

O'Rourke; Kimberly Worthy, FWP Human Resources Manager; Ken McDonald, FWP Wildlife Bureau Chief; Travis Horton, FWP Regional Fisheries Manager; and Bonnie Shoemaker, Compensation and Classification Program Coordinator for the Montana Department of Administration (DOA), all testified under oath. The parties stipulated to the admission of O'Rourke's Exhibits I through 11 and Respondents' Exhibits A, D, F through I, K, L, Y, and AA through MM.

After taking testimony, the parties requested the opportunity to submit post-hearing briefs. The last of the parties' briefs was filed on March 28, 2017 at which time the hearings process concluded and the matter was deemed submitted for decision. Upon a review of the evidence submitted at hearing, the hearing officer requested the parties to submit additional information regarding the wage information from SABHRS. The parties agreed that such information would be marked and received as Exhibit NN, which was received on May 30, 2017.

Based upon the evidence adduced at the hearing as well as the post-hearing arguments and briefing of the parties, the following findings of fact, conclusions of law and recommended decision are made.

II. PROCEDURAL BACKGROUND

On May 9, 2016, O'Rourke filed an Employee Classification & Wage Appeal with Montana Department of Fish, Wildlife and Parks (FWP) in which she argued that the Fishing Access Supervisor (FAS) position and the Block Management (BM) Program Specialist position share the same job classification but she had been paid less than FAS Manager Ray Heagney since his hire in 2011. Ex. H.

On May 10, 2016, an employee with FWP human resources submitted an Interoffice Memorandum with the subject line, "Coleen O'Rourke [sic] - Wage Appeal" to Worthy. The memorandum addressed the salary adjustment made effective April 16, 2016 and the continuing discrepancy between Heagney's pay and the pay of the BM Coordinators. The memorandum included the recommendation that Heagney, "... either a) be pay protected for six months and then their salary moved down to be in line with like positions; or b) their salary should be frozen (except for Statutory increases) until such time as they are in line with like position." It was further recommended, "In addition, I think we need to consider retro pay for those employees who were at the lower salary in Job Code #131235. If we were to give them retro pay I would go back and see when the discrepancy happened (but not more than 2 years prior) to determine the amount of pay owed." Ex. H, p. 3.

During her review of O'Rourke's grievance, Worthy came to understand that Heagney's pay was set as part of a lateral transfer and had been negotiated and was not due to the department reorganization. Worthy determined that Heagney's pay had not been affected by the transfer as a result of FWP's policy not to harm employees under those circumstances when implementing the one rate pay plan.

On May 26, 2016, FWP denied O'Rourke's grievance stating:

We have reviewed the pay for the 14 employees in the job classification code of Program Specialist (Job Code 131235) and your pay is the same as all of them with the exception of the FAS Coordinator in Region 3 who was pay protected when he transferred from the Parks Division. Your pay is set based on the job code classification and in accordance with our pay plan rules and our one rate pay chart. The pay increase that you referenced was given based on a strategic pay request that was made pursuant to our pay plan rules and the determination of the effective date was based on that request. We believe that it is important to point out that although you brought this appeal to us under a 'classification and wage appeal' process it does not meet the definitions of appealable issues as defined in section 2-18-203(2), MCA.

Ex. H.

On June 2, 2016, O'Rourke filed her Step II appeal arguing her position had not been properly classified and she had not been paid appropriately since 2009 and continuing through the most recent pay adjustment in April 2016. O'Rourke contended her position would more accurately be classified as a Program Specialist, Band 6. Ex. BB.

On June 30, 2016, Bonnie Shoemaker, DOA Compensation and Classification Program Coordinator, remanded the appeal to FWP at Step I to allow the agency an opportunity to conduct a full job audit and to classify the work of O'Rourke's position, as well as the other positions that shared the job classification. Ex. BB.

On July 28, 2016, Worthy provided Shoemaker with the Step I classification review and response to O'Rourke, denying a classification change. Ex. BB, p. 7, ¶ 17.

On August 9, 2016, O'Rourke provided Shoemaker with the reasons why she disagreed with the agency's position thereby continuing her appeal to Step II. Ex. BB, p. 7, ¶ 18.

During the weeks that followed, Shoemaker requested additional information from both O'Rourke and FWP regarding the issues raised in the Step II appeal. Ex. BB, p. 7, ¶¶ 18 - 28.

