

# Civil Service Commission

1055 MONTEREY STREET, SUITE D-250 • SAN LUIS OBISPO, CALIFORNIA 93408 • 805.781.5959

**San Luis Obispo County Civil Service Commission  
Regular Session Meeting  
Wednesday, May 27, 2015 @ 9:00 A.M.  
1055 Monterey Street, Suite D-271 San Luis Obispo, CA**



## AGENDA

MEMBERS OF THE COMMISSION  
President Wayne Caruthers  
Vice President Betsey Nash, SPHR  
Robert Bergman  
William Tappan  
Erwin Ohanessian

1. **Call to Order / Flag Salute / Roll Call**
2. **Public Comment Period**  
Members of the public wishing to address the Civil Service Commission on matters other than those scheduled below may do so when recognized by the President. Presentations are limited to three minutes per individual.
3. **Minutes**  
The following draft minutes are submitted for approval:
  - a. April 1, 2015
4. **Specifications – New**
  - a. **Waste Water Systems Worker**
5. **Letter to the Civil Service Commission-Re: Liberty Interest Hearings for County Probationary Employees**
6. **Reports**
  - a. Commission President
  - b. Commission Counsel
  - c. Commission Secretary
7. **Closed Session Hearing (per Government Code Section 54956.9) Re: Appeal #A15-03**
8. **Adjournment**

# Civil Service Commission

The San Luis Obispo County Civil Service Commission  
Regular Session Meeting  
Wednesday, April 1, 2015 @ 9:00 A.M.  
1055 Monterey Street, Suite D-271, San Luis Obispo, CA



MEMBERS OF THE COMMISSION  
Wayne Caruthers, President  
Betsey Nash, SPHR, Vice President  
Robert Bergman  
William Tappan  
Erwin Ohannesian

## MINUTES

**Present:** President Caruthers, Vice President Nash, Commissioner Robert Bergman, Commissioner William Tappan, Commissioner Ohannesian

**Staff:** Commission Secretary Tami Douglas Schatz, Commission Clerk Lacey Gabriel

**Counsel:** Commission Counsel Steve Simas, Commission Counsel Nina Negranti

**1. Call to Order/ Flag Salute/ Roll Call**

President Caruthers called the meeting to order at 9:00 A.M. and led the flag salute.

**2. Public Comment Period**

President Caruthers asked for Public Comment. Being none, he closed the Public Comment period.

**3. Minutes – February 25, 2015**

President Caruthers asked for corrections or revisions to the February meeting minutes. President Caruthers requested a motion to approve the minutes as submitted. Vice President Nash made a motion to approve; Commissioner Ohannesian seconded the motion. Motion passed 5-0-0.

**4. Specifications – New**

a. Capital Planning/Facilities Manager: Personnel Analyst Mark McKibben presented the new specification and introduced Machele Vieux, Director, General Services. Mr. McKibben explained the reason for the new specification. President Caruthers asked if there was public comment; being none the Commission questioned Mr. McKibben. President Caruthers offered amendments to the wording of the specification regarding education and experience. Being that the amendments were made to the specification, President Caruthers asked for a motion to approve the new specification. Vice President Nash made the motion; Commissioner Bergman seconded the motion. The motion passed 5-0-0.

b. Deputy Director- Planning and Building: Personnel Analyst Jamie Azarvand presented the new specification and introduced Jim Bergman, Director, Planning and Building and Irina Starodubzew. Ms. Azarvand explained the reason for the new specification. The Commission questioned Ms. Azarvand. President Caruthers asked if there was public comment; Theresa Schultz, SLOCEA commented. President Caruthers offered amendments to the wording of the specification regarding education and experience. Being that the amendments were made to the new specification, President

# Civil Service Commission

Caruthers asked for a motion to approve the new specification as amended. Commissioner Bergman made the motion, Commissioner Ohannesian seconded the motion. The motion passed 5-0-0.

