

DEPARTMENT OF PERSONNEL ADMINISTRATION (DPA)

DIRECTOR'S DECISION

Subject

California Association of Professional Scientists (CAPS) request for hearing and salary adjustments pursuant to Government Code Section 19826 (a) for State supervising scientific classifications.

Claim

CAPS alleges the 2006-2007 pay plan for fourteen (14) supervising scientific classifications ("CAPS classifications", "S10" classes) must be adjusted to reflect "like work for like pay" as required by Government Code 19826.

The supervising scientific classifications and the alleged comparable supervising engineering classes at issue are as follows:

**SCIENTIFIC CLASSIFICATION**                      **ALLEGED COMPARABLE ENGINEERING CLASSIFICATION**

Supervising Hazardous Substances Scientist I and II	Supervising Hazardous Substances Engineer I and II
Senior Industrial Hygienist	Senior Safety Engineer
Senior Seismologist and Senior Geologist (Supervisor)	Senior Engineering Geologist
Senior Environmental Scientist	Senior Engineering Geologist Senior Engineer, Water Resources Senior Water Resources Control Engineer
Senior Land and Water Use Scientist	Senior Engineering Geologist Senior Engineer, Water Resources Senior Water Resources Control Engineer
Land and Water Use Program Manager	Supervising Engineering Geologist Supervising Engineer, Water Resources Senior Water Resources Control Engineer
Environmental Program Manager I (Supervisory)	Supervisory Engineering Geologist Supervisory Engineer, Water Resources Supv. Water Resources Control Engr.
Energy Commission Supervisor II (Efficiency)	Electric Generation Specialist II
Energy Commission Supervisor II (Forecasting)	Electric Generation Specialist II

Energy Commission Supervisor II (Technology Evaluation and Development)	Electric Generation Specialist II
Supervising Integrated Waste Management Specialist I	Senior Waste Mgmt. Engineer
Supervising Integrated Waste Management Specialist II	Supervising Waste Management Engineer

CAPS specifically requested: (1) DPA determine if the listed supervising scientific and engineer classes are comparable, (2) If the classifications are comparable, DPA determine the appropriate salaries to be paid to the supervising scientific classifications; and, (3) DPA take all necessary steps to adjust the salaries for the classes and all incumbents.

The claimants specifically requested the following salary increases:<sup>1</sup>

**SCIENTIFIC CLASSIFICATION**                      **ADJUSTMENT**

Supervising Hazardous Substances Scientist I	6.5%
Supervising Hazardous Substances Scientist II	11.5%
Senior Industrial Hygienist	6.0%
Senior Seismologist	15%
Senior Geologist (Supervisor)	12.0%
Senior Environmental Scientist	13.0%
Senior Land and Water Use Scientist	12.0%
Land and Water Use Program Manager I (Supervisor)	17.0%
Energy Program Manager I (Supervisory)	13.0%
Supervising Integrated Waste Management Specialist I	13.0%
Supervising Integrated Waste Management Specialist II	12.5%
Energy Commission Supervisor II (Efficiency)	17.0%
Energy Commission Supervisor II (Forecasting)	17.0%

<sup>1</sup> Since the November 3, 2006 filing of the claim, the engineer classes obtained salary increases that may not be reflected in the requested salary adjustment.

Energy Commission Supervisor II (Technology Evaluation and Development)	17.0%
---	-------

**PROCEDURAL HISTORY/INVESTIGATIVE PROCESS**

CAPS requested a “quasi-adjudical” hearing on or about November 3, 2006. DPA granted appellant’s request for a hearing on or about December 11, 2006. However, DPA granted a quasi-legislative rather than a quasi-judicial hearing<sup>2</sup>.

DPA established an investigative hearing panel. This panel was charged with investigating the claim supervising scientists are performing comparable duties and have comparable responsibilities to certain supervising engineering classes. The panel was given responsibility for gathering relevant facts from CAPS, from the claimants, and from any other sources it deemed necessary.

Factual information was obtained from the following sources:

- Testimony provided by incumbents in the subject classes;
- Documents provided by CAPS in the April hearings;
- Testimony provided by departmental management and human resources staff;
- California State Classification Specifications for subject scientific supervisor classes and alleged comparable engineering supervisor classes;
- Salary history documents contained in DPA and SPB archives;
- Position allocation factors contained in the State of California Department of Personnel Administration Classification and Pay Manual;
- Salary information from the State of California Pay Scales,
- Salary information from the State Controller’s Office salary history files; and
- Historical State Personnel Board Calendars.

The panel’s authority was limited to factual inquiry. It was not given authority to decide questions of law or to make ultimate factual conclusions. Any legal or ultimate factual conclusion provided by the panel is not adopted by DPA.

The panel held hearings on April 11 and 12, 2007. Eleven (11) CAPS witnesses testified. The panel submitted a draft report. On September 26, 2007 the draft report was remanded to the panel with instructions to conduct further investigation.

Additional days of hearings were held on November 26, 27, 30, and December 3, 2007. Representatives from the Central Valley Regional Water Quality Control Board, the State Water Resources Control Board, the Department of Toxic Substances Control, the California Energy Commission, the Department of Water Resources, the Department of Conservation, and the California Integrated Waste Management Board appeared on these days. The Department of Industrial Relations submitted written comments. The panel submitted its final report on or about February 27, 2008.

---

<sup>2</sup> See *Lowe v. California Resource Agency* (1991), Cal. App 4th 1140, 1151-1152 where the court held setting and adjusting salaries is a quasi-legislative function.

## Factual Findings

DPA adopts the investigation panel's factual summary of witness testimony and exhibits and document review as reported below:

### CAPS Labor Relations Consultant - Kristen Haynie.

Ms. Haynie testified on behalf of CAPS ("the claimants"). Her duties included bargaining on behalf of State supervisory scientists.

Ms. Haynie testified about CAPS' efforts since 2005 to re-establish what the union believes to be historical salary ties between engineering and scientific classifications.

