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FILED  
ENDORSED  
2017 JAN 31 PM 3:33  
GDSSC COURTHOUSE  
SUPERIOR COURT  
OF CALIFORNIA  
SACRAMENTO COUNTY

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SACRAMENTO

12 CALIFORNIA ASSOCIATION OF  
13 PROFESSIONAL SCIENTISTS,  
14 Petitioner/Plaintiffs,

15 vs.

16 CALIFORNIA STATE PERSONNEL  
17 BOARD; CALIFORNIA DEPARTMENT OF  
18 HUMAN RESOURCES; and CALIFORNIA  
19 DEPARTMENT OF FISH AND WILDLIFE  
20 Respondents/Defendants.

) Case No.: 34-2016-80002426

) **MEMORANDUM OF POINTS &  
AUTHORITIES IN SUPPORT OF THE  
VERIFIED PETITION FOR WRIT OF  
MANDATE [C.C.P § 1085] AND  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

) Date: March 17, 2017

) Time: 9:00 AM

) Dept: 31

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1 allow the Senior Environmental Scientist Supervisors to supervise their Senior Environmental  
2 Scientist Specialist peers.

3 As a result of this action, Specialists are effectively demoted in violation of the  
4 constitutionally established classifications.

5  
6 Departments have an obligation to uphold the classification plan established by the State  
7 Personnel Board. The Board retains the exclusive jurisdiction to classify positions in the state civil  
8 service under Article VII of the State Constitution and Government Code Section 18800. DFW's  
9 misuse of the Senior Environmental Scientist Supervisory classification violates the State Personnel  
10 Board-established classification scheme, constitutes an improper subordination of the Senior  
11 Environmental Scientist Specialist class as well as a constructive demotion, usurps Board jurisdiction  
12 over the classification of positions, and violates the delegation of authority given to CDFW under  
13 Government Code 19818.14.  
14

15 **STATEMENT OF FACTS**

16 *The California State Personnel Board*

17  
18 The California State Personnel Board is a California State Constitution-established political  
19 subdivision. The SPB is responsible for enforcing California's civil service statutes. (Cal Const.  
20 Article VII, Sec. 3) Additionally, the Board, by majority vote of its members, prescribes  
21 classifications, adopts other rules authorized by statute, and reviews disciplinary actions imposed  
22 against state employees. (Ibid) The Board also establishes rules implementing and enforcing the merit  
23 principle in the state civil service system. (Gov. Code Section 18800; see Cal. Const., Article VII,  
24 Section 1, subsection b) Consistent with the merit principle, the Board promulgates rules to govern  
25 classifications and other matters related to its authority under Article VII of the Constitution. The  
26  
27  
28

1 SPB retains the exclusive jurisdiction to classify positions in the state civil service under Government  
2 Code Section 18701 et seq., 19818.6, and Article VII of the California State Constitution.

3 California Government Code Section 18800 directs the SPB to create and adjust classes of  
4 positions in the State civil service. Classifications adopted by the SPB are known as the "Personnel  
5 Classification Plan of the State of California." (Cal. Gov. Code Sec. 18800) The classification plan  
6 must include the title and scope of duties and responsibilities for each class of positions. (Ibid.)  
7

8 Regulation provides that persons shall only be appointed to a civil service classification  
9 that is appropriate for the functions, duties, and responsibilities of the position the person is hired to  
10 perform. (2 CCR Sec 248)

### 11 *The California Department of Human Resources*

12 The California Department of Human Resources is a California state agency created by the  
13 Legislature for the purposes of managing the non-merit aspects of the state's personnel system.  
14 (Gov. Code § 19815 et seq.) CalHR has jurisdiction over the state's financial relationship with its  
15 employees, including matters of salary, layoffs, and non-disciplinary demotions. (*Tiraelle v. Davis*  
16 (1983) 20 Cal.App.4th 1317, 1322; Gov. Code §§ 19816, 19816.2, 19825, 19826)  
17

18 The Legislature has provided the CalHR with the statutory authority to set salaries for  
19 employees excluded from collective bargaining, including employees designated as supervisors.  
20 CalHR also negotiates salaries for represented employees under the Dills Act (Cal. Gov. Code section  
21 3512 et seq.) The matter of setting employee compensation is a legislative function which, in this  
22 instance, the Legislature has delegated to the CalHR. (*Tiraelle v. Davis* 20 Cal.App.4th 1322 citing  
23 *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 189.) CalHR can act only to the extent and  
24 in the manner consistent with the legislative delegation of authority.  
25  
26  
27

