

CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS

November 13, 2014

Appeals Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Re: Merit Appeal; Improper Subordination of Classification; Constructive Demotion

To whom it may concern:

The California Department of Fish & Wildlife (CDFW) intends to have Senior Environmental Scientists (Specialist) report to Senior Environmental Scientists (Supervisory). (See Attachment A) 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 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.

The Board has jurisdiction over this complaint under Government Code Sections 18670-18683. The California Association of Professional Scientists has attempted to resolve this matter with CalHR through several oral conversations. Despite numerous attempts to reach resolution, neither CalHR nor CDFW have provided additional information or support for their proposal. CAPS asks the Board to prevent CDFW from using the Senior Environmental Scientist (Supervisor) classification in this impermissible manner.

The Classifications

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.

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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.

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 Scientists. (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.

The practical impact of this proposed change on the morale of employees cannot be ignored. With no more than a memorandum, an employee would now have to report to someone previously their peer.

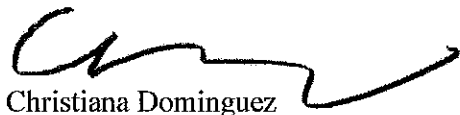
The Proposed Changes Constitute A Constructive Demotion

By subordinating a classification to its peer, CDFW proposes to demote the Specialist Seniors to a lower rung on the ladder. This action cannot be taken without affording incumbents the requisite due process. (Alternatively, it may be seen to be improperly promoting Supervisor Seniors in violation of the civil service scheme.)

There is no evidence in the class specifications or the various histories of the classification to support CDFW’s proposal to subordinate Senior Environmental Scientist (Specialists) to their Senior Environmental Scientist (Supervisor) peers.

The Board must intervene to prevent this improper use of classifications.

Yours truly,



Christiana Dominguez
Legal Counsel
California Association of Professional Scientists

ATTACHMENT A

Human Resources Memorandum

SUBJECT: Change in Reporting Structure (Senior Environmental Scientist - Specialist) Classification	NUMBER: HR14-048
	DATE ISSUED: 9/15/2014
DISTRIBUTION: All CDFW Employees	EXPIRES: N/A

On August 20, 2014, the California Department of Human Resources (CalHR) issued Pay Letter (PL) 14-17 which outlined special salary adjustments for certain classes in S09, S10 and M10. This special salary adjustment became effective July 1, 2014.

As a result of the new salary increase, the Senior Environmental Scientist (Specialist) classification is no longer within transferable range (i.e., 9.99%) for the Senior Environmental Scientist (Supervisor) classification. Therefore, employees in the Senior Environmental Scientist (Specialist) class must take an examination in order to promote into the Supervisor class.

Change in Reporting Structure

Effective October 1, 2014, CDFW will allow the Senior Environmental Scientist (Supervisor) to supervise the Senior Environmental Scientist (Specialist).

Prior to initiating changes to the organizational structure, programs must schedule a meeting with their assigned personnel analyst to ensure the adjustment(s) to the organizational structure are appropriate. Requests for deviations from the structure recommended by CalHR should be documented to your personnel analyst and will be considered on a case-by-case basis.

Note: *when reviewing your organizational structure, please note that CalHR guidelines state that managers should have at least 3-5 subordinate staff as direct reports.*

Please direct any questions to your assigned Personnel Analyst.

ATTACHMENT B

Part B. Class Proposal
Environmental Specialist Classification Series
Page 2

incumbents, and provides recognition of the scientific and educational requirements of the classification.

The second component involves updating all areas within the class specification series to reflect current environmental terminology and a more accurate description of scientific environmental work performed by incumbents in the various State departments. Within the specification, the term 'employer' is used to represent the State agencies, boards, commissions, departments, or offices using this class series.

The third component involves a change to the minimum qualifications, which eliminates the ability to substitute experience for a college degree. In recognition of the tasks performed by these classifications, and the level of understanding of scientific methods, it has been determined all levels should possess at a minimum, a bachelor's degree with a major in a biological, chemical, physical or environmental science, or a closely related scientific discipline.

The fourth component of the proposal establishes a deep class for Environmental Specialist I, Environmental Specialist II, and Environmental Specialist III. A review of the Environmental Specialist I, II, and III levels indicated there was a natural progression through the classes.

The fifth component of the proposal encompasses splitting the existing class concept of Environmental Program Manager I into distinct supervisory and managerial parenteticals. Therefore, the new class of Environmental Program Manager I (Managerial) is proposed.

2. To what classifications do the subject classes report?

Typically, the Environmental Scientist reports to a Senior Environmental Scientist. In some departmental settings, the Environmental Scientist may report to other supervisory classes such as: Senior Engineer, Senior Engineering Geologist, Senior Biologist (Supervisory), or Senior Land and Water Use Analyst.

The Staff Environmental Scientist and Senior Environmental Scientist typically report to an Environmental Program Manager I (Supervisory) or Environmental Program Manager I (Managerial). In some departmental settings, these classes may report to other supervisory classes such as: Supervising Engineer, Supervising Engineering Geologist, or Supervising Biologist.

The Environmental Program Manager I (Supervisory) and the proposed Environmental Program Manager I (Managerial) will typically report to an Environmental Program Manager II. In some departmental settings, these classes may report to other managerial classes such as: Principal Geologist or various principal engineer classifications.

3. Will the subject classes supervise? If so, what classes?

The classes of Senior Environmental Scientist, Environmental Program Manager I (Supervisory), Environmental Program Manager I (Managerial) and Environmental Program Manager II will all have supervisory responsibility. Incumbents in the supervisory classes will typically supervise subordinate level environmental scientists. In some departmental settings, various professional level staff such as engineers, engineering geologists, and land and water use analysts may also be supervised. Oversight responsibilities may also include the supervision of support staff such as administrative positions in analytical, technical, and clerical classifications.