Ms. Haynie also testified the Supervising Hazardous Substances Scientist I/II and the Supervising Hazardous Substances Engineer I/II had the same salaries in January, 1995. She noted in the last two years the Supervising Hazardous Substances Engineer I received 6.5% more pay than the Supervising Hazardous Substances Scientist I. She testified the Supervising Hazardous Substances Engineer II received almost 11.5% more pay than the Supervising Hazardous Substances Scientist II.

Ms. Haynie also testified there has been no change in the mission of the departments using these classifications or change in the scope of the classes to justify such a salary disparity.

### Central Valley Regional Water Quality Control Board Senior Environmental Scientist Kelly Briggs

Ms. Briggs testified on behalf of the claimants. She worked for the board for over seven (7) years. Ms. Briggs testified she performs work similar to that performed by a Senior Water Resources Engineer and a Senior Engineering Geologist. She pointed to work in the area of discharge requirements, compliance, outreach, enforcement orders, waivers, and the need to prepare and make Board presentations as evidence of the similarity of work.

The Senior Environmental Scientist class specification described the position as a first level supervisor responsible for directing the work of professional or technical staff. Incumbents have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees and to adjust employee grievances or effectively recommend such actions. It appears Ms. Briggs performs duties consistent with her classification of Senior Environmental Scientist.

The Senior Water Resources Engineer class specification described the position as responsible for supervising other personnel who perform or may perform complex civil engineering work in any phase of the State's water resources program.

A Senior Engineering Geologist is defined by class specification as either a first-line supervisor or a non-supervisory staff specialist assigned to perform the most complex and technical engineering geologic assignments. The senior level is the first level that has administrative responsibility.

To demonstrate the similarity of job functions between the supervisory scientist and engineering classes, Ms. Briggs testified about eight (8) supervisor duty statements from different units within the Water Quality Control Board. Ms. Briggs noted although the assigned duties articulated in the duty statements are similar, several different classifications are used to staff the functions. The various classifications used to staff the functions included Senior Water Resources Control Engineer, Environmental Specialist IV, Senior Environmental Scientist, and Senior Land and Water Use Analyst.

Ms. Briggs also addressed several "vacancy announcements" from the Water Quality Control Board. Ms. Briggs testified when filling vacancies the Board often considered employees in a variety of classifications. For example, the vacancy announcement for a Senior Water Resource Control Engineer from the Central Valley Regional Water Quality Control Board described those "who may apply" as follows:

"Applicants must hold a current Senior Water Resource Control Engineer appointment or possess list, transfer or reinstatement eligibility for Senior Water Resource Control Engineer. In addition, applicants who hold current Senior Engineering Geologist, Senior Environmental Scientist or Senior Land and Water Use Scientist appointments or possess list, transfer or reinstatement eligibility to these classifications may also apply."

A second vacancy announcement seeking a Senior Engineering Geologist, described those "who may apply" as follows:

"Applicants must hold a current Senior Engineering Geologist appointment, possess or will possess list, transfer or reinstatement eligibility for Senior Engineering Geologist. In addition, applicants who hold current Senior Water Quality Control Engineer or Senior Environmental Scientist appointments possess or will possess list transfer or reinstatement eligibility to these classifications may also apply."

#### Central Valley Regional Water Quality Board Staff Environmental Scientist - John Marshack

Mr. Marshack testified on behalf of the claimants. He testified within his agency the Senior Environmental Scientist, Senior Engineering Geologist, and Senior Water Resource Control Engineer classes are used interchangeably.

The Staff Environmental Scientist class specification defined the position as the advanced journey level of the series. Incumbents independently identify problems, develop courses of action, and conduct extremely complex and difficult scientific investigations and studies on issues of major importance to the employer, and they do other related work. Incumbents may be assigned lead responsibility for a specific project, program function, or area of expertise. Mr. Marshack's duties appear to be consistent with the Staff Environmental Scientist classification.

The Senior Environmental Scientist class specification described the position as a first level supervisor responsible for directing the work of professional or technical staff. Incumbents have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees and to adjust employee grievances or recommend such actions.

The Senior Water Resource Control Engineer was defined by class specification as either (1) the first line supervisor of a unit within a Division or Region; or (2) a non-supervising staff specialist assigned to perform the most complex and technical engineering assignments. The senior level is the first level of administrative responsibility.

CAPS introduced copies of two separate job announcements for the State Water Resources Control Board. The first job announcement sought qualified applicants for a Senior Environmental Scientist but also stated the department would consider hiring a Senior Engineering Geologist or a Senior Water Resource Control Engineer. The second job announcement sought qualified candidates for a Senior Water Resource Control Engineer but stated the department would consider hiring a Senior Engineering Geologist or a Senior Environmental Scientist. Mr. Marshack testified DPA asked the department to cease such a practice.

CAPS also introduced a State Water Resources Control Board organization chart. Mr. Marshack drew the panel's attention to multiple positions apparently at the same organizational level but in a variety of classifications. In addition, he asserted several positions had undergone reclassification without any change in duties.

Mr. Marshack testified within his agency several different classifications are used interchangeably and the determining hiring factor is not the classification of the position but rather the background and experience of the proposed candidate. The vacant position is reclassified to conform with the eligibility of the candidate.

California Regional Water Quality Board, Central Valley Region, Environmental Program Manager I -Dr. David Carlson

Dr. Carlson appeared on behalf of claimants.

He testified the position he now holds was originally advertised as a Supervising Engineer vacancy. Although he is not an engineer he was the successful candidate for the position and the position was thus reclassified.

The Environmental Program Manager I class specification included two separate positions encompassing supervision and management.

**ENVIRONMENTAL PROGRAM MANAGER I (SUPERVISORY)**

This is the second supervising level of the series. Incumbents direct and oversee environmental programs or components that are of major sensitivity and complexity. Incumbents have authority and accountability for timely completion of program objectives and for submitting satisfactory products. They are responsible for operational planning and assigning projects, budgeting for time and funds, reviewing and evaluating achievements, and preparing administrative reports. They coordinate program activities with technical and administrative support sections. They formulate and administer policies; maintain liaison with other governmental agencies and the private sector; and they do other related work. Incumbents may supervise a group of Staff Environmental Scientists and other professionals working on a major environmental management, regulation, compliance, or research project. Incumbents have authority to 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.

