 hours
Research Data Specialist II	1/6/2019	8 hours
Senior Water Resource Control Engineer	2/4, 2/5, 2/11, 2/15 and 2/26/19	40 hours
Senior Water Resource Control Engineer	2/4, 2/5, 2/14, 2/15 and 2/26/19	41 hours
Water Resource Control Engineer	1/6/2019	10 hours
Water Resource Control Engineer	2/4, 2/5, 2/11, 2/14 and 2/26/19	37 hours
Water Resource Control Engineer	1/31, 1/18 and 1/22/19	33.5 hours
Water Resource Control Engineer	12/12, 12/14, 12/21, 12/26 and 12/28/18	40 hours
Water Resource Control Engineer	12/13 and 12/19/18	40 hours
Water Resource Control Engineer	11/7, 11/8, 11/9 and 11/13/18	32 hours
Water Resource Control Engineer	2/4, 2/5, 2/11, 2/14, 2/15 and 2/26/19	45.5 hours
Water Resource Control Engineer	9/4, 9/5, 9/20, 9/21 and 9/27/18	36 hours
Water Resource Control Engineer	12/13, 12/19, 12/21 and 12/26/18	40 hours
Water Resource Control Engineer	2/4, 2/5, 2/11, 2/15 and 2/26/19	44 hours

FINDING NO. 17 – Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The SWRCB provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

Leave Auditing and Timekeeping

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.)

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. (*Ibid.*) If an employee’s attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

During the period under review, June 1, 2019, through August 31, 2019, the SWRCB reported 262 units comprised of 2,357 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
July 2019	155	82	82	0
August 2019	150	164	164	0

FINDING NO. 18 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed

Summary: The SWRCB failed to provide completed Leave Activity and Correction Certification forms for both units reviewed during the July and August 2019 pay periods.

Criteria: Departments are responsible for maintaining accurate and timely leave accounting records for their employees. (Cal. Code Regs., tit. 2, § 599.665.) Departments shall identify and record all errors found using a Leave Activity and Correction form. (Human Resources Manual Section 2101.) Furthermore, departments shall certify that all leave records for the unit/pay period identified on the certification form have been reviewed and all leave errors identified have been corrected. (*Ibid.*)

Severity: Technical. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure

accuracy and timeliness. For post-audit purposes, the completion of Leave Activity and Correction Certification forms demonstrates compliance with CalHR policies and guidelines.

Cause: The SWRCB states that there was reduced time to audit leave records due to staffing shortages.

Corrective Action: Within 90 days of the date of this report, the SWRCB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that their monthly internal audit process is documented and that all leave input is keyed accurately and timely. The SWRCB must incorporate completion of Leave Activity and Correction Certification forms for all leave records even when errors are not identified or corrected. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Leave Reduction Efforts

Departments must create a leave reduction policy for their organization and monitor employees' leave to ensure compliance with the departmental leave policy; and ensure employees who have significant "over-the-cap" leave balances have a leave reduction plan in place. (Human Resources Manual Section 2124.)

Applicable Memorandums of Understanding and the California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. "If a represented employee is not permitted to use all of the vacation to which he or she is entitled in a calendar year, the employee may accumulate the unused portion."¹⁶ (Cal. Code Regs., tit. 2, § 599.737.) If it appears an excluded employee will have a vacation or annual leave balance that will be above the maximum amount¹⁷ as of January 1 of each year, the appointing power shall require the supervisor to notify and meet with each employee so affected by the preceding July 1, to allow the employee to plan time off, consistent with operational needs, sufficient to reduce their balance to the amount permitted by the applicable regulation, prior to January 1. (Cal. Code Regs., tit. 2, § 599.742.1.)

¹⁶ For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for Bargaining Unit 06 there is no established limit and for Bargaining Unit 05 the established limit is 816 hours.

¹⁷ Excluded employees shall not accumulate more than 80 days.

It is the intent of the state to allow employees to utilize credited vacation or annual leave each year for relaxation and recreation, ensuring employees maintain the capacity to optimally perform their jobs. (Cal. Code Regs., tit. 2, § 599.742.1.) For excluded employees, the employee shall also be notified by July 1 that, if the employee fails to take off the required number of hours by January 1, the appointing power shall require the employee to take off the excess hours over the maximum permitted by the applicable regulation at the convenience of the agency during the following calendar year. (*Ibid.*) To both comply with existing civil service rules and adhere to contemporary human resources principles, state managers and supervisors must cultivate healthy work- life balance by granting reasonable employee vacation and annual leave requests when operationally feasible. (Human Resources Manual Section 2124.)