4. What are the specific duties of the subject classes?

The Environmental Scientist classifications in this series are used in multiple State departments to perform a broad range of staff and management work concerning present and future environmental, environmental health, and natural resource management issues related to protecting the State's natural resources and public health.

Incumbents give presentations; prepare environmental permitting packages, regulatory permits, and other environmental documents; implement enforcement of various environmental and environmental health-related regulations; and conduct natural resource management, planning, and implementation activities. Incumbents apply scientific methods and principles in the identification, research, and solution of problems in the areas of biodiversity planning, environmental monitoring, water resources development, illegal discharge of waste to the lands and waters of the State, toxic and hazardous materials management, point and nonpoint source pollution, natural area management, habitat protection and restoration, wetland restoration, river greenways, riparian habitat, land and water use, agricultural return flows, timber harvesting, streambed alterations, and watershed evaluation. Incumbents analyze and evaluate available data on the effects of water pollutants, waste management, water diversions, and water use on human health, vegetation, fish, wildlife, water supplies, potential land uses, and other aspects of the environment. Incumbents prepare and review environmental impact reports and other documents to determine the effects of proposed activities on environmental health and all areas of the environment; coordinate water development, water pollution, waste management control, and other environmental and environmental health programs with other public and private agencies. Incumbents develop regulatory measures and implement enforcement of environmental standards; develop recommendations regarding environmental programs as these may be affected by scientific findings; prepare and edit scientific papers for publication; consult with and advise other agencies and institutions engaged in related environmental analysis, management, planning, regulation, investigation, and research; and meet and confer with individuals and groups to obtain compliance with laws and regulations concerning environmental requirements of the State. Incumbents participate in hearings and field investigations as a staff expert for environmental matters; and prepare reports and correspondence. On occasion, incumbents may perform environmental analysis in a laboratory setting.

ATTACHMENT C

Environmental Program Manager II	Environmental Program Manager II
Environmental Program Manager	Environmental Program Manager

In addition to the consolidation, the data supports revisions to the Environmental Scientist class series.

Establish an additional level within the Environmental Scientist series of Environmental Program Manager I (Specialist) to recognize the high level and complexity of duties. It is proposed the duties at this level may include responding on behalf of management on highly visible, sensitive and complex environmental issues and/or manage highly sensitive environmental programs.

What classes would the subject classes report to?

The Environmental Scientist reports to a Senior Environmental Scientist (Supervisory), Senior Water Resources Control Engineer, Supervising Hazardous Substances Engineer I or Senior Engineering Geologist. The Senior Environmental Scientist (Specialist) and Senior Environmental Scientist (Supervisory) report to an Environmental Program Manager I (Supervisory), Environmental Program Manager I (Managerial), Supervising Water Resources Control Engineer, Supervising Hazardous Substances Engineer II or Supervising Engineering Geologist. The Environmental Program Manager I (Supervisory), Environmental Program Manager I (Specialist), and Environmental Program Manager I (Managerial) report to an Environmental Program Manager II or Principal Water Resources Control Engineer. The proposed Environmental Program Manager I (Managerial) and Environmental Program Manager II would report to a CEA such as the Executive Officer or the Deputy Director.

Will the subject classes supervise? If so, what classes?

Some of the classifications in the proposed classification series supervise. The Senior Environmental Scientist (Supervisory) supervises Environmental Scientists, Water Resources Control Engineers, Hazardous Substances Engineers and/or Engineering Geologists. The Environmental Program Manager I (Supervisory) and Environmental Program Manager I (Managerial) supervise Senior Environmental Scientists (Specialist), Senior Environmental Scientists (Supervisory), Senior Water Resources Control Engineers, Supervising Hazardous Substances Engineers I, and/or Senior Engineering Geologist. The Environmental Program Manager II supervise Environmental Program Managers I, Supervising Engineering Geologists, Supervising Hazardous Substances Engineers II and/or Supervising Water Resources Control Engineers.

The proposed Environmental Program Manger I (Specialist) would not supervise.

What are the specific duties of the subject classes?

The Environmental Scientist classes perform duties concerning present and future environmental issues, environmental health, and natural resources management and regulatory issues related to protecting the State's natural resources, public health and agricultural productivity.

Duties include preparation and administration of presentations, preparing environmental permitting packages, regulatory permits and other environmental documents; implementing enforcement of various environmental and environmental health-related regulations; gathering data on public health, environmental and natural resource management issues; performing preliminary environmental analysis, research, surveys, investigations, and studies; conduct natural resource management, planning, and implementation activities; answer questions from the public in various formats; planning, organizing and directing critical, sensitive and/or complex public health, environmental, and natural resource management and regulatory programs; formulating and administering policies, programs, strategic plans on technically diverse range of projects or programs; identifying, researching, solving problems in the areas of biodiversity planning, environmental monitoring, water resources development, water conservation, water recycling, illegal discharge of waste (including solid and hazardous waste); analyzing and evaluating available data on the effects of water pollutants, waste management, prevention and recycling, water diversions, and water use on human health, vegetation, fish, wildlife, water supplies, potential land uses, and other aspects of the environment; preparing and/or reviewing environmental impact reports and other documents to determine the effects of proposed activities on environmental health and all areas of the environment; coordinating water development, water pollution, waste management and control, and other environmental and environmental health programs in collaboration with other public and private entities; developing regulatory measures and implementing enforcement of environmental standards; managing and