

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

<b>DATE/TIME</b>	<b>March 17, 2017, 9:00 a.m.</b>	<b>DEPT. NO</b>	<b>31</b>
<b>JUDGE</b>	<b>HON. MICHAEL KENNY</b>	<b>CLERK</b>	<b>S. LEE</b>
<b>CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS,</b>  <b>Petitioner/Plaintiff,</b>  <b>v.</b>  <b>CALIFORNIA STATE PERSONNEL BOARD;</b> <b>CALIFORNIA DEPARTMENT OF HUMAN RESOURCES; and CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE,</b>  <b>Respondents/Defendants.</b>		<b>Case No.: 34-2016-80002426</b>	
<b>Nature of Proceedings:</b>		<b>PETITION FOR WRIT OF MANDATE</b>	

The following constitutes the Court’s tentative ruling on the petition for writ of mandate, which is scheduled to be heard by the Court in Department 31 on Friday, March 17, 2017, at 9:00 a.m. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing and further advises the clerk that such party has notified the other side of its intention to appear.

In the event that a hearing is requested, oral argument shall be limited to no more than 20 minutes per side.

Any party desiring an official record of this proceeding shall make arrangements for reporting services with the clerk of this Department no later than 4:30 p.m. on the day before the hearing. The fee is \$30.00 for civil proceedings lasting under one hour, and \$239.00 per half day of proceedings lasting more than one hour. (Local Rule 1.12(B); Gov. Code § 68086.) Payment is due at the time of the hearing.

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## I. Introduction

This action concerns a change in reporting structure within Respondent/Defendant Department of Fish and Wildlife (“DFW”). On September 15, 2014, DFW issued a memorandum to all DFW employees stating, *inter alia*, that it will allow the Senior Environmental Scientist (Supervisory) classification to supervise the Senior Environmental Scientist (Specialist) classification, effective October 1, 2014. These classifications previously both reported to the Environmental Program Manager I (Supervisory) or higher classification. Petitioner/Plaintiff California Association of Professional Scientists (“CAPS”) contends this change violates Respondent/Defendant State Personnel Board’s (“SPB”) classification plan and effectively usurps SPB’s exclusive authority to set civil service employee classifications.

## II. Background / Factual Summary

The SPB is a board established by the State Constitution, which is responsible for enforcing the civil service statutes and creating classes of positions in the state civil service. (Cal. Const., Art. VII, § 3; Gov. Code § 18800.) The classes adopted by the SPB are known as the Personnel Classification Plan (“PCP”) of the State of California.

The Legislature created Respondent/Defendant California Department of Human Resources (“CalHR”) (formerly the Department of Personnel Administration) in 1981 “for the purpose of managing the non-merit aspects of the state’s personnel system.” (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1322.) “In general, [CalHR] has jurisdiction over the state’s financial relationship with its employees, including matters of salary, layoffs and nondisciplinary demotions.” (*Ibid.*) CalHR administers the PCP, including the allocation of every position to the appropriate class. (Gov. Code §§ 19818, 19818.6.)

The SPB adopted the current Environmental Scientist class series in 2001. This series consists of six classifications: Environmental Scientist, Senior Environmental Scientist (Specialist), Senior Environmental Scientist (Supervisory), Environmental Program Manager I (Supervisory), Environmental Program Manager I (Managerial), and Environmental Program Manager II. (Dominguez Decl., Ex. A.)

Historically, the Senior Environmental Scientist (Specialist) classification (hereinafter referred to as “Specialist class” or “Specialist classification”) and Senior Environmental Scientist (Supervisory) classification (hereinafter referred to as “Supervisory class” or “Supervisory classification”) received the same salaries. However, in 2014, scientific supervisory employees, including the Supervisory class, received an average 42% increase in their salaries as the result of litigation that sought pay parity with employees performing like work in supervisory engineering classifications. The Specialist class did not receive a similar pay increase, thereby creating a significant salary disparity between the two classes.

On September 15, 2014, DFW distributed Human Resources Memorandum HR 14-048 with the subject “Change in Reporting Structure.” (Dominguez Decl., Ex. B.) The memo stated that “[a]s a result of the new salary increase, the [Specialist] classification is no longer within transferrable range . . . for the [Supervisory] classification. Therefore, employees in the

[Specialist] class must take an examination in order to promote into the Supervisor[y] class.” (*Ibid.*) The memo further stated that “[e]ffective October 1, 2014, [DFW] will allow the [Supervisory class] to supervise the [Specialist class].” (*Ibid.*)<sup>1</sup>

On November 13, 2014, CAPS challenged the change in reporting structure by filing a merit issue complaint with SPB. SPB declined to exercise jurisdiction over the complaint, stating in an April 8, 2016 letter:

After deliberation, it was determined that the issue should be addressed through formal negotiations with [CalHR] either as a collective bargaining issue or a classification planning issue . . . the SPB continues to believe that an exercise of jurisdiction over the reporting relationships between the two class specifications does not appear justified. The reporting or work direction requirements are frequently left to the judgment and province of the appointing authority. If revisions are required to the class specifications, that process should be initiated with CalHR.

(Truong Decl., Ex. A.)

CalHR received a copy of CAPS’ complaint and determined it lacked merit. CalHR denied the complaint on December 14, 2015. (Manwiller Decl., Ex. B.) CAPS did not respond to CalHR’s December 14, 2015 denial letter.

On April 18, 2016, CAPS filed the instant petition and complaint for declaratory and injunctive relief, challenging the legality of the change in reporting structure.