#### ENVIRONMENTAL PROGRAM MANAGER I (MANAGERIAL)

This is the first managerial level of the series that has significant responsibility for formulating and administering policies or programs. Incumbents direct and manage environmental programs or components that are of major sensitivity and complexity. They have authority and accountability for timely completion of program objectives and for submitting satisfactory products. Incumbents are responsible for operational planning and assigning of projects, budgeting time and funds, reviewing and evaluating achievements, and preparing administrative reports. They coordinate program activities with technical and administrative support sections; formulate and administer policies; maintain liaison with other governmental agencies and the private sector; and they do other related work. Incumbents have authority to 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 Water Resources Control Engineer specification also includes separate positions encompassing supervision and management concepts.

#### Supervising Water Resource Control Engineer (Supervising)

This level in the series is the full supervisory level. Incumbents supervise at least two or more major units. They are responsible for flow of work, personnel use, instruction, and coordination of staff activity with other organizational units. Incumbents typically report to a Principal Water Resource Control Engineer, Division Chief, or Executive Officer.

#### Supervising Water Resource Control Engineer (Managerial)

This level is the first managerial level in this series. Incumbents supervise two or more major units; assist a Regional Board Executive Officer in developing policy; plan, direct, and coordinate the work of a Regional Board Office; and may act in the absence of the Regional Executive Officer. These positions are typically found in those Regional Boards that do not have a principal Water Resource Control Engineer.

Dr. Carlson testified there is no distinction made between supervising scientists and supervising engineers. He reported the Quality Board tended to seek individuals that are academically strong with good communication and writing skills. He testified the classification of the individual is not as important as the background/educational skills the individual brings to the position.

In support of Dr. Carlson's contentions, CAPS introduced a list of the 10 individuals identified as program managers within the Water Quality Control Board. CAPS maintained the employees shared common responsibilities but the positions were allocated to two different classes: Supervising Water Resources Control Engineer and Environmental Program Manager I.

State Water Resources Control Board Assistant Executive Officer Kenneth D. Landau; Chief Deputy Thomas Howard; Chief Administrative Officer Richard Loncarovich; Deputy Director Esteban Almanza; and Personnel Officer Sheryl Brooks.

These witnesses appeared at the request of the panel:

Mr. Landau agreed with Ms. Briggs' testimony. Mr. Landau expressed frustration at not always being able to select individuals with the right skill set, irrespective of discipline.

Mr. Landau testified he also agreed with Dr. Carlson's testimony. He emphasized the need for particular expertise depends on the needs of the project.

Mr. Howard testified about creating project teams from both environmental scientists and engineers and the advantages this seemed to bring to departmental operations. He commented because of the multidisciplinary approach to staffing the teams, supervisors were selected on the basis of who possessed the best managerial skill sets. He noted since salaries were virtually identical at the senior level, there was no issue about who was eventually selected to lead the team. Because of the salary disparity between engineers and scientists, however, it became more problematical to select a scientist for a supervisory role because they might make less than subordinate engineers. He commented one solution might be to equalize all salaries on these teams. He also stated he would support the creation of a "generalist" class merging the various disciplines.

Mr. Loncarovich began his testimony by indicating he did not have any major disagreement with Mr. Marshach's comments. However, he was not in total agreement with Mr. Marshach's comments regarding interchangeability. Mr. Loncarovich emphasized the need for particular expertise dependent on the needs of the project.

However, Mr. Loncarovich also supported creating a single supervising class thereby increasing flexibility in meeting program needs. Mr. Loncarovich's views were best summed up in his closing remarks when he suggested:

"My world would be, let me go after whatever I need. I define what the job is and whatever candidate comes through the door, whatever their background is, if they meet that requirement and they can do it, that's the person I'd like to hire. "

Ms. Brooks indicated the practice of advertising for vacancies with multiple classifications had been terminated. She testified the department had recently taken steps to ensure positions are advertised and classified appropriately. In an ideal world Ms. Brooks indicated a "selective certification" approach to hiring would be desirable.

The department representatives emphasized the need for particular educational disciplines while at the same time recognizing that certain positions such as the branch managers, share many traits common to supervision and management.

Department of Toxic Substances Control Supervising Hazardous Substances Scientist II (SHSS II) John Scandura

Mr. Scandura testified on behalf of the claimants. Mr. Scandura worked for the department for over 21 years. He is a branch chief and a second-line supervisor in the Office of Military Facilities for the southern branch. He has a counter-part performing similar duties in the northern part of the state. Mr. Scandura's testimony focused on the similarity of work between supervising scientists and supervising engineers.



The Supervising Hazardous Substances Scientist II is defined in the class specification as the second supervisory level in the series. Incumbents are responsible for technical and professional staff in the Department of Toxic Substance Control headquarters or a regional program unit. Positions at this level typically supervise ten (10) or more professional staff including lower level Hazardous Substances Scientists, other scientific disciplines, and lower level engineers or engineering geologists. This level places major emphasis on the performance of supervisory and management activities such as staff recruitment, development, performance evaluation, program budgeting and strategic planning. The duties described by Mr. Scandura appear to be consistent with the duties in the Supervising Hazardous Substances Scientist II class specification.

A Supervising Engineering Geologist is described in the class specification as the full supervisory level in the series. Incumbents supervise two or more sections through subordinate level supervisors. Incumbents plan, organize, and direct geological work; direct the use of personnel, instruction of supervisory technical personnel, and the coordination of activity with other organizational components.

A Supervising Hazardous Substances Engineer II is described in the class specification as the second supervisory level in the series. Incumbents direct and supervise professional and technical staff in the department Headquarters or regional program unit. Typically, positions at this level directly supervise ten (10) or more primarily professional staff, including lower level Hazardous Substances Engineers or employees in other related engineering and scientific disciplines. Supervising Hazardous Substances Engineers I may be supervised by this level. There is major emphasis at the Supervising Hazardous Substances Engineer II level on the performance of supervisory and management activities such as staff recruitment, development, and performance evaluation; program budgeting; and strategic planning.