As of December 2019, 130 SWRCB employees exceeded the established limits of vacation or annual leave. The CRU reviewed 28 of those employees' leave reduction plans to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Administrative Assistant II	R01	328	No
Associate Governmental Program Analyst	R01	534	Yes
Assistant Chief Counsel	M02	487	Yes
Assistant Chief Counsel	M02	402.5	Yes
Attorney IV	R02	337.4	Yes
CEA	M01	453	Yes
CEA	M01	250	No
CEA	M01	666	Yes
CEA	S10	488.35	Yes
Engineering Geologist	R09	348	Yes
Engineering Geologist	R09	361	Yes
Executive Officer II	M01	348	Yes
Information Technology Specialist I	R01	300.5	Yes
Office Assistant (Typing)	R04	274.2	Yes
Personnel Specialist	R01	513.5	No
Research Data Specialist II	R01	278.75	Yes
Senior Environmental Scientist (Specialist)	R10	199.5	Yes
Senior Sanitary Engineer	E48	345	Yes
Senior Sanitary Engineer	E48	1114.5	Yes
Senior Sanitary Engineer	E48	347.5	Yes

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Senior Water Resource Control Engineer	R09	563	Yes
Staff Services Manager II (Supervisory)	S01	474.7	Yes
Supervising Engineering Geologist	S09	301.25	Yes
Supervising Sanitary Engineer	S09	380.5	Yes
Supervising Water Resource Control Engineer (Supervisory)	S09	1690	Yes
Supervising Water Resource Control Engineer (Supervisory)	S09	296	Yes
Water Resource Control Engineer	R09	250.5	Yes
Water Resource Control Engineer	R09	575	Yes
Total		14,204.65	

FINDING NO. 19 – Leave Reduction Plans Were Not Developed for Employees Whose Leave Balances Exceeded Established Limits

Summary: Although the SWRCB made a reasonable effort to ensure that all employees over the maximum vacation or annual leave hours had leave reduction plans in place, the SWRCB did not provide leave reduction plans for three employees reviewed whose leave balances significantly exceeded established limits.

Criteria: It is the policy of the state to foster and maintain a workforce that has the capacity to effectively produce quality services expected by both internal customers and the citizens of California. (Human Resources Manual Section 2124.) Therefore, appointing authorities and state managers and supervisors must create a leave reduction policy for the organization and monitor employees' leave to ensure compliance with the departmental leave policy. Employees who have significant "over-the-cap" leave balances must have a leave reduction plan in place and be actively reducing hours. (*Ibid.*)

Severity: Technical. California state employees have accumulated significant leave hours creating an unfunded liability for departmental budgets. The value of this liability increases with each passing promotion and salary increase. Accordingly, leave

balances exceeding established limits need to be addressed immediately.

Cause: The SWRCB states that not all employees submitted leave reduction plans as directed.

Corrective Action: Within 90 days of the date of this report, the SWRCB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure employees who have significant “over-the-cap” leave balances have a leave reduction plan in place. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

State Service

The state recognizes two different types of absences while an employee is on pay status; paid or unpaid. The unpaid absences can affect whether a pay period is considered to be a qualifying or non-qualifying pay period for state service and leave accruals.

An employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service.¹⁸ (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

Hourly or daily rate employees working at a department in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit. 2, § 599.609.)

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs. tit. 2, § 599.608.) When computing months of total state service to determine a change

¹⁸ Except as provided in California Code of Regulations, title 2, sections 599.609 and 599.776.1, subd. (b) of these regulations, in the application of Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, 19997.4 and sections 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.787, 599.791, 599.840 and 599.843 of these regulations.

in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs. tit. 2 , § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees¹⁹ shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

Permanent intermittent employees also earn leave credits on the pay period following the accumulated accrual of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period, are not counted or accumulated towards leave credits.

