

Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

A. GENERAL INFORMATION

1. Date

2. Department

Office of the Secretary, CalEPA

3. Organizational Placement (Division/Branch/Office Name)

CalEPA

4. CEA Position Title

Assistant General Counsel

5. Summary of proposed position description and how it relates to the program's mission or purpose.
(2-3 sentences)

Under the general direction of the Secretary and Deputy Secretary for Law Enforcement and Counsel for Environmental Protection at the California Environmental Protection Agency (CalEPA), the Assistant General Counsel provides legal counsel to the agency, manages the coordination of the Agency's special project initiatives and serves in a policy and protocol advisory role to the Secretary and other senior management staff in the areas of air, water and soil quality, pesticide use and waste recycling and reduction, and other projects, as assigned.

6. Reports to: (*Class Title/Level*)

Deputy Secretary for Law Enforcement and Counsel

7. Relationship with Department Director (*Select one*)

- ☒ Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- ☐ Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(*Explain*):

8. Organizational Level (*Select one*)

- ☐ 1st ☐ 2nd ☒ 3rd ☐ 4th ☐ 5th (mega departments only - 17,001+ allocated positions)

B. SUMMARY OF REQUEST

9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

- Advises and consults on a regular basis with the Secretary, other senior management staff of CalEPA, and senior leaders of the CalEPA Boards, Departments and Offices (BDOs) on the formulation of policies and programs, with an emphasis on legal implications.
- In conjunction with the Deputy Secretary for Law Enforcement and Counsel, serves as the CalEPA liaison between the Office of the Governor and CalEPA on legal issues.
- Advises on legal matters arising out of CalEPA's Board's, Departments and Offices (BDOs), including through preparation of legal research; review of proposed regulations; and review of litigation.
- Advises on legal matters arising out of CalEPA's own programs, including CalEPA's Unified Program, California Accidental Release Program, Emergency Response Program, and grants administration.
- Provides legal opinions and recommendations on litigation and legal disputes.
- Coordinates and collaborates with sister agencies outside CalEPA to avoid conflict and maximize consistency of legal positions across the Administration.
- Work with CalEPA's BDOs in developing consistent policies on environmental issues that cut across the jurisdiction of multiple BDOs, with an emphasis on legal implications.
- Serve as a representative of the Secretary on legal affairs in interacting with other state agencies, federal agencies, local governments, private entities, non-governmental organizations, environmental justice organizations, and the public.
- Perform other duties, as assigned.

B. SUMMARY OF REQUEST (continued)

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- ☒ Program is directly related to department's primary mission and is critical to achieving the department's goals.
- ☐ Program is indirectly related to department's primary mission.
- ☐ Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: CalEPA is the parent agency for six Boards, Departments and Offices (BDOs) and its mission is to protect public health and the environment. CalEPA's legal program is critical in ensuring the sound formulation of policies and programs for the Office of the Secretary as well as CalEPA's six BDOS, and in managing legal risk to accomplish the Governor's policy objectives within the field of environmental protection.

B. SUMMARY OF REQUEST (continued)

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

This position was formerly an exempt, gubernatorial appointee. The Governor's Office has directed CalEPA to reclassify as a CEA.

Additionally, the position now serves as the Assistant General Counsel and plays a vital role in providing legal support to the Secretary of CalEPA.

C. ROLE IN POLICY INFLUENCE

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

This CEA position would play the lead role in

*the formulation CalEPA's legal position on emerging environmental issues that cut across the jurisdiction of multiple CalEPA Boards, Departments and Offices (BDOs). One example of an emerging environmental issue which requires such policy formulation and cross-BDO coordination is PFAS (Per-and Polyfluoroalkyl Substances), also known as "forever chemicals." The Department of Toxic Substances Control (DTSC) within CalEPA regulates PFAS in consumer products through its Safer Consumer Products Program; the Office of Environmental Health Hazard Assessment within CalEPA lists various PFAS chemicals as chemicals known to the State of California to cause cancer or reproductive harm and about which businesses must provide consumers with warnings under Proposition 65; and the State Water Resources Control Board and nine Regional Water Quality Control Boards also within CalEPA enforce water quality laws and regulations under which PFAS contamination is a major concern. The CEA would take a lead role in ensuring a thoughtful, coordinated approach to PFAS, so that CalEPA's Boards, Departments and Offices take action to protect public health and the environment but do not take varying positions that subject the regulated community to inconsistent requirements. The statewide impact of this initiative is enormous, given the prevalence of PFAS and the grave public health concerns they pose.

*the formulation of suspensions of environmental laws, pursuant to the authority of Executive Orders or Proclamations, to facilitate disaster recovery and response. Climate change has accelerated the pace of natural disasters including wildfire and flood. In recent years, the Governor has issued Executive Orders proclaiming states of emergency in light of various wildfires and floods and authorized the suspension of environmental laws to the extent necessary to expedite disaster recovery and response, while charging the Secretary of Environmental Protection with authority to exercise their sound discretion to apply the suspension to ensure that it serves the purpose of accelerating disaster recovery and response and protecting public health and the environment. The CEA would take the lead role in ensuring any suspension issued by the Secretary of Environmental Protection is formulated to address local conditions and balance competing policy considerations. Issuance of these suspensions has a significant benefit to the state and is critical to the state's disaster recovery and response efforts.

*the formulation of legal positions on issues that involve one or more CalEPA BDOs and an agency outside CalEPA. One example is the legal position to assert on proposed efforts by local governments situated in Coastal Development Zones to ban or limit the use of pesticides. Do such efforts fall within the authority of the Coastal Commission to approve under the Coastal Act as a Local Coastal Program, or are they preempted under the Food and Agriculture Code as pesticide regulations that fall within the exclusive authority of the Department of Pesticide Regulation? The CEA would take the lead role in harmonizing, to the maximum extent possible, the positions of and ensuring coordination between the CalEPA BDO affected (in this case, the Department of Pesticide Regulation) the sister agency (in this case, the Coastal Commission). The benefit of this work is to ensure consistency of legal positions across the Administration.

C. ROLE IN POLICY INFLUENCE (continued)

13. What is the CEA position's scope and nature of decision-making authority?

CalEPA's legal program is critical in ensuring the sound formulation of policies and programs for the Office of the Secretary as well as CalEPA's six BDOS, and in managing legal risk to accomplish the Governor's policy objectives within the field of environmental protection.

The CEA makes legal recommendations and renders legal opinions. The CEA formulates legal positions on high profile and complex issues, subject to final approval by the Deputy Secretary for Law Enforcement and Counsel or Secretary. Additionally, this position provides high level legal advice and analysis in ALL programmatic areas within Office of the Secretary - e.g., Legislative, Admin, CUPA, Climate, Water, and EJ and Tribal - just to name a few. Very often this position will have final say on how trailer bill or budget bill language is written in conjunction with high level policy decisions. As a regulatory agency, all that we do needs a legal review and support to ensure all environmental laws are being implemented and followed appropriately.

14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?

Yes, the CEA will play a lead role in developing and formulating legal positions for CalEPA as described in question 26 above.