Mr. Scandura testified the department's duty statements for Supervising Hazardous Substances Scientist I and Supervising Hazardous Substances Engineer I contain identical essential functions for the jobs. He also pointed out similarity among the duty statements on the Supervising Engineering Geologist, Supervising Hazardous Substances Scientist II, and Supervising Hazardous Substances Engineer II. Mr. Scandura noted 40% of the duties described for the Scientist II and the Engineer II were identical.

Scandura also testified much of the project management work is the same in part because of the creation of multi-disciplinary teams. He testified when assignments are made, they are made based on the background, education, and experience of the employee, rather than on whether the employee is an engineer or a scientist.

To further demonstrate the interchangeability of the classifications, Mr. Scandura compared his own assignment with that of his counterpart in the north. The individual performing the same work as Mr. Scandura in the northern part of the state happens to be a Supervising Hazardous Substances Engineer II. Scandura testified, except for the geographical distinction, the work is the same and both supervisory classifications enjoy the same complement of staff. Mr. Scandura stated although that the northern branch has a few more positions and deals with more counties than the Southern branch, "... everything we do is the same."

Department of Toxic Substances Control Division Chief Frederick S. Moss; Chief, Human Resources Phillip R. Amen, Deputy Directory Administration Vicki L. Vandergriff

These witnesses appeared at the request of the panel. They commented on Mr. Scandura's testimony and associated documents.

Mr. Moss is Mr. Scandura's supervisor. Mr. Moss confirmed Mr. Scandura's staff management and workload responsibility as a branch chief dealing with military facilities in Southern California was essentially the same as his counterpart in Northern California. Moss also agreed with Mr. Scandura's testimony approximately 40% of the duties described for the level II scientist and engineer were nearly identical. Mr. Moss further noted the primary function of the branch chief as confirmed by the duty statements was management of staff, workload, and resources irrespective of whether the incumbent was an engineer or a scientist.

Because of the similarity of duties noted above, the panel asked Mr. Moss and Mr. Amen whether a single class should be created to serve as the branch chief. Amen and Moss each stated a continuing need for the two disciplines because work assignments required different expertise from time to time. Ms. Vandergriff testified it had been her experience that program management desired more flexibility in selecting incumbents for particular positions.

Amen, Moss and Vandergriff were each asked what problems, if any, existed as a result of the difference in salary between the supervisory scientists and the engineers. All cited employee morale as a key concern.

California Energy Commission Energy Commission Supervisor II - Virginia Lew

Ms. Lew testified for the claimants. She supervised a multi-disciplinary team of scientists and engineers. The focus of her testimony was on the similarity of work between her classification and that of the Energy Generation System Specialist III and what she considered to be work of comparable value.

The Energy Commission Supervisor II class specification defined the position as a second-level supervisor. The incumbent is typically responsible for two or more small units with a total of six (6) professional staff. Staff is usually at the Energy Analyst through Energy Commission Specialist I level and includes direct supervision of Energy Commission Supervisor I positions. In the more complex and technical functional areas, staff at the Associate Energy Specialist level and above may report directly to the Energy Commission Supervisor II, provided the minimum staff size requirement is met. Ms. Lew's duties appeared to be consistent with her classification of Energy Commission Supervisor II.

The Energy Generation Systems Specialist III is defined by class specification as the full supervisory level. Incumbents typically supervise a group of electric generation specialists and have major program responsibilities. Supervisors usually report to the class of Office Manager responsible for one of the Commission's major programs; or, they report to a Division Administrator when supervising one of the division's major support programs. Incumbents spend their time supervising and managing activities

rather than personally performing work which can be done by a journey person or program specialist.

Ms. Lew testified the Energy Commission Supervisor II and Energy Generation Systems Specialist III positions are similar except the engineering classes work on electric generation activities. Both classes utilize models and similar analytical techniques. Furthermore, she testified when the Electric Generation System Specialist class series was created in 1977, the State Personnel Board item included a statement to the effect the new class (Energy Generation System Specialist III) was intended to parallel the Commission's other line classes for salary setting purposes. Ms. Lew opined the rationale for the initial salary setting determination has not changed.

California Energy Commission Manager, Public Program Office John Sugar; Deputy Director, Electricity Supply Analysis Division Sylvia Bender; Human Resources and Support Services Branch Manager Betty La Franchi; and Personnel and Labor Relations Manager Gina Tosi-Smith

These witnesses appeared at the request for the panel.

Mr. Sugar is Ms. Lew's immediate supervisor. He testified the only area in which he disagreed with Ms. Lew's testimony was her reference to a date on which reclassification of the Supervisor I's occurred. Aside from that detail, he stated he concurred with her statements. Additionally, he commented about Ms. Lew's use of models and the technical work that is involved. He found her examples to be consistent with his recollection and work experience.

Ms. Bender testified about two offices in her division. One was led on by an Energy Generation System Specialist III and the other by a Supervisor II. Ms. Bender also basically agreed with Ms. Lew's testimony. When asked to focus on the similarities of the two classes under discussion, Ms. Bender stated:

"The classes—generally both of those classes are responsible for directing the work of others, for advising them on what is to be done, directing the work to be done, planning, organizing. They are both responsible for taking that work forward, perhaps to the commission level, to outside agencies. They might serve as a spokesperson often for the work that is being done by the people in the division. They are both responsible for administrative issues, for planning, budgeting, recruitment, all of those sorts of tasks.

So, generally, the same sorts of supervisorial administrative and advising kinds of duties."

When questioned about any differences between the classes in types of contacts, Ms. Bender replied both classes interact with other state agencies, appear before the commission, public meetings, business meetings, workshops, and the public utilities commission.

When asked whether the use of the classes had changed over the last few years, Ms. LaFranchi responded the world of energy has changed because problems have now become much more technically complex than 25 years ago.