During the period under review, March 1, 2019, through August 1, 2019, the SWRCB had three employees with non-qualifying pay period transactions. The CRU reviewed six transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	Number Reviewed
Non-Qualifying Pay Period	Full Time	4
Qualifying Pay Period	Full Time	2

FINDING NO. 20 – Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU determined that the SWRCB ensured employees with non-qualifying pay periods did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

Policy and Processes

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. (*Ibid.*) Nepotism is defined as the practice of an employee using his or her influence or power

¹⁹ As identified in Government Code sections 19858.3, subd. (a), 19858.3, subd. (b), or 19858.3, subd. (c) or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subd. (c) or California Code of Regulations, title 2, section 599.752 subd. (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

FINDING NO. 21 – Department Does Not Maintain a Current Written Nepotism Policy

Summary: The SWRCB does not maintain a current written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees.

Criteria: It is the policy of the State of California to recruit, hire and assign all employees on the basis of fitness and merit in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204). All department policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring, and assigning employees on the basis of merit. (*Ibid.*)

Severity: Very Serious. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. Departments must take proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in accordance with civil service statutes. Maintaining a current written nepotism policy, and its dissemination to all staff, is the cornerstone for achieving these outcomes.

Cause: The SWRCB states that the nepotism policy had not been updated since 1997 due to a lack of awareness of Human Resources Manual Section 1204.

Corrective Action: Within 90 days of the date of this report, the SWRCB must submit to the SPB a written corrective action response which includes an updated nepotism policy which contains requirements outlined in Human Resources Manual section 1204, and documentation demonstrating that it has been distributed to all staff.

Workers' Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers' compensation law. (Cal. Code Regs., tit. 8, § 9880 subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee's "personal physician," as defined by Labor Code section 4600. (Cal. Code Regs., tit. 8, § 9880 subds. (c)(7) & (8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work-related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401 subd. (a).)

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers' compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers. (*Ibid.*) In this case, the SWRCB did not employ volunteers during the compliance review period.

FINDING NO. 22 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the SWRCB provides notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law. Furthermore, the CRU verified that when the SWRCB received workers' compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

According to Government Code section 19992.2, subdivision (a), appointing powers must "prepare performance reports." Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee's probationary period.

The CRU selected 56 permanent SWRCB employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:

Classification	Date Performance Appraisals Due
Associate Governmental Program Analyst	8/1/2019
Associate Governmental Program Analyst	6/1/2019
Associate Governmental Program Analyst	7/25/2019
Associate Sanitary Engineer	1/1/2019
Associate Sanitary Engineer	11/17/2019
Attorney III	7/13/2019
Attorney IV	10/21/2019
Delineator	6/1/2019
Engineering Geologist	1/1/2019
Engineering Geologist	9/1/2019
Engineering Geologist	9/30/2019
Engineering Geologist	11/6/2019
Engineering Geologist	10/6/2019
Engineering Geologist	6/1/2019
Engineering Geologist	6/19/2019
Engineering Geologist	5/21/2019
Environmental Program Manager I (Supervisory)	8/8/2019
Environmental Scientist	1/6/2019
Environmental Scientist	1/3/2019
Environmental Scientist	1/3/2019
Environmental Scientist	9/18/2019
Environmental Scientist	2/6/2019
Environmental Scientist	12/18/2019
Environmental Scientist	4/12/2019
Environmental Scientist	10/1/2019
Executive Assistant	7/9/2019
Information Technology Specialist II	11/16/2019
Information Technology Supervisor II	7/31/2019
Office Technician (Typing)	1/20/2019
Sanitary Engineer	9/5/2019
Sanitary Engineer	8/13/2019
Sanitary Engineering Associate	3/5/2019
Sanitary Engineering Associate	1/1/2019
Senior Environmental Scientist (Specialist)	7/1/2019
Senior Engineering Geologist	5/11/2019
Senior Environmental Scientist (Supervisory)	10/31/2019

Classification	Date Performance Appraisals Due
Senior Sanitary Engineer	2/1/2019
Senior Water Resource Control Engineer	1/28/2019
Senior Water Resource Control Engineer	2/14/2019
Senior Water Resource Control Engineer	11/30/2019
Staff Services Manager I	3/2/2019
Staff Services Manager I	3/14/2019
Staff Services Manager I	3/2/2019
Staff Services Manager I	1/10/2019
Water Resource Control Engineer	7/8/2019
Water Resource Control Engineer	1/31/2019
Water Resource Control Engineer	2/27/2019
Water Resource Control Engineer	1/25/2019
Water Resource Control Engineer	3/2/2019
Water Resource Control Engineer	1/9/2019
Water Resource Control Engineer	11/3/2019
Water Resource Control Engineer	6/9/2019
Water Resource Control Engineer	6/5/2019
Water Resource Control Engineer	7/1/2019
Water Resource Control Engineer	5/3/2019
Water Resource Control Engineer	9/13/2019

FINDING NO. 23 – Performance Appraisals Were Not Provided to All Employees

Summary: The SWRCB did not provide annual performance appraisals to four of 56 employees reviewed after the completion of the employees’ probationary periods.