1 As part of the salary setting delegation, the Legislature has stated that the salary ranges “shall  
2 be based on the principle that like salaries shall be paid for comparable duties and responsibilities.”  
3 (Gov. Code § 19826.) This provision has been construed to mandate “horizontal parity among  
4 comparable positions throughout the civil service structure.” (*State Trial Attorneys’ Assn. v. State of*  
5 *California* (1976) 63 Cal.App.3d 298, 304.)  
6

7 In addition to horizontal pay parity, CalHR tries to maintain a vertical salary relationship  
8 between classes. This vertical salary relationship reflects what it considers appropriate salary  
9 differentials between classes within the same career pattern. The maximum salary for a first-line  
10 supervisor is generally 10 percent above the maximum salary for the full journey-level class it  
11 supervises. (RJN<sup>1</sup> Ex. I, p 71)  
12

13 Regardless of its work to maintain horizontal and vertical pay relationships, CalHR is obliged  
14 to uphold the classification plan established by SPB to ensure allocation of every position to the  
15 appropriate class in the classification plan. (RJN Ex J, p 74)  
16

17 CalHR is only granted statutory authority to *recommend* changes in the Personnel  
18 Classification Plan to the State Personnel Board. (Cal. Gov. Code Section 19818.10)

### 19 *The Senior Environmental Scientist Class Specifications*

20 In 2001, the State Personnel Board adopted the current Environmental Scientist deep-class  
21 series. (RJN Ex. E) It is currently comprised of six classifications: Environmental Scientist, Senior  
22 Environmental Scientist (Specialist), Senior Environmental Scientist (Supervisory), Environmental  
23 Program Manager I (Supervisory), Environmental Program Manager I (Managerial), and  
24 Environmental Program Manager II. (RJN Ex. B)  
25

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26 <sup>1</sup> Request for Judicial Notice  
27



1 Senior Environmental Scientist Supervisory incumbents are described as supervising and  
2 directing the work of professional or technical staff. (RJN Ex. B, p 4) Environmental Program  
3 Manager I (Supervisory) incumbents are tasked with supervising a group of Senior Environmental  
4 Scientists. (RJN Ex. B, pg. 4) This description in the specification does not break down the Senior  
5 Environmental Scientists into its component peer classes of Supervisory and Specialist. (RJN Ex. B,  
6 p 4)  
7

8 The most recent changes to the Environmental Scientist class series were made in 2013  
9 pursuant to a proposal submitted jointly by CalHR and CAPS. (RJN Ex. D) The changes were based  
10 on an intensive classification study conducted under a labor contract agreement between CalHR and  
11 CAPS to review scientific classifications and determine if some could be consolidated or revised.  
12 (RJN Ex. D, p 32) As the result of that proposal, the title of the Staff Environmental Scientist  
13 classification was changed to Senior Environmental Scientist Specialist. (RJN Ex. D, p 34) Other  
14 changes, such as the abolishment of other scientific classes and the consolidation of those positions  
15 into the Environmental Scientist classification series are not at issue here.  
16  
17

18 The 2013 class proposal documents reinforce that both species of Senior Environmental  
19 Scientist – Supervisory and Specialist – report to Environmental Program Manager I or higher  
20 incumbents. (RJN Ex. D, p 40) The reporting relationship in the other direction is also contemplated:  
21 Environmental Program Managers are described as supervising both Specialist and Supervisory  
22 Senior Environmental Scientists. (RJN Ex. D, p 40)  
23

24 Additionally, the 2001 documents on which the Board relied in establishing the modern  
25 iteration of the class series says that Senior Environmental Scientist Supervisory incumbents will  
26 supervise “subordinate level environmental scientists.” (RJN Ex. E, p 49) A Senior Environmental  
27 Scientist Specialist is not a classification “subordinate” to its peer Senior Environmental Scientist  
28

1 Supervisor. Such a span of control was never considered by the Board for this series. They have  
2 always been peer classes. The action challenged here has improperly subordinated a peer class in  
3 violation of the constitutionally adopted classification plan.

4 *Problems Caused by Salary Disparities*

5  
6 Historically, the Senior Environmental Specialists and Supervisors received the same salaries  
7 (RJN Ex. H) CalHR sets salaries for Senior Environmental Scientist Supervisors directly while  
8 salaries for the rank-and-file Senior Environmental Scientist Specialists are set through the collective  
9 bargaining process under the Dills Act (Cal. Gov. Code Section 3512 et seq.)