## 5. Specifications – Revised

a. Supervising Planner: Personnel Analyst Jamie Azarvand presented the revised specification and introduced Jim Bergman, Director, Planning and Building, and Irina Starodubzew. Ms. Azarvand explained the reason for the revision. The Commission questioned Ms. Azarvand. President Caruthers asked if there was public comment; Theresa Schultz from SLOCEA commented. President Caruthers requested a motion to approve the revised specification, Commissioner Ohannesian seconded the motion. The motion passed 5-0-0.

b. Juvenile Services Officer I,II, III: Personnel Analyst Megan Fisher presented the revised specification and introduced Jim Salio, Director, Probation. Ms. Fisher explained the reason for the revised specification. The Commission questioned Ms. Fisher and Mr. Salio regarding the revised specification. President Caruthers asked if there was public comment. Being none, President Caruthers asked for a motion to approve the revised specification. Commissioner Bergman made the motion; Vice President Nash seconded. The motion passed 5-0-0.

## 6. Reports

- a. Commission President: No report.
- b. Commission Counsel: No report.
- c. Commission Secretary: Ms. Douglas Schatz reported a need for additional hearing dates for a new termination appeal. The Commission offered availability. The Commission will meet on the afternoon of May 27, and all day May 28 and June 5, 2015.

## 7. Closed Session (per Government Code 54956.9) Re: Sanchez v. San Luis Obispo, Civil Service Commission – Pending Litigation

No report.

## 8. Closed Session to deliberate the # A14-01 Appeal

The Commission ruled that based on the findings and evidence the appointing authority's order of termination was upheld in Appeal # A14-01. Commissioner Bergman made a motion to approve; Vice President Nash seconded on the decision of the Commission. The motion passed 5-0-0.

## 9. Adjournment

President Caruthers adjourned the meeting at 11:24 a.m.

*\* Note: These minutes reflect official action of the Civil Service Commission. A digital record exists and will remain as the official, complete record of all proceedings by the Civil Service Commission.*



# Human Resources Department

## SAN LUIS OBISPO COUNTY

*Tami Douglas-Schatz,*

County Government Center, 1055 Monterey Street • Suite D-250, San Luis Obispo, CA 93408-2110

- Telephone 805.781.5959
- Fax 805.781.1044
- Email [HR@co.slo.ca.us](mailto:HR@co.slo.ca.us)

TO: Civil Service Commission

DATE: May 27, 2015

FROM: Jamie Azarvand, Personnel Analyst

SUBJECT: New Class Specification: Waste Water Systems Worker series

### **RECOMMENDATION:**

It is recommended that the Commission approve the new Waste Water Systems Worker series class specification as proposed.

### **DISCUSSION:**

The Public Works Department is overseeing the construction, administration and operation of the Los Osos Wastewater Recycling Facility. In Fiscal Year 2015-16, the Facility will begin serving the community of Los Osos as a state-of-the-art Grade IV waste water treatment plant and collection system in accordance with the State Water Resources Control Board (SWRCB). At the request of the Public Works Department, the Human Resources Department is proposing a new Waste Water Systems Worker classification. Future incumbents in this classification will operate the Los Osos Wastewater Recycling Facility as well as other waste water collection systems in the County.

The Waste Water Systems Worker Series (Trainee, I, II, III & IV) positions are required to operate a Grade IV waste water treatment plant per the SWRCB Title 23 of the California Code of Regulations. Shift operators are to be assigned and available to operate and maintain the plant to support the Chief Plant operator, and are needed to operate and maintain the waste water collection system, including 21 pump stations. The minimum qualifications for this classification are consistent with SWRCB requirements. It is anticipated that recruitment for these positions will begin in July 2015.

The Waste Water Systems Workers will perform a wide variety of unskilled, semi-skilled and skilled work in all phases of the operation, maintenance, repair, and light construction activities associated with waste water collection systems, waste water treatment, and waste water reclamation and disposal systems; and perform other related work as required per the State Water Resources Control Board (SWRCB) regulatory board permits (Title 23 of the California Code of Regulations).