Criteria: Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule. (Gov. Code, § 19992.2, subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve calendar months following the end of the employee's probationary period. (Cal. Code Regs., tit. 2, § 599.798.)

Severity: Serious. The department does not ensure that all of its employees are apprised of work performance issues and/or goals in a systematic manner.

Cause: The SWRCB states that the supervisors or managers failed to complete the performance appraisals when due, despite implementing new procedures for completion.

Corrective Action: Within 90 days of the date of this report, the SWRCB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

DEPARTMENTAL RESPONSE

The SWRCB's response is attached as Attachment 1.

SPB REPLY

Based upon the SWRCB written response, the SWRCB will comply with the corrective actions specified in these report findings. Within 90 days of the date of this report, a written corrective action response including documentation demonstrating implementation of the corrective actions specified, must be submitted to the CRU.



GAVIN NEWSOM
GOVERNOR



JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

July 2, 2020

Alton Ford, Compliance Review Manager
State Personnel Board
Policy and Compliance Review Division
801 Capitol Mall
Sacramento CA, 95814

Dear Mr. Ford,

The State Water Resources Control Board (Water Boards) acknowledges the findings identified in the State Personnel Board (SPB), Compliance Review Report (Review Report), prepared by the SPB's Compliance Review Unit (CRU), received on June 12, 2020. We would like to thank the CRU for their professionalism and cooperation during this compliance review.

The CRU conducted a compliance review of the Water Boards personnel practices in the areas of examinations, appointments, Equal Employment Opportunity, Personnel Service Contract's, mandated training, compensation and pay, leave, and policy and processes. In general, we found the Review Report to be a thorough analysis and accurate characterization of the processes that existed during the time period reviewed.

The Water Boards strives to ensure compliance with all civil services laws and maintain the integrity of the state's merit-based selection processes and is committed to implement any corrective actions necessary to remedy the findings identified in the Review Report.

If you have any questions or concerns regarding this response, please feel free to contact me at (916) 341-5095 or by email at Lucia.Neri@Waterboards.ca.gov

Sincerely,

 Recoverable Signature

X Lucia Neri

Signed by: Neri, Lucia@Waterboards

Lucia Neri, Chief
Human Resources Branch

Enclosure
cc: Next Page

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

cc: John Russell, Administrative Deputy Director
Eileen Sobeck, Executive Director

The Corrective Action Response (CAR) is an opportunity for departments to demonstrate necessary steps have been implemented to correct the non-compliant Findings (deficiency) found as a result of the Compliance Review.

For each non-compliant Finding, refer to the Corrective Action section of that Finding in the review report. Copies of relevant documentation demonstrating that the Corrective Action has been or is in the process of being corrected must be included with the CAR. Examples include, but are not limited to, a training log for supervisory training, leave reduction policy and/or any new procedures that have been implemented.

CORRECTIVE ACTION RESPONSE

DEPARTMENT: State Water Resources Control Board (Water Boards)	BRANCH/DIVISION/PROGRAM: Division of Administrative Services, Human Resources Branch
CONTACT PERSON (NAME AND TITLE): Lucia Neri, Human Resources Branch Chief	CORRECTIVE ACTION RESPONSE DATE: October 8, 2020

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)
Finding as stated in the report, by number	Description of 1) completed or planned corrective action(s) and 2) of supporting documentation (if applicable)	Actual or Estimated Completion Date
<p>Finding # 3: Probationary Evaluations Were Not Provided for All Appointments Reviewed and Were Not Timely</p>	<p>In compliance with the Water Boards' probation evaluation tracking process, the Special Projects manager will continue to follow up with all hiring managers to obtain each probationary report in a timely manner. The HRB will improve the process by reiterating to supervisors and managers the importance of completing timely probationary evaluations. In addition, the HRB Liaison Unit adds probationary reporting dates to the Outlook calendar of each hiring supervisor and manager. Furthermore, our Executive Director and each Regional Board Executive Officer will emphasize the requirement and importance of completing probationary reports in management meetings. The timeframe of implementation is ongoing.</p>	<p>Ongoing</p>
<p>Finding # 4:</p>	<p>In compliance with the Water Boards' retention schedule, the HRB Liaison Unit will distribute the retention schedule to all hiring supervisors and managers to ensure all appointment documentation is kept for the appropriate amount of time. The Water Boards have a</p>	<p>February 26, 2020</p>

