



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM

P.O. Box 40911 · Olympia, WA 98504-0911 · (360) 407-4101 · FAX (360) 586-4694

December 23, 2015

TO: Kristie Wilson  
Acting Rules and Appeals Program Manager

FROM: Kris Brophy  
Director's Review Program Investigator

SUBJECT: Candy Graff v. Department of Ecology (ECY)  
Allocation Review Request ALLO-15-067

**Director's Determination**

This position review was based on the work performed for the six-month period prior to January 28, 2013, the date ECY Human Resources (ECY-HR) received Ms. Graff's request for a position review. As the Director's Review Investigator, I carefully considered the documentation in the file, the exhibits, and the verbal comments provided by both parties during the review conference. Based on my review and analysis of Ms. Graff's assigned duties and responsibilities, I conclude her position is properly allocated to the Environmental Specialist 3 (ES 3) classification.

**Background**

On January 29, 2014, Ms. Graff submitted a Position Review Request (PRR) to ECY-HR, requesting that her ES 3 position be reallocated to the Environmental Specialist 4 (ES 4) classification. (Exhibit B-4)

ECY-HR notified Ms. Graff on June 23, 2015 that her position was properly allocated to the ES 3 classification. (Exhibit B-1)

On July 6, 2015, OFM - State Human Resources received Ms. Graff's request for a Director's review of ECY's allocation determination. (Exhibit A-1)

A Director's telephone review conference was conducted on November 3, 2015. Present for the conference were Candy Graff, ECY; Tom Loranger, Water Resources Program Manager, ECY; and Corrina McElfish, Senior Human Resource Consultant, ECY-HR.

### **Rationale for Director's Determination**

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. *Liddle-Stamper v. Washington State University*, PAB Case No. 3722-A2 (1994).

Positions are to be allocated to the class which best describes the majority of the work assignment. *Ramos v DOP*, PAB Case No. A85-18 (1985).

### **Duties and Responsibilities**

Ms. Graff's position is located in the Operations Unit of the Central Regional Office (CRO) as part of the agency's Water Resources Program. As an environmental specialist, her position supports the water rights permit writing and permit extension process for the CRO. She independently investigates and makes recommendations on water right applications, change applications and permit extension requests. This includes making recommendations for approvals, denials and cancellations of applications.

Ms. Graff states in the PRR that the purpose of her position is to support all permitting functions of the unit. She states she serves as the section specialist with Kittitas County with respect to new appropriations, making independent decisions involving Kittitas County applicants applying for group determinations and representing the program regarding permit and change authorizations.

Ms. Graff's duties and responsibilities are identified in the PRR as follows:

#### **81% Duty:**

Independently analyze permit application submittals and make a determination for completeness, then work with attorney representative, applicant, or consultant to provide technical assistance in response to complex inquiries, and provide assistance including suggesting methods toward submission of any required supplemental information that may be lacking. Plan and create required components for Report of Examination (ROE), such as public notice publication, SEPA checklist and/or DNS documents, legal requirements, 4-part test, map, water duty rationale and calculations, overlapping water right research, conduct site visits, and determine and coordinate ultimate decision for approval or denial with other technical/hydro staff.

Responsible for prioritizing work against priority date of application, determining if application is Water Budget Neutral and Hillis Rule applicable. Must determine and interpret whether USSR storage contract is appropriate to use where water bank is insufficient for mitigation based on location of original diversion point of trust water right and location of proposed place-of use.

Serve as senior unit expert on self-created proposals for Kittitas Water Transfer Working Group proposals.

Responsible for Trust Water Right and USBR debit accounting.

Must create and issue final permit when ROE and appeal period expires.

Review Application for Water Budget Neutrality requests for group use and represent agency opinion in whether or not proposal is permit exempt or permit required.

8% **Duty:**

Independently and are exclusively responsible for review and analysis of extension request submittals and research of public interest, due diligence, and/or speculation and offer management options for either recommended approval or denial of said request.

Review development schedule submittals and research accurateness and applicability and then acknowledge submittal.