### **OTHER AGENCY INVOLVEMENT:**

The Public Works Department has been involved in development of this specification and concurs with the specification as proposed. The County Administrative Office and Employee Association (SLOCEA) have reviewed and provided input on the proposed classification specification.

### **Attachments:**

Waste Water Systems Worker Series Class Specification  
Public Works Organizational Charts – Current & Proposed

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**HUMAN RESOURCES DEPARTMENT**  
**San Luis Obispo County**

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**WASTE WATER SYSTEMS WORKER TRAINEE, I, II, III, & IV**

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**DEFINITION:**

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Classes in this series perform a wide variety of unskilled, semi-skilled and skilled work in all phases of the operation, maintenance, repair, and light construction activities associated with waste water collection systems, waste water treatment, and waste water disposal systems; and perform other related work as required per the State Water Resources Control Board (SWRCB) regulatory board permits (Title 23 of the California Code of Regulations).

Incumbents may work in one or more of the following areas: (a) waste water collection systems; (b) waste water treatment operations; (c) disposal, discharge and/or reclamation; and/or (d) waste water storage operations, pump stations, force mains, and associated systems to ensure regulatory discharge and/or reclaimed water discharge requirements are met.

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**DISTINGUISHING CHARACTERISTICS:**

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Waste Water Systems Worker Trainee: This is the trainee-level position in the series.

Incumbents work under close supervision, performing a limited range of routine, unskilled and semi-skilled operational and maintenance assignments in a safe manner while becoming familiar with overall facility operations, locations and equipment. Incumbents are expected to promote to the next higher level Waste Water Systems Worker I after acquiring necessary experience and training and demonstrating satisfactory job performance. Appointment at this level will not be extended beyond two years.

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Waste Water Systems Worker I: This is the entry-level position in the series. Incumbents work under close supervision, performing a variety of unskilled and semi-skilled operational and maintenance assignments in a safe manner, while developing an understanding of waste water operations and systems and reclamation; learn to operate and maintain a variety of plant equipment and machinery; utilize a variety of hand and power tools; perform routine water sampling and testing. May be designated as "operator-in-charge" as defined by the SWRCB

34 (Chapter 26, Title 23 of the California Code of Regulations).

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36 Waste Water Systems Worker II: This is the journey-level position in the series. Incumbents  
37 work under general supervision, performing a wide variety of unskilled, semi-skilled and skilled  
38 operational and maintenance assignments in a safe manner; perform complex assignments  
39 within established guidelines; operate and maintain a wide variety of plant equipment and  
40 machinery; utilize a wide variety of hand and power tools; perform water sampling and testing,  
41 interpret test results and take corrective action. May be designated as "operator-in-charge" as  
42 defined by the SWRCB (Chapter 26, Title 23 of the California Code of Regulations).

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44 Waste Water Systems Worker III: This is the advanced journey-level position in the series.  
45 Incumbents work under general supervision as a lead worker, performing the most complex  
46 work assignments, and exercise judgment within established guidelines. Incumbents possess  
47 comprehensive knowledge of plant operations and maintenance protocols; assist in training,  
48 directing and supervising the work of subordinate staff; have responsibility for efficient plant  
49 and system operations. May be designated as "operator-in-charge" as defined by the SWRCB  
50 (Chapter 26, Title 23 of the California Code of Regulations).

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52 Water Systems Worker IV: Under general direction is the Chief Operator for a Wastewater  
53 Treatment facility. Supervises plant operations; evaluates and assigns personnel; sets up  
54 preventive maintenance programs and schedules; coordinates maintenance with operations  
55 activities; and assists in budget preparations; does other related work as required.