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)
Appointment Documentation Was Not Kept for the Appropriate Amount of Time	Supervisor's Hiring Toolkit to establish improved internal controls and to ensure the Water Boards' hiring processes are compliant with best hiring practices and the civil service laws/rules governing hiring. Additionally, the Water Boards recently implemented an electronic Request for Personnel Action (e-RPA) database that automates the processing of personnel actions. The e-RPA system resembles the familiar paper format and has built-in checklists and required document fields. These measures will improve consistency during and compliance with the recruitment and hiring process, and this consistency will help prevent loss of required retention documents.	
Finding # 5: Complainant Was Not Notified of the Reason for Delay in Decision Within the Prescribed Time Period	The responsible employee in the Equal Employment Opportunity (EEO) Office was new to the Water Boards and to the EEO field. The issue was addressed with the employee and the supervisor is working closely with the employee to ensure this doesn't happen again.	February 3, 2020
Finding # 6: Unions Were Not Notified of Personal Services Contract	The Water Boards failed to provide Union Notification on a Personal Services contract with Eaton Interpreting Services, Inc. The Corrective Action Plan has been completed by providing additional training to the new analyst to ensure the analyst is clear that the responsibility of the Union Notification is the Water Boards' duty and responsibility. To ensure that this duty is carried out and completed for future personal services contracts, the contract checklist was updated to include Union Notification. On January 30, 2020, the Lead Analyst sent the Union Notification to the union, although it was late, and ensured that the language was made available to the new analyst for future use. In addition, the topic was addressed in a weekly meeting with all procurement staff.	January 30, 2020
Finding # 7: Ethics Training Was Not Provided for All Filers	On January 28, 2020, the Water Boards implemented an online process that notifies all new Form 700 filers of their responsibility to complete training. In addition, the Form 700/Ethics Coordinator will continue to follow up with all filers to ensure their training has been	Ongoing

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)
	completed. Furthermore, the training coordinator will generate monthly reports and will escalate the non-compliant filer list to the Deputy Directors and Executive Officers. One month prior to the Ethics Training due date, a non-compliant filer list will be forward it to the Executive Director and the Chief Counsel for further handling.	
<p>Finding # 8: Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs</p>	<p>Training Services is working to procure a Learning Management System (LMS). The LMS will allow consolidation of internal and external training records and will allow for improved tracking and reporting of mandatory leadership training compliance. The LMS will provide staff access to their complete training history and will include a dashboard with compliance reminders.</p>	<p>July 2022</p>
<p>Finding # 8: Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs</p>	<p>Hired Research Data Specialist I (RDS I) to manage Training Services data and reporting needs, including tracking and reporting of mandatory leadership training compliance. As part of internal tracking, Training Services will prepare quarterly compliance reports for Water Boards management. The RDS I will also follow-up on collecting certificates of completion to ensure records are complete.</p>	<p>RDS I Hired June 2020 First quarterly compliance report to management planned by December 2020</p>
<p>Finding # 8: Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs</p>	<p>Streamlined registration process and improved manual tracking. Since early 2019, Training Services has offered a streamlined alternative registration procedure for Water Boards staff to self-register in CalHR Leadership Academy courses, which fill quickly. (See attached factsheet.) Announcements for these courses are distributed to existing supervisors and managers. In July 2020, Training Services implemented a new electronic Training Request Form which automatically populates our current training tracking spreadsheet for external training vendors, including CalHR. The new form reduces the possibility for data entry error. Training Services will continue to implement manual tracking improvements until the LMS is procured and operational.</p>	<p>Electronic TRF implemented July 2020, discussion and improvements ongoing</p>

