



Board of Directors Agenda Report

MEETING DATE: FEBRUARY 28, 2019 ITEM NUMBER: 10G

**SUBJECT: California Department of Food and Agriculture
Independent Auditor's Report and Financial Statements
for the Years Ended December 31, 2015 and 2016**

DATE: February 22, 2019

FROM: Kathy Kramer, CEO

PRESENTATION BY: Kathy Kramer, CEO and Bianca Kulback, Director of HR

RECOMMENDATION

Information item only.

BACKGROUND

See attached:

- 2016 Audit Timeline
- California Department of Food and Agriculture Independent Auditor's Report and Financial Statements for the Years Ended December 31, 2015 and 2016

32nd DAA 2016 Audit Timeline

April 27, 2017

The CDFA Audit team conducted the 2016 audit in April of 2017. As a part of their onsite audit and normal protocol in their audit procedures, they hold an audit exit meeting with staff and the current Board Chair at the conclusion of their onsite audit. This audit exit meeting was held on April 27, 2017 with CEO, VP of Finance, Director of Finance, and Board Chair at the time, Nick Berardino.

The employee separation agreement was discussed as part of the audit finding and the CDFA auditor indicated that this finding would remain an open item and needed to be discussed in more detail with his supervisor.

January 16, 2018

CEO received email from CDFA auditor indicating that CDFA auditor's office leadership was in consultation with CDFA legal about the preliminary draft of the Management Report (audit report), and that they had a few more questions about the employee separation agreement.

January 24, 2018

CEO responded to CDFA auditor asking to schedule a call to discuss questions regarding the employee separation agreement. CEO and Director of HR provided information via phone to CDFA auditor.

February 16, 2018

Director of HR sent an email to CDFA auditor advising that she had contacted CalHR as requested by the CDFA auditor during the January 24th call, and CalHR indicated they would not approve the separation agreement because they were not involved in negotiating the terms of the agreement and would not approve it after the fact. In addition, the Director of HR indicated that she did not have any additional information regarding the employee separation agreement and they should move forward in closing the audit report.

April 11, 2018

CEO received an email from CDFA auditor indicating they were ready to move forward scheduling the 2017 audit as long as 32nd DAA agreed to have the contracting policies (AB 2490) approved by the Board of Directors before July of 2018. The CDFA auditor also indicated that during a meeting with his supervisor that they were going to change the status of one of the reportable 2016 audit items:

The reportable item initially was presented as -

“Lack of Written Contracting Policies and Procedures”

They were going to change it to -

“Internal Control Weaknesses in Contracting Policies and Procedures “

April 28, 2018

We received MANAGEMENT REPORT #17-018 from the CDFA auditor

Their findings were indicated on pages 1 – 5 of the 2016 audit report

Page 3 - REPORTABLE CONDITIONS

Overpayment to a Fair Employee

Internal Control Weaknesses in Contracting Policies and Procedures

This information was provided to Board Chair at the time Barbara Bagneris, CEO, VP of Finance and Director of HR.

May 23, 2018

Upon receipt of these findings, the 32nd DAA drafted and sent a letter to CDFA auditor in response to the audit report findings. The letter was signed by the CEO and the Board Chair at the time, Barbara Bagneris.

May 24, 2018

At the May 2018 32nd DAA's Board of Directors Meeting staff presented "Adoption of California State Assembly Bill/Contracting Policies and Procedures (AB2490)" as an action item to the Board of Directors. It was approved by the 32nd DAA Board of Directors at the May 2018 meeting. A copy of the board action item was sent to CDFA auditor for verification.

September 13, 2018

CEO received email from CDFA auditor to update the status of the 2016 audit report, he indicated it was being reviewed by CalHR before it could be finalized.

October 2018

The 32nd DAA received two copies of the 2016 audit report, one addressed to the CEO and the other to Barbara Bagneris, Board Chair at the time. This MANAGEMENT REPORT #17-018 contained an updated response from CDFA - "CDFA EVALUATION OF RESPONSE" (page 10 in the audit report).

1. CDFA acknowledged that the 32nd DAA in the future would follow CalHR's rules and regulations going forward for any employee settlement agreement.
(This was highlighted by the 32nd DAA in the response letter dated May 23rd to CDFA auditor)
"In the future, the 32nd DAA will seek CalHR approval prior to entering into any employee separation agreements."

2. CalHR Legal Division concluded that despite its illegality, the 32nd DAA likely cannot void the contract and recover the amount paid to the employee. CalHR does agree that 32nd DAA should contact CalPERS to determine if an adjustment is necessary for the eight months of service accrued under the employee separation agreement.

Upon receipt of the final MANAGEMENT REPORT #17-018 in October of 2018, staff advised board leadership that they would contact CalPERS to discuss the audit findings and any action CalPERS would require to satisfy the audit findings. At this time, it was only a recommendation by CDFA auditor as to contact CalPERS .

32nd DAA's HR Staff contacted CalPERS:

November 13, 2018

32nd DAA's HR Representative contacted CalPERS Representative (left a voice message)

November 19, 2018

HR Representative emailed CalPERS Representative regarding audit report of employee overpayment

November 21, 2018

CalPERS Representative replied to HR Representative's email

November 28, 2018

HR Representative spoke to CalPERS Representative regarding employee overpayment, discussed the matter and provided CalPERS with a copy of the Employee Separation Agreement

November 29, 2018

CalPERS ordered the 32nd DAA to proceed with the employee's payroll adjustment reversing the 8 months of service credit accrued. CalPERS representative stated that the agreement was placed on file.

December 03, 2018

The 32nd DAA Accounting Department was not able to proceed with adjustment in "my CalPERS" system, due to the employee's "retirement status"

December 04, 2018

HR Representative changed status in "myCalPERS" system and the 32nd DAA Accounting Department proceeded with payroll adjustments. Retiree was notified by HR

December 15, 2018

CalPERS notified HR Representative that the adjustments were keyed into their system

January 02, 2019

Reimbursement check was issued to employee for CalPERS withholdings (employee contributions) that employee had paid into CalPERS during the 8 months of the employee separation agreement.

January 03, 2019

Reimbursement check was hand delivered to employee by HR Representative

Background

As a matter of background, and was included in the 32nd DAA's response to CDFA audit findings, in the letter dated May 23, 2018; the 32nd DAA had facilitated numerous employee separation agreements dating back to 2008 to the current agreement. Some of these agreements were approved by CalHR and some approved by 32nd DAA's previous outside counsel.

The 2016 audit report was the first time that an employee separation agreement had been flagged by the CDFA auditor as part of their annual audit process or findings. The employee separation agreement template used to facilitate this agreement, was created from a previously approved CalHR separation agreement template.