10  
11 In 2008, CAPS successfully sued the State in this court to enforce the like-pay-like-work  
12 principle as applied to 14 supervisor scientist classifications, including the Senior Environmental  
13 Scientist Supervisory classification (and related classes that have since been reorganized into the  
14 Senior Environmental Supervisory class). (See *California Association of Professional Scientists v.*  
15 *Department of Personnel Administration et al.* (2011) 195 Cal.App.4<sup>th</sup> 1228; and trial court decision  
16 at Super. Ct. No. 34-2008-00014476,) These classes were underpaid, despite sharing historical  
17 horizontal pay parity with employees performing like work in various supervisory engineer  
18 classifications.

19  
20 The court agreed and in 2014, Scientific Supervisory employees, including the Senior  
21 Environmental Scientist Supervisory class, received an average 42% increase in their salaries. (RJN  
22 Ex. C p 29) The peer Senior Environmental Scientist Specialist classification, which is designated as  
23 rank-and-file and thus subject to the collective bargaining process, did not receive a similar pay  
24 increase from CalHR. Horizontal pay parity was restored between the previously equal senior  
25 supervisory scientists and senior supervisory engineers, but it was lost between the Senior  
26 Environmental Scientist Supervisory and their peer Specialists. (RJN Ex. F, G, H) This loss of the  
27

1 horizontal pay parity relationship between the two Senior Environmental Scientist classes created a  
2 significant salary disparity at both ends (bottom and top) of the salary ranges of the two classes. A  
3 newly hired Senior Environmental Scientist Supervisor makes about 42% more than a newly hired  
4 Specialist and a Senior Environmental Scientist Supervisor at the top of the scale makes about 42%  
5 more than a Specialist at the top of the scale. The distance from the top of the Senior Environmental  
6 Scientist Specialist scale to the bottom of the Supervisory scale is slightly less dramatic at about 14%.  
7 (See Ex. F, G, H)

9 *The DFW Memorandum*

10 On September 15, 2014, the Department of Fish and Wildlife distributed Human Resources  
11 Memorandum HR 14-048 with the subject "Change in Reporting Structure." (RJN Ex. B) The memo  
12 explained that, *because of* the change in Senior Supervisor pay, the Senior Specialist class is no  
13 longer within transferable range of the Senior Supervisory classification. (RJN Ex. B) It noted that  
14 Specialists must now take an exam to promote into the Supervisor class. (RJN Ex. B) Previously,  
15 employees could laterally transfer between the peer classifications. (RJN Ex. B) The memo also  
16 informed employees that DFW would allow Senior Environmental Scientist Supervisors to supervise  
17 Specialists. (RJN Ex. B) This change violates the classification plan and is the basis for the instant  
18 action.  
19  
20

21 ARGUMENT

22 I. THE STATE PERSONNEL BOARD HAS EXCLUSIVE JURISDICTION OVER  
23 CREATING, DEFINING AND ENFORCING JOB CLASSIFICATIONS.

24 The rules of statutory interpretation are the same for constitutional amendments as for statutes.  
25 (See *Williams v. Superior Court* (2001) 92 Cal.App.4<sup>th</sup> 612, 622) The court must look to the language  
26 of the constitutional provision in question and give the words their usual and ordinary meaning. (*Id.*)  
27

1 at 623) Only if the language is susceptible to more than one reasonable interpretation should the court  
2 resort to extrinsic evidence to determine the intent behind the provision. (*Ibid*).

3 Here, the plain meaning of Article VII, Section 3 is not susceptible to more than one reasonable  
4 interpretation. It reads, in its entirety:

- 5
- 6 (a) The board shall enforce the civil service statutes and, by majority vote of all its  
7 members, shall prescribe probationary periods and classifications, adopt other rules  
8 authorized by statute, and review disciplinary actions.  
9 (b) The executive officer shall administer the civil service statutes under rules of the  
10 board.

11 The prescriptive “shall” confers an absolute authority to the State Personnel Board to prescribe  
12 classifications. The courts have confirmed the exclusive jurisdiction of the Board to classify positions  
13 many times. (See: *Lowe v. California Resources Agency* (1991) 1 Cal.App.4th 1140 citing *Stockton v.*  
14 *Department of Employment* (1944) 25 Cal.2d 264) At one time, the State Personnel Board also had  
15 jurisdiction over the administration of salaries, but that function was split and passed down to what is  
16 now CalHR in 1981. (*Id.* at 1146) The splitting of functions clearly indicates that each entity, the SPB  
17 and CalHR, has a sphere of control and the Legislature’s (and people’s) grant of specific authority  
18 and jurisdiction to each cannot be ignored.