When the panel asked about the consequence of error for the supervisory scientist and engineering classes, Mr. Sugar responded consequences are much more immediate than in the past.

Both Ms. Bender and Mr. Sugar indicated both supervising scientist and supervising engineering classes were responsible for supervising a mix of scientists and engineers.

When asked about independence of action, Mr. Sugar reported he expects all his subordinate supervisors to operate independently. Ms. Bender responded Energy Generation Systems Specialist IIs and Supervisor IIs are basically similar and she expects all of them to exercise the same level of independent judgment.

When asked if he viewed the Energy Generation System Specialist and Energy Commission Supervision II classes as "comparable, Mr. Sugar responded he has a total of five employees in these classes---three in one and two in the other. Mr. Sugar reported the employees have similar responsibility in terms of independent judgment and expectations, and the expertise they need. When asked to explain the term, "comparable," in terms of appropriate compensation, Mr. Sugar opined at present there is no comparability but that there should be.

Department of Water Resources Senior Land and Water Use Scientist - Xavier (Tito) Cervantes

Mr. Cervantes testified on behalf of the claimants. He is assigned to the Department of Water Resources Division of Planning and Local Assistance. Mr. Cervantes has been a supervisor for 10 years. Mr. Cervantes testified about the similarity of work among the Senior Land and Water Use Scientists, Senior Engineering Geologists, and Senior Engineers.

The Senior Land and Water Use Scientist class specification described the position as the first full supervisory level. Incumbents supervise and direct major agricultural, urban, and other land and water use, agricultural and water conservation, water recycling, statewide planning, and agricultural drainage. Incumbents supervise lower level land and water use scientists and other closely related classes. Incumbents have the authority to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, and discipline other employees, adjust grievances, or effectively recommend such actions. Mr. Cervantes' duties appeared to be consistent with his classification of Senior Land and Water Use Scientist.

A Senior Engineering Geologist is defined by class specification as either a first-line supervisor or a non-supervisory staff specialist assigned to perform the most complex and technical engineering geologic assignments. The senior level is the first level at which administrative responsibility is assigned.

The Senior Water Resources Engineer class specification stated the position supervises other personnel performing, or who may perform complex civil engineering work in any phase of the State's water resources program.

Mr. Cervantes testified at the supervisory levels approximately 80% of the work is similar within the Senior Land and Water Use Scientist, Senior Engineering Geologist and Senior Water Resources Engineer positions. The work is comparable other than in those situations where drilling is required and it is necessary to have the technical knowledge of an engineering geologist. He further testified over the last 20 years the

work has become more similar because of the de-emphasis on construction and because engineers have become more involved in doing assessments and studies similar to those assigned to the scientists and the geologists.

Department of Water Resources Land and Water Program Manager I - Scott Matyac

Mr. Matyac testified on behalf of the claimants. He worked at the Department of Water Resources for 22 years. Mr. Matyac's testimony focused on the similarity of work between supervising scientists and Supervising Engineering Geologist and Supervising Engineer Water Resources. He testified both scientific and engineering disciplines are responsible for meeting departmental objectives, reviewing the work of subordinate staff, reviewing and approving work plans, scheduling budgets, and acting as team leaders. He testified at the supervisory level a scientist is virtually interchangeable with an engineer. He based his conclusion on the fact he himself had applied for a position that is today filled by an engineer and the fact when advertising for job vacancies he advertises for both scientists and engineers in an effort to expand the candidate pool.

The Land and Water Program Manager I class specification defined this position as the second supervisory level. Incumbents supervise the agricultural, urban, and other water and land use and water recycling programs or components which are of major importance to the State. They have authority and responsibility for the punctual completion of program objectives and submission of satisfactory as product. Incumbents are responsible for planning, implementing, and assigning projects; budgeting for time and funds; reviewing and evaluating achievements; preparing administrative reports; coordinating program activities; assisting in formulating policies; and maintaining liaisons with other governmental agencies and the private sector. Incumbents typically supervise senior land and water use scientists and other closely related classes. Incumbents have authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline employees, adjust their grievances, or effectively recommend such actions. It appeared Mr. Matyac's duties were consistent with the class specification for Land and Water Program Manager I.

A Supervising Engineering Geologist is described in the class specification as the full supervisory level in the series. Incumbents supervise two or more sections through subordinate level supervisors. Incumbents plan, organize, and direct geological work; direct the utilization of personnel and instruction of supervisory technical personnel, and coordinate staff activity with other organizational components.

A Supervising Engineer, Water Resources is described in the class specification as being responsible for planning, organizing, directing, and coordinating the work of a group responsible for one or more of the activities of an engineering branch performing complex work in any phase of the State's water resources program. The position may also act as the one departmental nonsupervisory staff specialist or consultant in a specific civil engineering field and does other related work.

Mr. Matyac was asked to compare his duties to that of a colleague, Mr. Dabbs, a Supervising Engineer, Water Resources. He testified the organizational structure and responsibility were identical except Mr. Dabb's unit focused on water supply projections and Mr. Matyac's staff focused on water demand projections. Mr. Matyac believed the positions were totally interchangeable and he could walk into Mr. Dabb's position today and function perfectly well.

Department of Water Resources Labor Relations Specialist Susie Cano-Guzman; Manager, Classification and Placement Services Jennifer K. Dong; Supervising Engineer, Water Resources Curtis Anderson; and Manager, Statewide Water Planning Branch Kamy Guivetchi.

These witnesses appeared at the request of the panel.

Mr. Anderson stated he agreed with Mr. Cervantes that “. . . engineers and scientists are doing similar work but not exactly the same work. . . .” Mr. Anderson stated at the supervising level 99% of the work deals with traditional supervisor and management duties such as budgets, personnel, and allocation of work. Mr. Anderson did not agree with Mr. Cervantes’ testimony the disciplines share a common liability. He pointed out engineers who are required to stamp documents must assume a greater liability than others. If there was a serious error, there is potential for serious discipline or loss of licensure. He noted, however, stamping documents is infrequent.