On September 29, 2016, Shoemaker issued her decision regarding O'Rourke's Step II appeal. Shoemaker found that O'Rourke's position was properly classified a Program Specialist, Band 5, and O'Rourke was not entitled to retroactive pay based on a reclassification. Ex. BB, p. 24, Conclusion. Shoemaker further found that O'Rourke had not stated a basis for a pay exception; O'Rourke was being paid in accordance with the one rate pay plan; and O'Rourke was not entitled to retroactive pay based on application of FWP's pay plan rules. *Id.* Shoemaker also found that O'Rourke was being paid \$23.37 per hour instead of the mandated \$23.3732 per hour and ordered her pay to be corrected and extended to the date she received the pay increase. *Id.*

On October 28, 2016, O'Rourke filed her Step III appeal.

On October 31, 2016, the Board of Personnel Appeals (Board) accepted O'Rourke's appeal at Step III. The Board declined to conduct a preliminary investigation and transferred the matter for hearing before the Office of Administrative Hearings (OAH).

III. ISSUE

Whether Coleen S. O'Rourke, Program Specialist, Wildlife Division, Montana Fish, Wildlife and Parks, is properly compensated in accordance with Mont. Code Ann. parts 1 - 3, Chapter 18, Title 2.

IV. FINDINGS OF FACT

1. Montana Fish, Wildlife and Parks (FWP) and the Montana Department of Administration (DOA) are executive agencies of Montana state government.

Coleen O'Rourke's Employment with FWP

2. Coleen O'Rourke has worked for FWP since November 2002.

3. O'Rourke currently works as the Region 3 Block Management (BM) Coordinator (Job Code 131235). O'Rourke's position is classified as a Program Specialist, Band 5. O'Rourke's current hourly rate of pay is \$23.3752.

4. O'Rourke's position is within the Wildlife Bureau and reports to Wildlife Manager Howard Burt.

Heagney's Transfer from Parks Division to Fisheries Division

5. In 2011, FWP transferred the Fishing Access Site (FAS) Program from the Parks Division to the Fisheries Division. As a result of the reorganization, all permanent, full-time employees were subject to position reclassification. Those employees who could not be offered an alternative position at the same grade had their hourly pay protected for a limited period. Some positions were subject to a reduction in pay, loss of health benefits, reclassification, and reduction in force. Ex. 3, pp. 4-7.

6. In June 2011, FWP posted a job vacancy notice for a FAS Program Coordinator (Position No. 13360) located in Bozeman, Montana. The job was listed as a Pay Band 5 with an hourly wage of \$17.47 and an annual salary of \$36,338.00. Ex. 3, pp. 16-19.

7. In July 2011, FWP hired Ray Heagney in a competitive hiring process as Region 3 FAS Manager (Position No. 13360). Ex. HH. The FAS Manager position is within the Fisheries Bureau and reports to Fisheries Manager Travis Horton.

8. Heagney previously worked as manager of Missouri Headwaters State Park for 21 years. Ex. EE.

9. FWP treated Heagney's hire as a lateral transfer because his duties in his former position were "similar enough" to the duties of the Region 3 FAS Manager. Worthy Testimony. As a result, Heagney's salary remained the same. Ex. HH.

10. On or about July 7, 2011, a FWP Payroll Authorization form was completed for Heagney. It is noted on the form, "Ray has been hired into the R3 Fishing Access Site Coordinator Job within the Fisheries Bureau from the Parks Management Specialist Position at Headwaters State Park in the Parks Division." It is further noted under Reason for PA: "Concurrent Record - Employee is being placed into another position while still active in current position." Ex. 10.

11. Heagney's Job Code at the time of hire was incorrectly noted as being 131955. Ex. II; Ex. 10. Heagney's Job Code should have been 131235 - the same as O'Rourke's. No explanation other than mistake or oversight was offered for this error, which was corrected on or about May 19, 2012. Worthy Testimony.

12. Heagney's start date was July 16, 2011. Ex. 10. Heagney's base hourly pay at the time he was hired was \$21.586. Ex. II; Ex. 10.

FWP Broadband Pay Plan Prior to December 31, 2011

13. Prior to December 31, 2011, FWP set pay using a pay range under the Broadband Pay Plan Guidelines in effect at that time. "Hiring range" was defined as, "The salary range from entry (80% of market) to the market rate (100% of the market)." "Pay zone" was defined as, "The salary range from entry (80% of market) to maximum for the position (120% of market)." Ex. JJ (adopted 11/01/03), p. 4.

14. Under this Broadband Pay Plan, pay was set according to a range based upon annual minimum salary; annual market salary; and annual max salary. Ex. LL. The hiring range was defined as "[t]he salary range from entry (90% of market) to the market rate (100% of market). Ex. JJ, p. 4, ¶ V.