11% **Duty:**

Other duties as assigned. Provide technical assistance to stakeholders and external customers. Mentor new permit writer.

Supervisor's Comments

Ms. Park completed the supervisor's portion of the PRR. She indicates that Ms. Graff's description of her assigned duties and responsibilities is accurate and complete with the exception of the following:

Section 4: Mentor new permit writer is listed as one of the three duties under the 11% column. I have asked Candy to mentor/train new ES-3 in-training permit writers; however the permit writers are just being hired, so the work hasn't been performed just yet.

This position does not make decisions. In the decision-making section of the Position Review Request, Section 5, Candy indicated she analyzes and makes decisions on multiple processes. This position makes recommendations to the Unit Supervisor and the Section Manager. I would replace "decide" with "recommends" throughout Section Number Five.

In her comments, Ms. Park provides the following of examples of Ms. Graff's decision making authority:

Candy does make Group Use Determinations based on the Upper Kittitas Rule without supervisory review. These determinations are based on specific criteria within the rule.

She also provided the following comments regarding Ms. Graff's position duties:

Candy does independently prioritize and manage her workload. The Water Resources Program generally processes applications based on priority date. Candy follows the priority date guidelines when managing her workload. When an application falls outside of the priority date Candy checks with her supervisor to make sure she should be working on it.

At this time Candy is the only permit writer to work on water budget neutral applications using the Upper Kittitas Rule. Candy reviews the application for accuracy, prepares the public notice, works with the applicant on SEPA, and follows the water resources permit writing guidelines to provide a recommendation to the unit supervisor and ultimately the section manager on approval or denial.

Candy works very closely with the technical unit when preparing a recommendation or denial. Part of the permit writing process within the Yakima Basin is to prepare a proposal for the Water Transfer Workgroup. It is also a requirement under the Upper Kittitas Rule. All water budget neutral permits and changes within the Yakima Basin go through Water Transfer Workgroup. Each permit writer working within the Yakima Basin is expected to independently prepare a proposal for the Water Transfer Workgroup.

Candy, at this time, is also the only permit writer working on the development schedule.

In exhibit B-7, Ms. Graff provides the following response to Ms. Park's comments:

Sage and I disagree about the position not making independent decisions. As I told you [Ms. McElfish] last week, no person in WR signs any appealable decision. This is true for all positions, not just ES3 positions and this could be the reason why she sees the position as making recommendations rather than decisions. As far as the differences between providing recommendations or decisions, I make the following comments: I indeed analyze, evaluate, and then decide which applications should be processed first according to the Hillis rule because WR rarely adheres strictly to the rule. Some applications, depending on the proposal and the contents of the application, are actually processed out of line. I make those decisions.

I also indeed make the decision as to whether or not a proposal meets the 4-part test. No one else makes this decision for the projects I am assigned. It is not a recommendation but a decision within the ROE.

Regarding water-budget-neutral determinations, while it is true I use WAC 173-539A as guidance, it still requires a level and degree of analysis to determine if the proposal is in fact part of a group use or not. The WAC is not a black-and-white document that clearly spells out the difference. This determination is done by careful research and analysis.

With development schedule submissions, I make the sole decision on whether to acknowledge/accept them or not. My initial goes on the form with a date and I create and sign the acknowledgement letter.

### **Summary of Ms. Graff's Perspective**

Ms. Graff contends the ES 4 class more accurately describes the scope of her duties and responsibilities. She states in the PRR that:

It is my opinion that the best match for my position is Environmental Specialist 4.

The reasons follow:

- I serve as the senior environmental section specialist in program-specific activities, such as Upper and Lower Kittitas Reports of Examination and permits.
- I serve as the section specialist in making decisions relative to group determinations (whether a permit is required or not), which typically involves multiple interested parties.
- I independently review, analyze, and interpret case law and statute in order to accept stakeholder input and recommend action to take relative to all development schedule processing and extension requests.
- I have been assigned increasingly complex responsibility on more difficult projects and permits.
- I have been asked to serve in the mentoring of junior staff.
- I serve as project coordinator on highly complex projects, coordinating with applicants, attorneys, consultant, and stakeholders.