Mr. Anderson indicated he agreed 80% of the work of supervising scientist and supervising engineer work was similar. However, he did not agree with Mr. Cervantes’ statement that during emergencies Mr. Cervantes’ and others in his class series are first in line to respond. Contrary to Mr. Cervantes’ testimony, it was Mr. Anderson’s view the first responder would depend on the nature of the emergency. For example, in the event of a levee failure, the first responder would likely be a geologist or a seismic engineer. Mr. Anderson concluded his testimony with the comment it was his belief the supervising scientist had similar if not more responsibility than a supervising engineer. In particular, he mentioned another DWR employee, Heidi Rooks. He based his view on the number of people Ms. Rooks supervises and the projects she reviews compared to what he does.

Ms. Dong testified about the analysis the Personnel Office performs when it makes engineering and scientist position allocations. The Personnel Office reviews the duty statements to ensure the duties are consistent with the requested classification. However, the initial discipline determination rests with the program. Ms. Dong contradicted Mr. Matyac’s testimony he recruits both engineer and scientist classification when requesting a position. Ms. Dong clarified the Personnel Office would not permit advertising a vacancy in that manner and would require the line program classify the vacancy appropriately.

Ms. Cano-Guzman, a 27-year Department of Water Resources employee, testified about the Department’s changing emphasis from a purely engineering organization to one that also emphasizes environmental concerns. When questioned about the comparability of work between the supervising engineer and the supervising scientist, she responded many of the managerial or supervisory responsibilities may be of equal status. She testified while there is clearly a need for specialized expertise, as it relates to supervision and “people skills,” the classes are comparable. In her view, one common class would not be viable. Ms. Cano-Guzman also indicated a Department of Water Resources, unit chief or section chief who is either an engineer or a scientist has the same level of responsibility.

Mr. Guivetchi was a 30-year Department of Water Resources employee and a principal engineer. Mr. Guvetchi reviewed both the testimony of Mr. Cervantes and that of Mr.

Matyac. He indicated both of their testimonies were essentially correct. He described the multi-disciplinary approach to running programs within Department of Water Resources and the Department's interaction with at least 18 other state agencies. Mr. Guivetchi noted Mr. Matyac left the Department of Water Resources for a comparable position with the Yuba County Water Agency. It was his understanding Mr. Matyac was receiving a salary 35% higher than he was receiving with the Department of Water Resources. Mr. Guivetchi also testified the department evolved from a purely engineering organization to one with greater involvement in environmental concerns. He indicated the need for the separate disciplines but emphasized he believed both engineers and scientists perform work of "coequal value."

Mr. Guivetchi also discussed compensation. He pointed out when matrix teams were first created, the salary difference between engineers and the comparable scientist class was 5 to 10%. Since July of 2005, however, the difference has grown closer to 30 or 35%. Mr. Guivetchi anticipated if the compensation problem is not resolved, the employer will experience continued turnover, inability to recruit, and decline in morale on the matrix teams.

Mr. Guivetchi disagreed with Mr. Matyac's testimony a scientist is interchangeable with an engineer at the supervisory level. Mr. Guivetchi suggested a supervising scientist and a supervising engineer have "... some common knowledge, skills, and abilities to direct tasks and to plan, manage, and evaluate performance, but they are not interchangeable because they have different educational backgrounds, different experiences."

#### Department of Conservation Senior Seismologist - Hamid Haddadi

Mr. Haddadi testified on behalf of the claimaints. His testimony focused on the similarity of work between the Senior Seismologists and the Senior Engineers.

As a Senior Seismologist, Mr. Haddadi was responsible for planning, organizing, and directing difficult seismic instrumentation studies and earthquake hazard investigations related to earthquake engineering and for doing other related work.

According to the class specification, a Senior Civil Engineer is responsible for planning and directing difficult field and office civil engineering work and doing other related work.

Mr. Haddadi testified there are no differences in the work performed by a Senior Engineer and that of a Senior Seismologist. He pointed to a position currently held by Mr. Huang, Senior Civil Engineer supervising the Data Utilization/Structural Response Unit. Mr. Haddadi testified Mr. Huang's position had been classified as a Senior Seismologist for approximately 20 years. However, recently, with no change in duties, the position was reclassified to Senior Engineer. In support of this contention Mr. Haddadi provided the panel with an organization chart from 2003 showing Mr. Huang as a Senior Seismologist with responsibility for the same unit.

Mr. Haddadi further testified the classes of Geologist and Engineering Geologist are also used interchangeably. No documents were presented in support of this assertion.

Mr. Haddadi also testified employees within the Minerals Program were recently transferred from the class of Senior Geologist Supervisor to Senior Engineering Geologist with no change in duties.

Department of Conservation Human Resources Consultant Janet Wright; Supervising Engineering Geologist Dr. Anthony F. Shakai and Chief, Human Resources Officer Rosalyn Brooks

These witnesses participated at the request of the panel.

Dr. Shakai is Mr. Haddadi's supervisor. He agreed with Mr. Haddadi's testimony. Dr. Shakai testified Mr. Huang and Mr. Haddadi had equal job responsibilities. He also explained the reclassification of Mr. Hang's position occurred after some minor changes in duties and was pursued because Mr. Huang preferred the title of "engineer" as opposed to seismologist.

Ms. Wright testified she agreed with Mr. Haddadi's testimony in concept. However, she disagreed with some of his terminology. Although she believed the classes were comparable, she did not believe they are interchangeable. In her view, both disciplines are equally important. When asked about the possibility of combining these disciplines into one class Ms. Wright indicated the department had considered creating a new classification structure combining separate classes.

Ms. Brooks testified about recent exam results for the senior seismologist class. She testified that Department was experiencing problems in recruiting a sufficient number of qualified candidates.

California Integrated Waste Management Board Acting Supervising Integrated Waste Management Specialist II - Trevor O'Shaughnessy

Mr. O'Shaughnessy testified on behalf of the claimants.