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57 **REPRESENTATIVE DUTIES:**

58 (Not in order of importance)

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60 • Operates pumps, motors, valves, gates, meters and other hydraulic structures to  
61 regulate water quality, quantity and discharge

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63 • Installs, calibrates, inspects, repairs and performs routine maintenance on pumps,  
64 motors, valves, pipes and related equipment; assists in the installation of building  
65 sewers, collectors and sewer mains

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- Maintains knowledge of, regulations and operations of waste water treatment and discharge through continuing education requirements and maintaining appropriate certifications for job class
- Operates various hand and power tools, motorized vehicles, forklifts, tractors, boats and other equipment as required
- Collects water samples, performs laboratory tests and makes recommended adjustments as required
- Inspects and maintains all waste water unit processes at assigned facilities
- Inspects and maintains waste water collection, conveyance, discharge and reclamation systems at assigned facilities
- Reads, monitors and records information resulting from water sample testing, process controls, automated control systems and Supervisory Control and Data Acquisition (SCADA) system
- Records observations of plant equipment and environmental factors that may affect plant operation and performance
- Performs general housekeeping and grounds maintenance at assigned facilities
- Follows all safety procedures and properly uses personal protective equipment, including respiratory devices, as required
- Responds to requests for on-call, holiday, weekend, after-hours support for plant operations

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- Provides training and direction to subordinate staff as required
- Makes chemical adjustments, changes flow rates and other adjustments to maintain treatment of waste water
- Establishes and maintains effective working relationships with those contacted in the course of employment

**EMPLOYMENT STANDARDS:**

**Knowledge of:**

- Operation of pumps, motors, valves, meters and hydraulic equipment
- Basic equipment maintenance and repair
- General plumbing, electrical and construction methods
- Water sampling and laboratory testing
- Data collection systems and computer software
- Regulations and practices of waste water collection, treatment, operations, storage, disposal, discharge and reclamation systems, to ensure discharge requirements are met
- Waste water system equipment, procedures and terminology
- Reading comprehension and basic mathematical computations
- Accepted methods of employee training and leadership

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128 • Safety guidelines and procedures

129 • Basic mechanical and electrical characteristics of pumps, motors, valves, control panels,  
130 Supervisory Control and Data Acquisition (SCADA) systems, and other waste water  
131 measuring devices

132 **Ability to:**

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134 • Operate and maintain a variety of pumps, motors, valves, meters and related equipment

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136 • Complete standardized reports to record plant operations and conditions

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138 • Inspect and repair plant equipment

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140 • Operate a variety of hand and power tools

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142 • Perform routine laboratory tests and interpret results

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144 • Understand and follow written and verbal instructions

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146 • Operate trucks, forklifts and other related equipment

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148 • Handle hazardous chemicals safely and within established guidelines

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150 • Operate automated control systems, telemetry equipment, computers and assigned  
151 software

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153 • Establish and maintain effective relationships with others

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155 **EDUCATION AND EXPERIENCE:**

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157 All levels: Graduation from high school or possession of a general educational development  
158 (GED) certificate

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160 Waste Water Systems Worker Trainee: No experience required

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162 Waste Water Systems Worker I: One year of qualifying experience as a waste water treatment  
163 plant operator or equivalent in accordance with the SWRCB (Chapter 26, Title 23 of the  
164 California Code of Regulations).

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166 Waste Water Systems Worker II: Two years of experience as Waste Water Systems Worker I or  
167 equivalent in accordance with the SWRCB (Chapter 26, Title 23 of the California Code of  
168 Regulations).

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170 Waste Water Systems Worker III: Three years of experience as a Waste Water Systems Worker  
171 II or equivalent in accordance with the SWRCB (Chapter 26, Title 23 of the California Code of  
172 Regulations).

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174 Water Systems Worker IV: Four years of experience as a Waste Water Systems Worker III or  
175 equivalent in accordance with the SWRCB (Chapter 26, Title 23 of the California Code of  
176 Regulations).

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178 **LICENSES AND CERTIFICATES:**

179 Waste Water Systems Worker Trainee: No certificate required. Within 24 months of  
180 appointment must possess a valid SWRCB Waste Water Treatment Plant Operator Grade I  
181 Certification.