15. The Broadband Pay Plan Guidelines regarding New Hires included the following:

Typically, new employees are hired at entry of the pay zone. However, when determining the base pay, the hiring authority shall consider criteria including but not limited to: A) the employee's job-related qualifications and competencies, B) existing salary relationships within the job class and work unit, C) ability to pay, and D) the competitive labor market. The hiring authority may request to hire within the hiring range as defined in these rules and identified on the vacancy announcement. Questions to be considered before hiring above the entry rate include:

1. Whether the applicant's education, training and/or work experience exceed the minimum qualifications required based on the job profile (position description).
2. Is there a business need to hire an employee with higher than entry-level skills and experience?
3. Are there recruitment problems associated with filling positions in this job class or location?
4. How unique is the position or applicant in terms of training or experience?
5. Are there other special circumstances such as the applicant previously worked for FWP but had a break in service?

6. What is the effect on current employees in the same job title? Do the differences in qualifications and performance justify a salary difference? (This must be addressed in every situation.)

If the hiring authority wishes to hire above the entry rate established for the position, written justification addressing the above questions must be submitted to and approved by the Personnel Office.

The hiring authority may request to use the strategic and situational pay components when recruitment is difficult (see Section X).

Ex. JJ, pp. 5-6, ¶ VII (underscoring included in the original).

16. The Broadband Pay Plan Guidelines regarding Promotions and Transfers included the following:

When determining a promoted or transferring employee's new base salary, the hiring authority shall consider criteria including, but not limited to: A) the employee's job-related qualifications and competencies, B) existing salary relationships within the job class and work unit, C) ability to pay, and D) the competitive labor market. Typically a promoted employee with fewer job-related qualifications than existing employees is compensated at a lower rate. The same questions need to be addressed when determining pay for promotions as identified in Section VII (New Hires).

If the hiring authority wishes to hire above the entry rate established for the position, written justification addressing the above questions must be submitted to and approved by the Personnel Office.

Movement into a higher band results from an employee going through the selection process for another position according to department policy, or from position reclassification.

Ex. JJ, pp. 6, ¶ VIII.

17. Heagney was free to negotiate his salary under the pay plan in effect at the time he applied for and was hired for the R3 Fishing Access Site Coordinator Job. Testimony of Worthy and Horton.

18. No written justification as required under the pay plan was in effect at the time Heagney's hire was offered by FWP regarding Heagney's pay being set above the entry rate for the position.

19. Despite having different job titles and working for different bureaus, the job duties of Heagney and O'Rourke are substantially similar. The differences between the job duties required of two positions do not support a difference in hourly wages paid.

FWP One Rate Pay System

20. In December 2011, Director Joe Maurier issued a Memorandum regarding changes to the FWP Pay Plan Rules. In this memorandum, Maurier announced FWP had reviewed its pay plan and determined it was necessary to adopt a one rate pay system that "openly defines the nonnegotiable salary of each job." Ex. GG. The memorandum went on to state that the pay of those employees who were already at the target compensation rate would not be adjusted while adjustments would be made to the pay of those employees affected by the change in pay compensation systems effective December 31, 2011. Ex. GG.

21. The new Broadband Pay Plan Rules ("one rate pay plan"), which were implemented in January 2012, provided, in pertinent part: "The objectives of this pay philosophy are as follows: First, be internally equitable; and Second, be externally competitive." Ex. KK, p. 1, ¶ II.

22. The one rate pay plan further provided:

The agency will consider the following criteria when establishing base pay: A) The most recent salary survey approved by the Department of Administration; B) What other agencies pay in the State of Montana for the same occupation; and C) the competitive labor market. The ability to pay will be a primary factor when establishing base pay.

Ex. KK, p. 3, ¶ IV.

23. The one rate pay plan also provided, "In the case of a lateral transfer for the same job, the pay will be kept the same for that employee transfer." Ex. KK, p. 3, ¶ IV(B).

24. Included with the one rate pay plan was a salary schedule (Pay Plan 020). For the Program Specialist (Block Mgmt/FAS Coord) position (Job Code 131235), which covered both O'Rourke and Heagney, the new hourly rate was \$19.457 and

the new annual rate was \$40,471.00, with a Target Cap of \$19.972. Ex. KK, p. 6. The salary schedule also provided, “Current employees applying for a lateral transfer to the same job will typically be allowed to retain their current salary.” Ex. KK, Appendix A.

FAS Program Manager Pay Adjustment

25. In February 2014, Fisheries Division Administrator Bruce Rich submitted a Classification Request for the FAS Program Manager Position as part of a request for strategic pay for six Regional Hunting Access Enhancement Coordinators. The justification was noted as being “based on equity when comparing the job duties of the FAS Program Manager Positions and the Hunting Access Enhancement Coordinator Positions.” The request was ultimately approved April 19, 2016. Ex. G.