19 II. **CALHR AND DFW HAVE IMPERMISSIBLY USURPED THE BOARD’S**  
20 **CONSTITUTIONALLY-GRANTED AUTHORITY.**

21 A. **CalHR’s Salary-Setting Function Does not Trump the Board’s Power to**  
22 **Determine Civil Service Classifications.**

23 CalHR believes the pay disparity between the previously equal classifications allows it to use  
24 the Senior Supervisors to supervise the Senior Specialists because of the wide vertical disparity  
25 between their current pay scales. That belief is wrong and has caused CalHR to deviate into the  
26 SPB’s arena of exclusive jurisdiction.

1 The courts have confirmed State Personnel Board's exclusive jurisdiction over classification  
2 specifications and the administration of the civil service. In *Westly v. California Public Employees'*  
3 *Retirement System Board of Administration* (2003) 105 Cal.App. 4th 1095, the State Controller  
4 challenged the CalPERS Board of Administration's attempt to exempt some of its employees from  
5 the state civil service system. The court held that the "plenary authority" granted to the Board of  
6 Administration does not include the exclusive power to determine their civil service status. (*Id* at  
7 1113) In *Westly*, the courts determined an issue pitting two provisions of the State Constitution  
8 against one another. Here, the fight is far more lopsided as the State Personnel Board derives its  
9 power from the State Constitution and CalHR attempts to overcome that constitutional mandate with  
10 its pay policies.  
11

12  
13 The State Constitution is clear: "the [State Personnel Board] shall enforce the civil service  
14 statutes and . . . shall prescribe probationary periods and classifications..." (Cal Const. Article VII,  
15 Sec. 3) There is no question that the Board alone defines how employees are classified and how those  
16 classifications relate to each other in the work they perform. Nothing about the peculiar situation the  
17 state created by breaking traditional pay parity within and among the scientific classes gives CalHR  
18 the authority to flout the State Constitution.  
19

20 **B. CalHR Had the Opportunity to Propose Changes to the Senior Environmental**  
21 **Scientist Classes But Did Not Do So.**

22 There was an opportunity in 2013 to propose changes in the class structure to allow Supervisory  
23 incumbents to supervise their Specialist peers. CalHR made no such proposals and SPB considered  
24 no such proposals to the Environmental Scientist series reporting structure.

25 CalHR and CAPS frequently discuss classification and pay issues and, when necessary, present to  
26 the State Personnel Board requests for changes to the class structure (for example, by consolidation  
27

1 of classes, the creation of new classes, or the abolishment of obsolete classes). (RJN Ex. D, E) During  
2 classification proposal discussions in 2013, just one year prior to DFW issuing its memo regarding  
3 the novel use of the Senior Environmental Scientist Supervisory class, the peer classes were  
4 described as reporting to the Environmental Program Manager I position, as is appropriate under the  
5 SPB classification specification. (RJN Ex. D) CalHR was actively involved in the study of the  
6 Environmental Scientist series of classifications. CalHR did not request SPB consider changes to the  
7 reporting structure (RJN Ex. D)

9 **III. THE ENVIRONMENTAL SCIENTIST CLASS SERIES CLEARLY DELINEATES**  
10 **REPORTING RELATIONSHIPS.**

11 The current iteration of this series came into being in 2001. (RJN Ex. E) The SPB amended the  
12 series in 2013. (RJN Ex. D) Had CalHR, or any department, desired to change the class structure to  
13 allow for Specialists to report to Senior Environmental Scientist (Supervisor), it could have proposed  
14 such a change to SPB for evaluation based on operational need. Yet, it proposed no such change  
15 because there is no operational need for such a change. Instead, CalHR attempts to create a loophole  
16 using pay rules through which it can, presumably, avoid the hiring or allocation of additional, more  
17 expensive, Environmental Program Manager I positions – a reason for classification changes the  
18 State Personnel Board would likely reject since it undermines the class structure they created.

19 Per the SPB classification, the Senior Environmental Scientist (Specialist):  
20

21  
22 ... is the advanced journey level of the series. Incumbents independently identify  
23 problems, develop courses of action, and conduct critical and/or sensitive scientific  
24 investigations and studies and may prepare guidance, policy, planning, or regulatory  
25 documents and legislative proposals on issues of importance to the employer, and do  
26 other related work. Decision making at this level has a higher consequence of error  
27 than that of an Environmental Scientist, Range C. Incumbents may be assigned lead  
28 responsibility for a specific project, program function, or area of expertise; may act as  
a mentor to lower level staff; and may act as consultants to other technical staff,  
management, and other agencies in those matters.