## II. Legal Standard

“A [traditional] writ of mandate will lie to ‘compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station’ (Code Civ. Proc. § 1085, subd. (a)) ‘where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.’ (Code Civ. Proc. § 1086.)” (*Cnty. of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 653.) “Traditional mandamus will, of course, not lie to compel a particular method of exercising discretion . . . . However, mandamus will lie to correct an abuse of discretion or the actions of an administrative agency which exceed the agency’s legal powers.” (*Saleeby v. State Bar* (1985) 39 Cal.3d 547, 561-562.)

“In determining whether a public agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency’s action, its determination must be upheld. [Citation.]” (*Cnty. of Los Angeles, supra*, 214 Cal.App.4th at 654.) “A court must ask whether the public agency’s action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices the law requires. [Citation.]” (*Ibid.*)

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<sup>1</sup> Petitioner, CalHR, and DFW treat the change in reporting structure as a decision authorized and delegated by CalHR to DFW. (Pet. 2:13-14; CalHR & DFW’s Opp’n 5:5-7, 6:13-17, 13:7-16; Manwiller Decl. ¶ 8.)

### III. Discussion

#### A. Requests for Judicial Notice

CAPS filed a request for judicial notice concerning ten documents. DFW and CalHR filed a request for judicial notice concerning two documents. Both requests are unopposed. The Court has reviewed the documents and finds they are properly subject to judicial notice. Therefore, both requests for judicial notice are granted.

#### B. The Writ Petition

CAPS' Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief "challenges the legality of [the] use of the . . . Supervisory . . . classification to supervise . . . the . . . Specialist . . . classification." (Pet. ¶ 1.) CAPS argues the change in reporting structure "violates the [SPB]-established classification scheme, constitutes an improper subordination of the . . . Specialist class[,] . . . [and] usurps Board jurisdiction over the classification of positions." (Mem. of P.&A. ISO Pet. ("Opening Br.") 2:8-13.) CAPS contends:

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

. . . .

. . . There is no question that the [SPB] alone defines how employees are classified and how those classifications relate to each other in the work they perform. Nothing about the peculiar situation the state created by breaking traditional pay parity within and among the scientific classes gives CalHR the authority to flout the State Constitution.

(*Id.* at 8:22-9:19.)

CalHR and DFW filed a joint opposition,<sup>2</sup> rejoining that "CAPS failed to demonstrate that CalHR or [DFW] violated any law, neglected a ministerial duty, or abused their discretion." (CalHR & DFW Opp'n 5:8-9.) They argue: "CalHR has broad statutory authority to manage the nonmerit aspects of the civil service system, including proper allocation of positions and to determine appropriate reporting relationships. In line with this statutory authority, CalHR historically has evaluated and made policy decisions about the reporting requirements within classifications, and appropriately determined in this case that individuals in the [Specialist]

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<sup>2</sup> SPB filed a separate, brief opposition in which it states that it "has declined to involve itself in this dispute," and "opposes the issuance of any order against it." (SPB Opp'n 1:25-2:2.)

classification may report to individuals in the [Supervisory] classification.” (*Id.* at 5:9-15.) CalHR and DFW further argue that the change is reporting structure “is entirely consistent with the applicable class specifications. . . . The specifications do not limit or expressly prohibit the Supervisor from supervising the Specialist.” (*Id.* at 14:11-17.)

The Court agrees. The express terms of the PCP do not preclude the Supervisory class from supervising the Specialist class. The class definitions for the Specialist and Supervisory positions are as follows:

#### **Senior Environmental Scientist (Specialist)**

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)**

This 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.

(Dominguez Decl., Ex. A, p. 4 [emphasis added].) Also relevant is the definition for the Environmental Program Manager I (Supervisory) class. It states:

#### **Environmental Program Manager I (Supervisory)**

This is the second supervisory level of the series. Incumbents direct and have charge of critical and/or sensitive public health, environmental, agricultural productivity, and natural resource management programs or components; carry authority and

accountability for timely completion of program objectives and for submittal of satisfactory products; are responsible for operational planning and assigning of projects, budgeting for time and funds, reviewing and evaluating achievements, and preparing administrative reports; coordinate program activities with technical and administrative support sections and their activities; assist in formulating and administering policies; exercise discretion in the provision of oversight and coordination of projects or programs; maintain liaison with other governmental agencies and the private sector; evaluate program performance and achievements; plan for workforce needs; represent their organization in compliance negotiations, policy implementation, program budgeting, and strategic planning; and do other related work. **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. Incumbents may also function as a nonsupervisory staff specialist in a critical and/or sensitive program or project management or coordination, policy development, or executive advisor position.

*(Id. at pp. 4-5 [emphasis added].)*

These class definitions do not prohibit the Supervisory class from supervising the Specialist class. The Supervisory class definition is written broadly and states incumbents may supervise “professionals or technical staff.” This language can be reasonably interpreted to include the Specialist class. Further, the definition of the Environmental Program Manager I (Supervisory) class states that incumbents “**may** supervise a group of Senior Environmental Scientists.”<sup>3</sup> The word may is permissive. This definition does not state that the Environmental Program Manager I (Supervisory) class must supervise Specialists, precluding other supervisory classes from doing so. Accordingly, CAPS has not shown that the terms of the relevant PCP preclude the challenged change in reporting structure.

The Court notes that CAPS cites to two sets of proposed revisions to the Environmental Scientist classification series to support its argument that the PCP prohibits the Supervisory class from supervising the Specialist class. However, these proposed revisions were prepared by CalHR in collaboration with CAPS. (Dominguez Decl., Exs. D, E.) They do not change the terms of the PCP and do not reflect SPB’s interpretation of the PCP’s terms.

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<sup>3</sup> This class definition does not distinguish between the Senior Environmental Scientist (Specialist) and Senior Environmental (Supervisory) classifications.