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<p>Finding # 8: Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs</p>	<p>Starting June 2020, Training Services is now holding quarterly information sessions for Water Boards staff. The sessions are intended to clarify leadership requirements, registration processes, and direct the individual and their supervisor to take an active role in ensuring compliance with both initial and biennial leadership training requirements. A Leadership Training and Development Requirement Factsheet is also available to Water Boards staff. The factsheet resource is highlighted in the information session. The recorded information session and PowerPoint presentation (attached) is available to all Water Boards staff on the Water Boards intranet site as a reference or for anyone who missed the scheduled information sessions.</p>	<p>June 2020; ongoing quarterly</p>
<p>Finding # 8: Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs</p>	<p>Training Services offers a variety of regularly scheduled leadership training to provide leadership hours towards the biennial training requirement. Training Services management reviews course content to determine if leadership hours are warranted and to ensure the courses align with CalHR core and leadership competencies.</p>	<p>Ongoing</p>
<p>Finding # 9: Sexual Harassment Prevention Training Was Not Provided for All Supervisors</p>	<p>The Water Boards' training academy previously agreed to track the sexual harassment prevention training and ensure all supervisors attended the training. When the deficiencies were identified, the EEO Office began to document all of the attendees for sexual harassment prevention training and the EEO has created a tracking system that will be used to notify management when their employee is not compliant with sexual harassment training in the future. Additionally, an annual non-compliant list will be forwarded to the Executive Director and the Chief Counsel for further handling.</p>	<p>September 1, 2020</p>
<p>Finding # 13: Incorrect Authorizations of Bilingual Pay</p>	<p>The Water Boards conducted an audit of all bilingual pay and verified those receiving pay were authorized. The Water Boards have implemented a checklist to verify transfer employee pay and, if necessary, removal of the differential. The Water Boards have also implemented new procedures for authorizing bilingual pay for current employees and, when advertising bilingual positions, to ensure proper</p>	<p>August 1, 2020</p>

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	documentation is received and maintained. Additionally, training will be provided for Classification & Pay and Transactions staff to ensure bilingual pay is applied correctly.	
<p>Finding #16:</p> <p>Positive Paid Employees Exceeded the Nine Month Limitation in Any Twelve Consecutive Month Period – Actual Time Worked (ATW) missing documentation and response to how hours were tracked.</p>	<p>The HRB has developed a year-to-date tracking spreadsheet so the Water Boards can closely monitor the total number of hours worked. These monthly totals will be tracked by the Special Projects manager to ensure the supervisors have up-to-date information and can also track the number of hours their employees have worked so as not to exceed the 1500 hours.</p> <p>As soon as it is detected that an employee is close to the 1500 cap, the Special Projects Manager will send an email to communicate this with the employee’s immediate supervisor.</p>	Ongoing
<p>Finding # 18:</p> <p>Leave Activity and Correction Certification Forms Were Not Completed for all Leave Records</p>	<p>The review of the leave accounting records is performed by the Special Projects Manager. When errors are discovered, the correction forms are disseminated to the designated Personnel Specialist who completes the corrections.</p>	Ongoing
<p>Finding # 19:</p> <p>Leave Reduction Plans (LRP) were not received for all staff or were not provided due to employee retirements during the calendar year.</p>	<p>The Water Boards will continue to send yearly reminders to supervisors and managers about the requirement to direct employees to complete the leave reduction plans.</p> <p>In addition, the Special Projects Manager will continue to generate quarterly reports to ensure the leave reductions plans are received for any employee over the 640 cap and are reducing their leave balances in accordance with the submitted plan. The Special Projects Manager will escalate the non-compliant list report to the Deputy Directors and Executive Officers.</p>	Ongoing
<p>Finding # 21:</p> <p>Department Does Not Maintain a Current Written Nepotism Policy</p>	<p>In compliance with the State Personnel Board, the Water Boards has updated the Nepotism Policy and released it to all staff. All staff will receive the updated policy.</p>	8/28/20

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<p>Finding # 23:</p> <p>Performance Appraisals were not provided to all employees.</p>	<p>In compliance with the Water Boards' performance appraisal guidance, the Special Projects Manager will continue to follow up with all hiring managers to obtain each performance appraisal in a timely manner.</p> <p>In addition, a yearly e-mail is sent out reminding all supervisors and managers to conduct annual performance appraisals. The HRB Special Projects Manager will instruct all supervisors and managers to complete performance appraisals in a timely manner and will develop a tracking mechanism to ensure all performance appraisals are completed for all employees. In addition, the Special Projects Manager will generate quarterly reports and will escalate the non-compliant list report to the Deputy Directors and Executive Officers.</p>	<p>Ongoing.</p>