1 (RJN Ex. A p 4) Per the SPB classification, the Senior Environmental Scientist (Supervisory):

2 ... is the first supervisory level of the series. Incumbents supervise and direct the work  
3 of professional or technical staff, are responsible for staff development, performance  
4 evaluation, program budgeting, and work force planning, and do other related work.  
5 Incumbents performing in this capacity have the authority and responsibility in the  
6 interest of management to recruit, hire, transfer, suspend, lay off, recall, promote,  
7 discharge, assign, reward, or discipline employees. Incumbents have the responsibility  
8 to direct employees, adjust employee grievances, or effectively recommend such  
9 actions.

10 (RJN Ex. A p 4) Additionally, supervision of Senior Environmental Scientists (of both stripes) is  
11 specifically contemplated in the Environmental Program Manager I (Supervisory) class specification.

12 Incumbents may:

13 ...supervise a group of Senior Environmental Scientists and other professional and  
14 technical staff working on a critical and/or sensitive public health, environmental, and  
15 natural resource management, regulation, compliance, or research project. Incumbents  
16 have authority in the interest of management to recruit, hire, transfer, suspend, lay off,  
17 recall, promote, discharge, assign, reward, or discipline employees. Incumbents have  
18 the responsibility to direct employees, adjust employee grievances, or effectively  
19 recommend such actions.

20 (RJN Ex. A p 4)

21 **A. The Senior Environmental Scientist Supervisor and Specialists Classes Were Designed  
22 to Be Peer Positions.**

23 Each time SPB has amended the now-Environmental Scientist deep class, the documents  
24 produced in the review process reinforce that both species of Senior Environmental Scientist –  
25 Supervisor and Specialist – should report to Environmental Program Manager I or higher incumbents.

26 (RJN Ex. D, E) Additionally, the 2001 class proposal says that Senior Environmental Scientists will  
27 supervise “subordinate level environmental scientists.” (RJN Ex. E, p 50) A Senior Environmental  
28 Scientist (Specialist) is not a classification “subordinate” to its peer Senior Environmental Scientist  
(Supervisor). Such a span of control was never considered by the Board for this series.

1 Likewise, in the 2013 proposal to SPB, both Senior Environmental Scientist Supervisory and  
2 Specialist incumbents are described as reporting to Environmental Program Managers (or in some  
3 instances, certain Supervising Engineer classifications). (RJN Ex. D, p 40) The alternate view is also  
4 considered: Environmental Program Managers are described as supervising both Specialist and  
5 Senior Environmental Scientists. (RJN Ex. D, p 40)

7 CalHR proposed no changes to the reporting structure and the Board adopted no changes to the  
8 reporting structure in 2001 or 2013. Accordingly, due to the overwhelming evidence that all parties  
9 involved with the study, development, and SPB adoption of these classifications intended for them to  
10 be peer classes and not dominate/subordinate classes, the court must find this use of the classes in  
11 violation of the State Constitution, state law and SPB rules. Allowing DFW's use of the classes to  
12 continue would impermissibly subordinate the Senior Environmental Scientist Specialists to their  
13 Supervisory peers in a manner not contemplated in the Board approved class specifications.

### 15 CONCLUSION

16 The State Constitution imbues the State Personnel Board with exclusive jurisdiction over the  
17 creation and administration of the merit-based state civil service classifications. The Board  
18 establishes classifications and creates classification specifications. The Board created the  
19 Environmental Scientist class series with a specific reporting structure contemplated. The Senior  
20 Environmental Scientist, superior to the Environmental Scientist class and subordinate to the  
21 Environmental Program Manager class was split into Supervisory and Specialist components in  
22 recognition of a need to allow for promotional opportunities and subject-matter specialization by  
23 incumbents. Nothing in that split of duties allows for a change in the reporting structure established  
24 by the State Personnel Board. CalHR's failure to preserve horizontal pay parity within the Senior  
25  
26  
27  
28



1 Environmental Scientist classifications does not provide it with the authority to violate the State  
2 Constitution by usurping the State Personnel Board's role in prescribing classifications.

3 Senior Environmental Scientist Supervisory incumbents must not continue to supervise their  
4 Specialist peers in violation of the State Personnel Board created classification specifications. The  
5 court must grant the writ.  
6

7 Respectfully Submitted,  
8

9 **CALIFORNIA ASSOCIATION OF**  
10 **PROFESSIONAL SCIENTISTS**

11 DATED: January 31, 2017

12   
13 CHRISTIANA DOMINGUEZ  
14 Attorney for CAPS  
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