182 Waste Water Systems Worker I: Possession of a valid SWRCB Waste Water Treatment Plant  
183 Operator Grade I Certification or equivalent. Within 24 months of appointment must possess a  
184 SWRCB Waste Water Treatment Plant Operator Grade II Certification, which must be  
185 maintained throughout employment.

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187 Waste Water Systems Worker II: Possession of a valid SWRCB Waste Water Treatment Plant  
188 Operator Grade II Certification or equivalent. Within 36 months of appointment must possess a  
189 SWRCB Waste Water Treatment Plant Operator Grade III Certification, which must be  
190 maintained throughout employment.

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192 Waste Water Systems Worker III: Possession of a valid SWRCB Waste Water Treatment Plant  
193 Operator Grade III or higher Certification or equivalent, which must be maintained throughout  
194 employment.

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196 Waste Water Systems Worker IV: Possession of a valid SWRCB Waste Water Treatment Plant  
197 Operator Grade IV or higher Certification or equivalent, which must be maintained throughout  
198 employment.

199 A valid Class "C" driver license is required at the time of application.

200 **OTHER CONDITIONS OF EMPLOYMENT:**

201 Positions in this classification are subject to the United States Department of Transportation  
202 (DOT) Alcohol/Drug testing requirements. Selected applicants will be required to pass a Pre-  
203 Employment drug test prior to appointment and shall be subject to Random, Post-Accident,  
204 Reasonable Suspicion, Return-To-Duty, and Follow-Up testing during employment.

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206 Must be willing and able to work alternating shifts and weekend work to provide coverage after  
207 normal workday or irregular and on-call emergency requests on nights, weekends, and holidays.  
208 Must keep hair and facial hair consistent with the ability to ensure proper use of safety  
209 equipment.

210  
211 This class specification generally describes the duties and responsibilities characteristic of the  
212 position(s) within this class. The duties of a particular position within a multi-position class  
213 may vary from the duties of other positions within the class. Accordingly, the essential  
214 functions of a particular position (whether it be a multi-position class or a single-position class)  
215 will be identified and used by medical examiners and hiring authorities in the selection process.

216 If you have any questions regarding the duties or the working conditions of the position, please  
217 contact the Human Resources Department at 805.781.5959.