He was a branch manager within the Diversion, Planning, and Local Assistance Division. His testimony focused on the similarity of work between the Integrated Waste Management Specialist Supervisor and the supervising Waste Management Engineer series. Mr. O'Shaughnessy reported both classifications are responsible for supervising and training of staff; reviewing reports and hearing items; reviewing planning documents and preparing agenda items. He also stated both classifications are at the same organization level within the agency.

A Supervising Integrated Waste Management Specialist II is defined by the class specification as the second full supervisory level in the class series. Incumbents typically manage multiple integrated waste management programs; supervise subordinate supervisors performing integrated waste management work; and select, develop, and evaluate the performance of staff.

A Supervising Waste Management Engineer is described in the class specification as the second supervisory level in the series. Under general direction, incumbents plan, organize, and direct engineering programs in connection with waste management and material reuse/recovery.

Mr. O'Shaughnessy provided a Venn diagram of two "almost concentric circles." He testified while at times there may be a need for particular expertise such as engineering knowledge to deal with questions of redundancy and design rather than knowledge of soil integrity that a scientist might possess, the overwhelming bulk of the work of the two



positions is the same. He testified the work of both classes is characteristic of traditional managerial or supervisory duties listed in class specifications.

California Integrated Waste Management Board Deputy Director Tom Estes; Division Chief Lorraine Van Kekerix; Director, Sustainability Program Howard Levenson, Ph.D.; and Manager, Administrative Services Branch Laurie A. Karlstad

These witnesses participated at the panel's request.

Ms. Kekerix testified many of the examples Mr. O'Shaughnessy used took place prior to her becoming his supervisor. She agreed with him regarding similarity of supervisory duties.

Mr. Estes testified about his work experience and knowledge of the department's organization. He indicated there was similarity between the supervising engineers and supervising integrated waste management incumbents. He testified engineers in supervising positions didn't really perform engineering duties. Mr. Estes noted the particular project dictated what expertise might be necessary.

Dr. Levenson agreed with Mr. O'Shaughnessy's testimony about supervisory functions. He stated ". . . the scientists, perform comparable work with the supervising engineers. I wouldn't say it's equal, but I think it's comparable. . . they all do the same kinds of basic supervisory oversight functions."

Dr. Levenson testified the Venn diagram appropriately displayed the overlapping supervisory duties of the engineers and supervisors, he noted there is equivalence in the technical analysis that an engineer and a scientist perform, but they are not the same.

Dr. Levenson reported the consequence of error affecting public health and safety were present in both the engineer and scientific disciplines.

Ms. Karlstad testified it was not possible to collapse the two disciplines into a common class.

Ms. Karlstad, Dr. Levenson, Mr. Estes, and Ms. Van Kekerix all agreed a branch manager at the California Integrated Waste Management Board is held to the same standards, has the same level of contacts, the same organizational level and is viewed at a "comparable level" regardless of whether they have a scientific or engineering background.

Department of Industrial Relations, Cal OSHA, Senior Industrial Hygienist - Jeff Ferrell

Mr. Ferrell testified on behalf of the claimants.

He testified about the overlapping duties of hygienists and safety engineers. He testified the positions for all Industrial Hygienists are being reclassified to Safety Engineer with no change in duties. He also testified Senior Industrial Hygenist and Senior Safety Engineer positions do similar work and are used interchangeably in both the Headquarters Unit and Consultation Service.

The Senior Industrial Hygienist class specification defined the position as the first supervisory level. Under general direction, incumbents are responsible for an industrial

hygiene program in an assigned geographic area or subject-matter function. Incumbents perform the more complex industrial hygiene work; plan, assign, and supervise the work of one or more industrial hygiene staff members in an assigned geographic area, or work independently in a staff capacity on complex industrial hygiene problems. Incumbents coordinate or conduct major studies and investigations. They conduct site inspections; consult with management, professional, and technical personnel, and make and secure recommendations for the prevention, elimination, or control of hazards: The position identifies training needs and assists in the development of training plans; reviews proposed health standards, evaluates them, and makes recommendations for their acceptance or modification; represents the department in contacts with the community, industries, and other agencies; participates in and conducts meetings with department staff and others concerning occupational health and safety matters; collects, records, and analyzes statistical data; determines priorities, assigns work, and evaluates performance of staff; prepares and reviews correspondence and reports; and does other related work. Mr. Farrell's duties appear to be consistent with the class specification.

At the Department of Industrial Relations, the Senior Safety Engineer is the first full supervisory level. Incumbents at the Department of Industrial Relations work in either the Standards and Research and Development Unit, the Compliance Unit, the CAL/OSHA Consultation Division, or the OSH Standards Board. The Senior may be (1) responsible for supervising a group of Safety Engineers in a particular geographical setting; or (2) can conduct complex studies and analyses; initiate investigations; review and make recommendations on reports involving alleged violations. The position coordinates with Division staff to compare Federal/State standards; conducts meetings; or (3) develops program for safety promotion, consults with labor, management, and public groups on sensitive issues; plans seminars; and may participate as a technical advisor to the Standards Board during public hearings.

#### Department of Industrial Relations

The Department of Industrial relations provided a written response to the panel's request for comment.

The department found Mr. Ferrell's testimony ". . . generally... accurate on the issue of what Mr. Ferrell described as the 'core competencies' of safety engineers and industrial hygienists who are in the employ of either the Division of Occupational Safety and Health or the occupational Safety and Health Standards Board."

During his testimony, Mr. Ferrell cited inspection of punch presses as an example of a task he would not perform because it constituted highly specialized equipment outside his expertise and it would require the expertise of a safety engineer. However, the department confirmed the fact as an industrial hygienist Mr. Ferrell would be expected to handle both health and safety issues. The department also stated:

"There is no distinction in DOSH between the concept of "scientist" and "engineer" for the purpose of defining the duties of industrial hygienists and safety engineers. The difference between the two class titles is solely a product of the distinction between a discipline that focuses on safety protection and one that focuses on health protection. In DOSH, this distinction is not one that would be determinative in any manner of

the level of responsibility a staff member or manager might have or the importance of the service to be delivered.”