In total, Ms. Graff asserts the scope of her position meets the ES 4 class by serving as the unit specialist for water budget neutral determinations and serving as the section specialist responsible for Kittitas ROEs, extension and development schedules in all counties and mentoring of other staff.

### **Summary of ECY's Perspective**

ECY contends Ms. Graff's position has not been designated as a senior environmental section specialist for the Water Resources Program. ECY asserts the primary focus of Ms. Graff's position is to review and analyze permit applications and other documents for completeness, technical accuracy and compliance with regulatory requirements.

ECY believes the scope of her work preparing ROEs in coordination with technical staff and others, making recommendations for approval or denial to management is appropriate for an ES 3 in the Water Resources Program and is supported by the definition and distinguishing characteristics described in the ES 3 class specification.

ECY asserts the ES 3 class definition addresses the focus of Ms. Graff's work and that the majority of her duties fall within the scope of work performed by that class. ECY asserts Ms. Graff's position is properly allocated to the ES 3 class.

### **Comparison of Duties to Class Specifications**

When comparing the assignment of work and level of responsibility to the available class specifications, the class series concept (if one exists) followed by definition and distinguishing characteristics are primary considerations. While examples of typical work identified in a class specification do not form the basis for an allocation, they lend support to the work envisioned within a classification.

### **Comparison of Duties to Environmental Specialist 4**

**The Definition** for this class states:

Serves as a senior environmental section specialist in program specific environmental laws, environmental regulations, and related activities in order to protect, preserve, and enhance air, land, and water resources; or serves as a senior environmental specialist in specific environmental public health programs in order to protect public health due to environmental factors. In either option, positions make decisions involving multiple stakeholders and that have significant public health, environmental protection, economic, and political consequences. Assigned areas of responsibility involve environmental assessments and protection actions that regularly require evaluation and coordination of interrelated environmental impacts on multiple specialty areas;

OR

Manages all the environmental regulatory and analyses functions of an agency.

**The Distinguishing Characteristics** for this class states:

Positions at this level use in-depth knowledge of the program area to carry out assignments, function independently, and require only general direction from the supervisor. Assignments are carried out using policies and program objectives and the work is planned and organized based on program priorities and deadlines.

In addition, positions functioning as a senior environmental specialist are characterized by one or more of the following assignments which comprise the majority of the position:

- As a senior environmental section specialist, responds to highly complex inquiries for technical assistance requiring an advanced scientific knowledge;
- Develops, negotiates, implements, and monitors terms of agreements for environmental mitigation efforts, remedial actions, grants and loans, and other environmental actions. Gains consensus from multiple stakeholders and interest groups;

- Represents the agency as a senior environmental section specialist in enforcement actions, hearings, and legal proceedings. Provides testimony in cases involving the approval, denial, or conditioning of permits; the imposition of civil penalties; or in cases which form the basis for precedent-setting interpretations of agency jurisdiction and regulatory authority;
- Reviews, analyzes, develops and recommends policies, guidelines, and regulations governing assigned area of responsibility. Accepts stakeholder input, evaluates concerns, and recommends actions to management. Analyzes legislative bills for potential impacts on program administration. Reviews, analyzes, and evaluates previous litigation, permits, and other data in order to develop effective regulatory guidelines;
- As a senior environmental section specialist, represents the program in an assigned specialty area; provides scientific and technical consultation to other agency staff, local and federal agencies on environmental impacts of various activities. Develops partnerships with communities, businesses, and interest groups in order to identify and respond to environmental issues affecting the common interest. Develops and enhances environmental protections and oversees implementation of changes;
- Assesses adverse environmental conditions and makes decisions that impact large numbers of the public (e.g. makes voluntary and mandatory wood stove burning curtailment decisions for the program);
- Responds to high priority and complex threats to the environment and human health emergencies. Coordinates all phases of a response with the appropriate private, local, state, and federal representatives and directs environmental response contractors. Conducts operations to control, contain, and clean up threats to the environment and human health; investigates the causes of the threat and recommends and takes appropriate response actions, including enforcement;
- Assesses the impacts of pollution on natural resources, gathers legally defensible data, develops damage estimates, and solicits and recommends appropriate restoration proposals;
- Plans, develops, designs and conducts professional research studies in order to determine the scientific validity of environmental enhancement efforts and impacts on interrelated natural resources. Provides scientific and technical assistance to other professional staff in environmental planning, regulation, and mitigation efforts.