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219 Adopted: 05-27-15

220 BOS Approved:

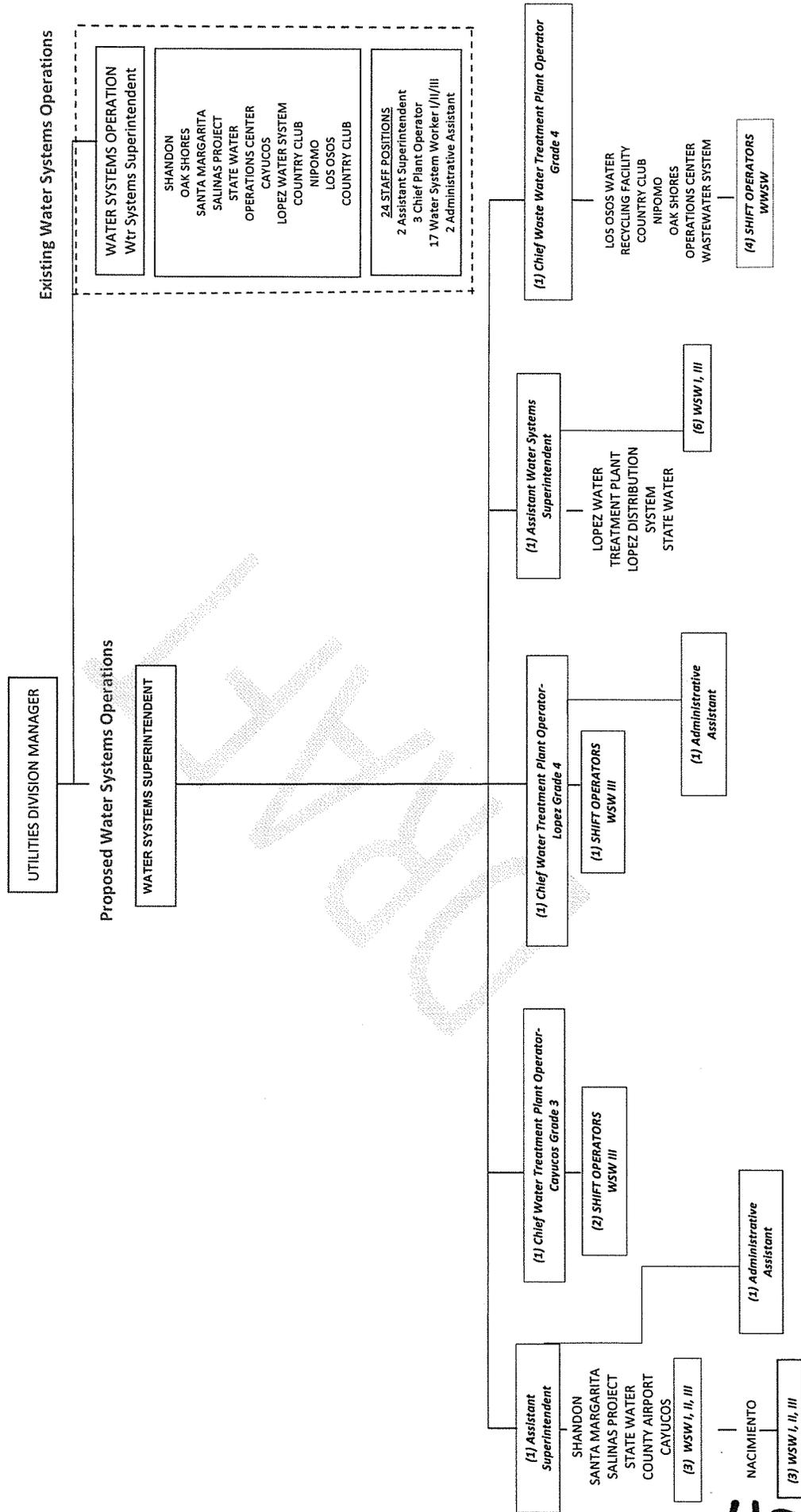
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**SAN LUIS OBISPO COUNTY DEPARTMENT OF PUBLIC WORKS  
 UTILITIES DIVISION WATER SYSTEMS OPERATIONS  
 PROPOSED STRUCTURE COMPARED TO EXISTING STRUCTURE  
 as of March 2015**



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# HUMAN RESOURCES DEPARTMENT

## SAN LUIS OBISPO COUNTY

TAMI DOUGLAS-SCHATZ, DIRECTOR

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County Government Center, 1055 Monterey Street Suite D-250, San Luis Obispo, CA 93408

May 20, 2015

To: Civil Service Commission

From: Tami Douglas-Schatz, Human Resources Director

Re: Recommendation regarding the letter to the Civil Service Commission from SLOCEA Counsel regarding Liberty Interest Hearings for Probationary Employees

Upon receipt of the attached letter, I contacted Pat McNamara, San Luis Obispo County Employees' Association (SLOCEA) General Manager to discuss the contents. Mr. McNamara stated that SLOCEA is periodically contacted by employees who wish to voice their displeasure at their release from their probationary period. The liberty interest hearings described by SLOCEA's counsel are recommended by them as a means for those who are released to experience due process.

Civil Service Rule 16.02 provides for appeal to your Commission by those released during their probationary period when discrimination is alleged. In all other instances, a release from probation is not subject to appeal (Rule 11.07).

Over the past five years, the County has averaged approximately 300 separations per year. These separations include retirements, resignations, terminations and probationary releases. Probationary releases make up the smallest portion of all terminations: there have been an average of 14 probationary releases per year over the past five years.

It is recommended that your Commission direct staff to perform a legal and administrative analysis of SLOCEA's position on liberty interest hearings for those released during their probationary period. Upon this direction, staff can report back at a future date with a substantive review and recommended actions or options.

