



December 10, 2014

Richard Gillihan
Director
California Department of Human Resources
1515 S Street, North Building, Suite 400
Sacramento, CA 95811

Re: Violation of Government Code Sections 19818.6 and 19818.14; Misallocation of Senior Environmental Scientist (Supervisory) by California Department of Fish & Wildlife

Dear Director Gillihan,

On November 13, 2014, the California Association of Professional Scientists filed with the State Personnel Board a Merit Issue Appeal after CAPS was made aware of the Department of Fish & Wildlife's intention to use Senior Environmental Scientist (Supervisory) incumbents to supervise their Senior Environmental Scientist (Specialist) peers in violation of the class specifications for each position. (Attached.)

While that matter remains pending with SPB, we have now received word that DFW intends not only to use the Senior Environmental Scientist (Supervisory) in this novel new way, but, in fact, intends to create, hire, or reallocate Senior Environmental Scientists (Supervisory) to positions previously filled by (or to avoid having to hire the more expensive) Environmental Program Managers I – the classification to which Senior Environmental Scientist (Specialist) are assigned to report to by specification.

Departments have an obligation to uphold the classification plan established by the State Personnel Board. The Board retains the exclusive jurisdiction to classify positions in the state civil service under Government Code Section 19818.6. The original plan contemplated by CDFW violates the State Personnel Board established classification scheme and constitutes an improper subordination of the Senior Environmental Scientist (Specialist) class as well as a constructive demotion and the usurpation of Board jurisdiction over the classification of positions. This new incarnation, however, at best, additionally violates the delegation of authority given to CDFW under Government Code 19818.14.

At worst, the plans commit both of the above ills and, potentially, violate the Exceptional Allocation Delegation component of CalHR's Delegation Project.

- | | | |
|---|---|--|
| ● Headquarters
455 Capitol Mall, Suite 500
Sacramento, CA 95814
(916) 441-2629
FAX (916) 442-4182
E-mail: caps@capsscientists.org | ● Los Angeles
215 N. Marengo Avenue, Suite 185
Pasadena, CA 91101-1528
(818) 246-0629
FAX (818) 247-2348 | ● San Francisco
1 Sutter Street, Suite 800
San Francisco, CA 94104-4917
(415) 861-6343
FAX (415) 861-5360 |
|---|---|--|

Per information available on the CalHR website, DFW has not yet received a delegation under the Delegation Project, nor entered into the Exceptional Allocation Delegation Agreement with CalHR.

Even if DFW and CalHR have executed an Exceptional Allocation Delegation Agreement, DFW's planned use of the Senior Environmental Scientist (Supervisory) classification is not covered by the Delegation Project's allowances.¹

The Classifications

As explained in our appeal to the State Personnel Board, the current iteration of this series came into being in 2001. The series was again amended and discussed by CalHR and CAPS in 2013. Had CalHR, or any Department, desired to change the class structure to allow for Specialists to report to Senior Environmental Scientist (Supervisor), it had a very recent opportunity to do so. Since no changes were made, one can only conclude that there was no intention to alter the specifications to subordinate Specialists to their Supervisory peers.

Senior Environmental Scientist (Specialist)

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

... is the advanced journey level of the series. Incumbents independently identify problems, develop courses of action, and conduct critical and/or sensitive scientific investigations and studies and may prepare guidance, policy, planning, or regulatory documents and legislative proposals on issues of importance to the employer, and do other related work. Decision making at this level has a higher consequence of error than that of an Environmental Scientist, Range C. Incumbents may be assigned lead 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.

Senior Environmental Scientist (Supervisory)

Per the SPB classification, the Senior Environmental Scientist (Supervisory):

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

¹ If an agreement exists, CAPS would appreciate a copy of both the Exceptional Allocation Delegation Agreement between DFW and CalHR, as well as a copy of the justification memo prepared by DFW explaining the grounds upon which they can use Senior Environmental Scientist (Supervisory) in the manner described.

Additionally, supervision of Senior Environmental Scientists (of both stripes) is specifically contemplated in the Environmental Program Manager I (Supervisory) class specification. Incumbents may:

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

The Senior Supervisor and Specialists Classes Were Designed to Be Peer Positions

Each time the now-Environmental Scientist deep class has been amended or studied by CAPS and CalHR, the resulting documents reinforce that both species of Senior Environmental Scientist – Supervisor and Specialist – should report to Environmental Program Manager I or higher incumbents. (See Attachment B; Class Proposal, Part B, Environmental Classification Series, Page 2, 2001, attached) Additionally, the 2001 class proposal says that Senior Environmental Scientists will supervise “subordinate level environmental scientists.” A Senior Environmental 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.

Likewise, during the 2013 classification proposal discussions between CAPS and CalHR, both Supervisory and Specialist Senior incumbents are described as reporting to Environmental Program Managers (or in some instances, certain Supervising Engineer classifications). Lest there be any remaining confusion, the flip side is also contemplated: Environmental Program Managers are described as supervising both Specialist and Senior Environmental Scientist Supervisors. (See Attachment C; Class Proposal, Part B, 2013)

As mentioned above, there was a recent opportunity to make changes in the class structure to allow Supervisory incumbents to supervise their peers. No changes were made.

Accordingly, due to the overwhelming evidence that all parties involved with the study and development of these classifications intended for them to be peer classes and not dominate/subordinate classes, the Board must find CDFW’s plan in violation of state law and Board rules. Allowing CDFW’s plan to go forward would impermissibly subordinate the Senior Environmental Scientist Specialists to their Supervisory peers in a manner not contemplated in the Board approved class specifications.

DFW Cannot Meet the Standards Set by CalHR for Exceptional Allocations

An Exceptional Allocation occurs when the duties of a position fall outside the typical or intended use of the class specification but are closely related to the classification scope and purpose, as is the case here. One type of exceptional allocation is where use of the class varies from the traditional use described in the class specification.

In CalHR's document "Exceptional Position Allocations Requiring Form STD. 625," departments receiving a delegation of this authority from CalHR are specifically told that departments will "**NOT**" [sic] be delegated authority for exceptional allocation if what they really intend is to misallocate a position under the guise of an "exceptional allocation" when a more appropriate classification is available. Here, a more appropriate classification is available: Environmental Program Manager I. Departments are also prohibited from justifying exceptional allocations based on budgetary or funding concerns. (See "Exceptional Allocation Guide") Here, surely, there is no other motivation for avoiding the appointment of additional Environmental Program Managers I beyond saving salary costs.

CalHR and Departments Receiving Exceptional Allocation Authority Are Required to Uphold the Classification Plan

The Government Code – as well as the delegations afforded under CalHR's Delegation Project – plainly requires all agencies to uphold the classification plan. This novel use of Senior Environmental Scientists (Supervisory) and subordination of Senior Environmental Scientists (Specialist) (the tandem ill) falls outside of the authority delegated to DFW by CalHR, if, in fact, authority for such action has been delegated at all.

CalHR must immediately intervene to prevent this improper use of classifications.

Yours truly,



Christiana Dominguez
Legal Counsel
California Association of Professional Scientists

Attachment – November 13, 2014 Merit Appeal

c: Pam Manwiller, CalHR
Suzanne Ambrose, SPB