The OFM - State HR, Glossary of Classification Terms defines "Specialist" as: "Duties involve intensive application of knowledge and skills in a specific segment of an occupational area."

The definition states that incumbents in this class serve as senior environmental section specialists. These positions provide program-specific technical expertise regarding environmental laws and regulations or serving as senior environmental specialists in specific environmental public health program areas. For either option, positions are responsible for making decisions having significant public health, environmental protection, economic and political consequences, and also involve multiple stakeholders. The Definition requires

incumbents to perform environmental assessments and protection actions that regularly require evaluation and coordination of interrelated environmental impacts on multiple specialty areas. Ms. Graff's position does not have this focus and the scope of her duties does not reach this overall level of responsibility.

First, Ms. Graff's position does not have responsibility for serving as an environmental section specialist in the Water Resources Program. This was confirmed by Ms. Graff's supervisor, Ms. Park, who stated in her comments that Ms. Graff's position does not have this designation. In addition, Ms. Graff does not have responsibility for serving as a senior environmental specialist in a specific public health program area. Rather, Ms. Graff works independently under the direction of her supervisor and the majority of her duties involve analyzing and processing water right permit applications.

In addition, incumbents have responsibility for performing one or more assignments identified in the Distinguishing Characteristics as a primary focus of their position. Ms. Graff's position does not fully reach any of these allocating factors.

For example, Ms. Graff does not have responsibility for representing the program in an assigned specialty area. She does not have primary responsibility for providing scientific and technical consultation to other agency staff, local and federal agencies on environmental impacts affecting the unit's water rights program area. She does not have responsibility for developing partnerships with communities, businesses and interest groups in order to identify and respond to environmental issues affecting the common interest. She does not develop, negotiate, implement, and monitor environmental mitigation efforts, remedial actions, grants and loans or other environmental actions, or gaining consensus from multiple stakeholders and interest groups. Mr. Loranger, Program Manager, stated during the review conference that broader, programmatic water rights issues affecting multiple stakeholders and interest groups are handled by a higher-level environmental specialist staff working in the unit.

A portion of her duties reaches one aspect of work performed at this level by representing the agency in hearings and legal proceedings. Ms. Graff occasionally provides testimony in cases involving the approval, denial or conditioning of permits. However this task is not a significant portion of her work and does not constitute the primary focus of her position or performed at the level intended by this class.

Further, Ms. Graff's position does not have responsibility for developing and recommending policies, guidelines and regulations within her assigned area of responsibility. A portion of her duties involves obtaining stakeholder input and evaluating concerns during the permitting process, which includes making recommendations to management regarding approvals for permits. However, the scope of this work does not include analyzing legislative bills for potential impacts on program administration. For example, she does not have responsibility for reviewing, analyzing and evaluating previous litigation, permits and other data in order to develop effective regulatory guidelines within this aspect of her work.

In addition, Ms. Graff's duties do not include responsibility for performing other identified assignments in the Distinguishing Characteristics as follows:

- Assesses adverse environmental conditions and makes decisions that impact large numbers of the public (e.g. makes voluntary and mandatory wood stove burning curtailment decisions for the program);

- Responds to high priority and complex threats to the environment and human health emergencies. Coordinates all phases of a response with the appropriate private, local, state, and federal representatives and directs environmental response contractors. Conducts operations to control, contain, and clean up threats to the environment and human health; investigates the causes of the threat and recommends and takes appropriate response actions, including enforcement;
- Assesses the impacts of pollution on natural resources, gathers legally defensible data, develops damage estimates, and solicits and recommends appropriate restoration proposals;
- Plans, develops, designs and conducts professional research studies in order to determine the scientific validity of environmental enhancement efforts and impacts on interrelated natural resources. Provides scientific and technical assistance to other professional staff in environmental planning, regulation, and mitigation efforts.