5-1

PERSONNEL

# Hayes & Cunningham, LLP

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April 2, 2015

Via Facsimile and First Class Mail

Civil Service Commission  
County of San Luis Obispo  
1055 Monterey Street, Suite D-250  
San Luis Obispo, CA 93408-1003  
Fax: (805) 781-1044

Re: *Liberty Interest Hearings for County Probationary Employees*

Dear Commissioners,

The law firm of Hayes & Cunningham, LLP is General Counsel for the San Luis Obispo County Employees Association ("SLOCEA") and represents it in this matter. It has come to SLOCEA's attention that the County of San Luis Obispo's Civil Service Rules do not provide for pre-termination liberty interest hearings for probationary employees. As will be discussed in more detail below, the Civil Service Commission should adopt such a procedure to avoid potential violations of the Fourteenth Amendment of the United States Constitution.

## I. LIBERTY INTEREST UNDER THE LAW

It is settled that public employers may terminate probationary employees without a hearing on the termination, and that such termination does not deprive the employees of any vested property rights. However, probationary employees are entitled to a hearing where their liberty interests are at issue.

As the California Supreme Court held in *Katzberg v. Regents of University of California*, "it is well established that an at-will [public] employee's liberty interests are deprived when his discharge is accompanied by charges that might seriously damage his standing and associations in his community or impose on him a stigma or other disability that forecloses his freedom to take advantage of other employment opportunities." 29 Cal. 4th 300, 304-05 (2002) (internal quotations omitted). A charge that infringes a person's liberty is described as "an accusation or label given the individual by his employer which belittles his worth and dignity as an individual, and, as a consequence is likely to have severe repercussions *outside* of professional life." *Stretten v. Wadsworth Veterans Hospital*, 537 F.2d 361, 366 (9th Cir. 1976) (italics in original). A liberty interest is not violated if an employee is terminated for incompetence or inefficiency. *Id.*

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When an employee is terminated for a reason that would “impose on him a stigma or other disability that forecloses his freedom to take advantage of other employment opportunities,” that employee has the right to a “name-clearing hearing.” *Codd v. Velger*, 429 U.S. 624, 627 (1977). The employee must be afforded “notice and opportunity for hearing appropriate to the nature of the case *before* the termination becomes effective.” *Board of Regents v. Roth*, 408 U.S. 564, 570, n.7 (1972); *see also Bell v. Burson*, 402 U.S. 535, 542 (1971).

## II. PROBATIONARY EMPLOYEES ARE ENTITLED TO LIBERTY INTEREST HEARINGS

In California, it has been held that even probationary employees are entitled to liberty interest hearings. *See Lubey v. City and County of San Francisco*, 98 Cal.App.3d 340, 346-47 (1970) (“[W]here the probationary employee’s job termination, or dismissal, is based on charges of misconduct which ‘stigmatize’ is reputation, or ‘seriously impair’ his opportunity to earn a living, or which ‘might seriously damage his standing or associations in his community,’ that employee is entitled to a liberty interest hearing.”) The employee’s remedy in such a case, as mandated by the Due Process Clause of the Fourteenth Amendment, is “an opportunity to refute the charge [and] to clear his name.” *Board of Regents v. Roth*, 408 U.S. at 573; *see also Holmes v. Hallinan*, 68 Cal.App.4th 1523, 1530-31 (1998).

In *Lubey v. City and County of San Francisco*, two probationary police officers with the Police Department of the City and County of San Francisco were terminated after a citizen levied unsworn allegations of misconduct against them. 98 Cal.App.3d at 343. Roughly two-and-a-half months after the citizen’s charges were made, the probationary officers were called to a meeting with the police chief and were given notices of termination. *Id.* at 344. The officers were not provided with the evidence against them and the complaining citizen was not at the meeting. *Id.* Subsequently, the City’s civil service commission informed the probationary officers that they were not entitled to future employment with the City and County of San Francisco. *Id.* The officers then initiated an action against the City, seeking to be reinstated as police officers. *Id.* In ruling in favor of the probationary officers, the Court found as follows:

Without even pretense of due process, or notice and opportunity for hearing appropriate to the nature of the case, or opportunity to refute the charges or to clear their names, the officers’ employment was terminated for misconduct on the charges made. It must fairly be said that their reputations were thereby stigmatized, their chances of future employment in their chosen field, and elsewhere, seriously impaired, and their standing in the community seriously damaged.