### ANALYSIS

CAPS contends State employees in certain supervising scientific classifications are entitled to receive “like pay” as employees in certain specified supervising engineering classes. CAPS alleges the scientific employees perform the same or similar duties and responsibilities as employees in alleged comparable engineering classes.

Government Code section 19826, subdivision (a) states:

“The [DPA] shall establish and adjust salary ranges for each class of position in the state civil service subject to any merit limits contained in Article VII of the California Constitution. *The salary range shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities.* In establishing or changing such ranges consideration shall be given to the prevailing rates for comparable service in other public employment and in private business. The department shall make no adjustments which require expenditures in excess of existing appropriations which may be used for salary increase purposes. The department may make a change in salary range retroactive to the date of application for such change.” (Italics added.)

Testimony from witnesses working in the various classifications, and from managers in agencies and departments using the classifications indicate the duties and responsibilities of supervising scientists and supervising engineers are sometimes identical or comparable in terms of organizational level and supervisory or management responsibility.

However, the panel’s investigation also demonstrated while the supervising and management duties and responsibilities were similar, the classifications when viewed as a whole were not identical. In many department situations, consideration was also given to the employees’ education, background, and past experience. Supervising employees may be expected to draw on their particular technical training, technical background and past technical experience as necessary to perform and enhance their management or supervisor responsibilities.

Class specifications for scientists and engineers generally include a series of classifications. As the employee moves upward through the classifications to the supervisor and management levels, technical work and specialized knowledge from the particular area of expertise is de-emphasized as the classification assumes more management and supervisor duties. It is assumed the employee already has the required specialized disciplinary knowledge and training by the time they reach the supervisor and management level.

An employee’s technical background assists the employee in performing the traditional supervisor and management duties and responsibilities associated with program oversight.

The State Personnel Board (SPB) recognized the difference in responsibility and accompanying technical expertise and background between the supervising scientist

and engineering classes by establishing different classes with different requirements for each discipline. It cemented the difference between the classes when it did not always align the salaries of the subject supervising scientist and engineer classes when it established the classes.

Historical review of the salary of the subject supervising scientist and engineer classifications also shows the classes generally have not been consistently paid the same. The exception to this is the Supervising Hazardous Substances Scientist I and II classifications. The two scientific classes have historically either been paid the same or they have been paid 5% more than the Supervising Hazardous Substances Engineer I and II.

There has, however, been a closer alignment of the salaries between the subject supervising scientists and engineers classifications than currently exists.

Many of the witnesses participating in the investigation recognized the difference in the technical knowledge and responsibilities of the classes

However, the investigation showed some departments place a premium on supervisory skills and reclass a supervisory position to fit a candidate's existing discipline. This practice skirts the boundaries of existing Civil Service rules and the existing classification system.

Other departments claim to give no consideration to technical direction, background, or training by using a "multi-disciplinary" approach to problem-solving. These departments expect all managers and supervisors to possess general analytical and problem solving skills without regard to formal education, technical expertise, and apparently without regard to past technical work experience. The departments viewed the skill of the individual as paramount while position classification is only secondary concern.

A department's implementation of such a multi-disciplinary approach, while well-intentioned and applicable to some work demands and situations, is inconsistent with the current classification system that assigns responsibility and authority based on supervisor and management skills built on and buttressed by technical training and experience in a particular discipline. The multi-disciplinary approach described by some departments also leads to a disgruntled work force that sees only widely differing salaries for what appear to be similar duties and responsibilities. In addition, such an approach to personnel management is inconsistent with the like pay for like work concept because supervisor salaries that were once comparable, no longer are. The exact dates of departments reclassification of positions and use of multi-disciplinary teams are unknown. DPA cannot condone personnel activity that may not comply with existing civil service rules and the existing classification system.

The participants in this investigation raised concerns for change in the State's personnel classification system. The State's Human Resources Modernization Program is working to address these issues.

### **CONCLUSION**

(1) The factual evidence presented by the claimants and the employing agencies established the duties and responsibilities of the subject supervising scientist

classifications are similar but not identical to those assigned to the subject supervising engineer classifications.

(2) Departments will be ordered to stop circumventing the current classification system.

(3) DPA recommends salary adjustments to the Supervising Scientist classifications. These salary adjustments are based on historical State Personnel Board documents that initially established classifications and historical pay scales.

**SCIENTIFIC CLASSIFICATION                      RECOMMENDED ADJUSTMENT**

Supervising Hazardous Substances Scientist I and II	Pay the same as Supervising Hazardous Substances Engineer I and II
Senior Industrial Hygienist	Pay the same as Senior Engineering Geologist
Senior Seismologist	Pay the same as Senior Engineering Geologist
Senior Geologist (Supervisor)	Pay the same as Senior Engineering Geologist
Senior Environmental Scientist	Pay 10% <sup>3</sup> less than Senior Engineer Water Resources or Senior Water Resources Control Engineer
Senior Land and Water Use Scientist	Pay 5% less than Senior Engineering Geologist or Senior Engineer Water Resources
Land and Water Use Program Manager I	Pay 5% less than Supervising Engineer Water Resources
Environmental Program Manager I (Supervisory)	Pay the same as Senior Engineering Geologist, Senior Engineer Water Resources, Senior Water Resources Control Engineer
Energy Commission Supervisor II (Efficiency)	Pay 5% less than Electric Generation Specialist II

<sup>3</sup> The percentages represent the historical mean average difference in pay between the classifications.

Energy Commission Supervisor II (Forecasting)	Pay 5% less than Electric Generation Specialist II
Energy Commission Supervisor II (Technology Evaluation and Development)	Pay 5% less than Electric Generation Specialist II
Supervising Integrated Waste Management Specialist I	Pay 5% less than Senior Waste Mgmt. Engineer
Supervising Integrated Waste Management Specialist II	Pay 10% less than Supervising Waste Management Engineer

(4) DPA will forward a copy of this report to the Department of Finance for its consideration. Consistent with Government Code 19826, the Department of Finance must determine whether the recommended pay adjustment is within existing salary appropriations.