In summary, incumbents in this class perform environmental assessments and protection actions that regularly require evaluation and coordination of interrelated environmental impacts on multiple specialty areas. As a whole, the scope of Ms. Graff's position is more tactical in nature and focuses on reviewing and analyzing permit applications and other documents for completeness, technical accuracy and compliance with regulatory requirements. Ms. Graff prepares complex ROEs in coordination with technical staff and others, which includes making recommendations for approval or denial to management. As a whole, the level of her research, analysis and decision making authority with respect to the development of recommendations aligns more closely with the ES 3 class specification.

For these reasons Ms. Graff's position should not be reallocated to the ES 4 class.

### **Comparison of Duties to Environmental Specialist 3**

**The Definition** for this class states:

Under general direction, independently performs professional level assignments and environmental reviews in one or more of the following areas:

- 1) Environmental permit development and review;
- 2) Environmental inspections and/or enforcement activities;
- 3) Scientific studies, surveys, and/or scientific analyses;
- 4) Grants, contracts, and loans;
- 5) Interpretation of policy and environmental technical assistance.

**The Distinguishing Characteristics** for this class states:

This is the fully qualified professional Environmental Specialist. Positions complete the full range of assignments under general direction. Completed work is reviewed for effectiveness in producing expected results.

Positions at this level are characterized by assignments in one or more of the following areas:

- 1) Environmental permit development and review: Reviews environmental permit applications for technical accuracy and compliance with regulatory requirements; negotiates permit conditions; develops or reviews technical plans and makes decisions regarding the scientific merit of the proposal; conducts conflict resolution; and prepares final permit evaluation/report for approval.
- 2) Environmental inspections and enforcement activities: Conducts inspections or field investigations in order to respond to complaints/violations relating to environmental regulations; participates with higher level environmental staff in negotiating agreements/settlements; imposes on-site enforcement action as necessary; performs follow-up inspections to ensure corrective action is implemented; oversees contractor or consultant services for compliance and certifies performance; participates in clean-up activities and mitigation efforts at large oil spills or other hazardous waste spills; represents the agency in public meetings, hearings, and workshops; interprets and explains environmental regulations and requirements; and works directly with local municipalities and the public to promote environmental improvements.
- 3) Scientific studies, surveys, and/or scientific analyses: Plans, develops, researches, and oversees or conducts data collection; utilizes computer modeling or other scientific analyses to determine effective methods and practices relating to toxic waste cleanup, resource management, or policy or regulation development; reviews technical plans for accuracy and makes scientific recommendations regarding the development, coordination, and implementation of environmental technical assistance programs involving pollution prevention or control or natural resource management. Makes recommendations to senior staff regarding new or modified sampling and analytical testing methods, best management practices, and technical operating procedures.
- 4) Grants, contracts, and/or loans: Provides technical environmental assistance and administrative guidance to grant/contract/loan recipients in the planning, design, construction and/or implementation of environmental protection projects. Recommends course of action to resolve issues or meet contract requirements.
- 5) Interpretation of policy and technical assistance: Under general direction, responds to complex inquiries or requests for technical assistance requiring a high degree of technical scientific background and understanding.

The scope of Ms. Graff's position fully aligns within the requirements of the definition and distinguishing characteristics of this class.

First, Ms. Graff works under general direction and independently performs professional level environmental permit review work requiring a high degree of technical scientific background and understanding.

Second, the majority of her key work activities involve performing environmental permit review work at a level consistent with the distinguishing characteristics of this class. This includes

reviewing environmental permit applications for technical accuracy and compliance with regulatory requirements. Ms. Graff negotiates permit conditions, reviews technical plans and makes decisions regarding the scientific merit of proposals. She conducts conflict resolution and prepares final permit applications and relation documentation for approval by higher level management staff.