*Id.* at 347 (internal quotations omitted).

Finally, in rejecting the City’s arguments: (1) that the police officers’ personnel files were confidential; (2) that the officers brought the “stigmatizing notoriety” upon themselves by filing their lawsuit; and (3) that the officers could still compete for employment despite the civil service commission’s letter denying them future employment, the Court held that, “[W]e must realistically assume that in the officers’ future applications for employment, inquiry will be made of their prior

job experience, and then into the reasons for their termination as policemen. We conclude therefore that...the 'termination' or 'dismissal' of Probationary Officers Lubey and Hood did not comport with Fourteenth Amendment requirements." *Id.*

Under the County of San Luis Obispo's current Civil Service Rules, "[a] probationary employee may be rejected by the Appointing Authority during probation without right to a hearing, except as to appeals regarding the issue of discrimination as provided for in Rule 16.02 of these Rules." (Rule 11.07 (emphasis added).) Between 2014 and 2015, the County rejected five (5) probationary employees and none of them were afforded liberty interest hearings. By denying probationary employees pre-termination hearings (except in cases of discrimination), the County is effectively depriving probationary employees of the opportunity to clear their names and respond to charges that might stigmatize their reputations, seriously impair their opportunities to earn a living, or damage their standing in the community. In so doing, the County is potentially violating such probationary employees' Constitutional right to due process.

Moreover, the County is also opening itself up to liability since without a pre-deprivation hearing, those probationary employees were never properly terminated. For example, in the County of Riverside, California, an employee was found unfit for duty by her employer (the County), and was terminated by the County. The County denied the employee an appeal hearing regarding her termination, arguing that she was not entitled to a hearing since her termination was not for disciplinary reasons, but rather, was because she could not meet the qualifications for her job. The California Court of Appeal rejected the County's argument, finding that the employee *was* entitled to a pre-termination hearing, and since she never received an appeal hearing, she was never properly terminated. As a result, the Court ordered the County to pay the employee over \$297,000 in backpay. *See Riverside Sheriffs' Association v. County of Riverside (Fauth)*, 173 Cal.App.4th 1410 (2009).

### III. CONCLUSION

As discussed above, California law supports the notion of pre-deprivation rights in the form of liberty interest hearings, even as to probationary employees. Yet, the County of San Luis Obispo's Civil Service Rules do not provide for such hearings for probationary employees, unless there are allegations of discrimination. SLOCEA strongly urges the Commission to review the procedures for liberty interest hearings set forth in the Civil Service Rules of its counterparts (*i.e.*, the County of San Diego), and adopt similar procedures for its own probationary employees to ensure proper termination of those employees.

If the Civil Service Commission fails to adopt an appeal procedure for probationary employees whose liberty interests may be infringed, it is only a matter of time until a lawsuit is filed over the deprivation of an employee's Constitutional right to procedural due process. In the future, the court may well view the failure to adopt such procedures and provide a liberty interest hearing as an intentional violation of an employee's Constitutional right to pre-deprivation procedural due process, since the County and the Commission have now been placed on notice of this deficiency by virtue of this correspondence.

County of San Luis Obispo  
Civil Service Commission  
April 2, 2015  
Page 4 of 4

I am happy to meet with the Commission and discuss this matter further if the Commission so desires. I look forward to hearing from you.

Very truly yours,

**HAYES & CUNNINGHAM, LLP**



Dennis J. Hayes  
Attorney at Law

cc: Rita L. Neal, County Counsel (*via facsimile and first class mail*)  
Pat McNamara, SLOCEA General Manager (*via email only*)