Additionally, while examples of typical work identified in a class specification do not form the basis for an allocation, they lend support to the work envisioned within a classification.

The following typical work example aligns with the scope of work assigned to Ms. Graff's position:

- ...serves as a senior permit writer or historical/institutional memory for geographic area or complex site;

Ms. Graff serves as a senior permit writer for the Upper and Lower Kittitas Reports of Examination and Permits. Ms. Graff is authorized to make Group Use Determinations based on the Upper Kittitas Rule without supervisory review. Ms. Graff is the only permit writer to work on water budget neutral applications using the Upper Kittitas Rule. She reviews these applications for accuracy, prepares the public notices, works with applicants on SEPA and follows the Water Resources permit writing guidelines to provide recommendations to the unit supervisor and others. She reviews Applications for Water Budget Neutrality requests for group use and represents agency opinion in whether or not the proposal is permit exempt or permit required.

Also, Ms. Park states in her comments that Ms. Graff is the only permit writer working on the development schedule.

Ms. Graff also resolves complex problems or situations such as recommending whether to approve or deny extension requests and accepting proof of appropriation submittals. A portion of this work involves making decisions relative to Group Use Determinations typically involving multiple interested parties. Ms. Graff works with the attorney representatives, applicants or consultants to provide technical assistance and respond to complex inquiries and resolve conflicts. She also reviews, analyzes and interprets case law and statutes and accepts stakeholder input. She makes recommendations regarding appropriate actions to take relative to all development schedule processing and extension requests. She coordinates with other staff including hydrogeologists and other ECY staff to accomplish her work. She also mentors other staff.

When determining the appropriate classification for a specific position, the duties and responsibilities of that position must be considered in their entirety and the position must be allocated to the classification that provides the best fit overall for the majority of the position's duties and responsibilities. *Dudley v. Dept. of Labor and Industries*, PRB Case No. R-ALLO-07-007 (2007).

In this case, the majority of the duties assigned to Ms. Graff's position and her level of responsibility and delegated authority are best described by the ES 3 class.

Her position should remain allocated to that class.

### **Appeal Rights**

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following:

An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to the Washington personnel resources board. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The mailing address for the Personnel Resources Board (PRB) is PO Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located on the 3rd floor of the Raad Building, 128 10th Avenue SW, Olympia, Washington. The main telephone number is (360) 407-4101 and the fax number is (360) 586-4694.

If no further action is taken, the Director's determination becomes final.

c: Candy Graff, ECY  
Corrina McElfish, ECY

Enclosure: List of Exhibits

**CANDY GRAFF v ECY**

**ALLO-15-067**

List of Exhibits

A. Candy Graff Exhibits

1. "Request for Director's Review" (returned)
2. Personal Journal Entries
3. Performance & Develop. Plan #1
4. Performance & Develop. Plan #2
5. Typical "Upper Kittitas" ROE and Language

B. ECY Exhibits

1. Position Review Determination Letter
2. Position Description for Environmental Specialist 3, Position #3723
3. Water Resources Program Organizational Chart
4. Department of Ecology Position Review Request
5. State of Washington Class Specification for Environmental Specialist 3
6. State of Washington Class Specification for Environmental Specialist 4
7. Email from Candy Graff
8. Example of work from Candy Graff, see Graff Exhibit Number 5
9. Example of work from Candy Graff
10. Performance and Development Plans, see Graff Exhibit Numbers 3 & 4
11. Position Allocation Process
12. Step 3: Understanding Allocating Criteria
13. Step 4: Understand Duties in Position Description
14. Step 6: Determine Appropriate Allocation
15. Office of the State Human Resource Director, OFM, Glossary of Classification Terms

C. Director's Exhibits

1. State of Washington Class Specification for Environmental Specialist 3
2. State of Washington Class Specification for Environmental Specialist 4