26. The base pay of FAS Program Managers was increased to \$21.784 per hour as a result of the strategic pay request thereby making their base pay equal to that of the Parks Program Managers in February 2014. Ex. 11. The FAS Managers were not given retroactive pay with this pay increase.

27. FWP had previously reviewed a Classification Request for the FAS Program Manager Position in 2011 and determined it was appropriate to keep the FAS Program Manager position at Band 5. Ex. 11, p. 2.

28. On April 16, 2016, O’Rourke and five other employees received a salary adjustment to bring their salary up to pay grade. Exhibit AA. Seven other employees who were already paid \$23.37 per hour were not subject to the salary adjustment. Ex. G.

29. Alan Charles, previous Program Manager for the Block Management Program, requested the pay adjustment be made retroactive in emails to McDonald. The request was forwarded to the committee formed to evaluate the pay adjustment for BM Managers. Worthy advised the committee that FWP does not typically make retroactive pay adjustments. It was ultimately determined that the pay adjustment for BM Managers would not be made retroactive.

30. Heagney’s pay was frozen during this period. Heagney has not received any market adjustments to his pay. Heagney has only received legislatively mandated pay increases.

31. As part of the 2016 pay review, Worthy became aware of Heagney’s base pay being greater than the base pay of the other employees within the same

classification. Worthy initially understood that Heagney's pay was pay protected as part of the department reorganization that took place in 2011. Worthy Testimony.

Disparities in the Base Pay of O'Rourke and Heagney

32. At the time of Heagney's transfer from the Parks Division to the Fisheries Division effective July 16, 2011, Heagney's base hourly wage was \$21.586, which was his rate of pay prior to the transfer. O'Rourke's base hourly wage at that time was \$19.39 - a difference of \$2.196.

33. There were 12 pay periods between July 16, 2011 through December 31, 2011 for a total of 960 working hours (12 pay periods x 80 hours). There was a disparity of \$2,108.16 between the pay of Heagney and O'Rourke during this period.

34. Effective December 31, 2011, O'Rourke's hourly base pay was increased to \$19.971 as a result of a market adjustment. Heagney's hourly base pay remained at \$21.586 - a difference of \$1.915.

35. There were 39 pay periods between December 31, 2011 and June 29, 2013 for a total of 3,120 working hours (39 pay periods x 80 hours). There was a disparity of \$5,974.80 between the pay of Heagney and O'Rourke during this period.

36. Effective June 29, 2013, O'Rourke's hourly base pay was increased to \$20.57 as a result of House Bill 13 (HB13). Heagney's hourly base pay was also increased to \$22.234 - a difference of \$1.664.

37. There were 36 pay periods between June 29, 2013 and November 15, 2014 for a total of 2,880 working hours (36 pay periods x 80 hours). There was a disparity of \$4,792.32 between the pay of Heagney and O'Rourke during this period.

38. Effective November 15, 2014, O'Rourke's hourly base pay was increased to \$21.599 as a result of HB13. Heagney's hourly base pay was increased to \$23.345 - a difference of \$1.746.

39. There were 30 pay periods between November 15, 2014 and January 9, 2016 for a total of 2,400 working hours (30 pay periods x 80 hours). There was a disparity of \$4,190.40 between the pay of Heagney and O'Rourke during this period.

40. Effective January 9, 2016, the hourly base pay of both O'Rourke and Heagney was increased \$0.50. O'Rourke's hourly base pay was \$22.099. Heagney's hourly base pay was \$23.845 - a difference of \$1.746.

41. There were seven pay periods between January 9, 2016 and April 16, 2016 for a total of 560 working hours (7 pay periods x 80 hours). There was a disparity of \$977.76 between the pay of Heagney and O'Rourke during this period.

42. Effective April 16, 2016, O'Rourke received a strategic adjustment of her hourly base pay to \$23.37 and a market adjustment of her hourly base pay to \$23.373. Heagney's hourly rate of pay remained the same at \$23.845 - a difference of \$0.472.

43. There were 20 pay periods between April 16, 2016 and January 7, 2017 for a total of 1,600 working hours (20 pay periods x 80 hours). There was a disparity of \$755.20 between the pay of Heagney and O'Rourke during this period.

44. Effective January 7, 2017, both O'Rourke and Heagney received a pay increase of \$0.50. O'Rourke's hourly base pay was \$23.873. Heagney's hourly base pay was \$24.345 - a difference of \$0.472.

45. There were 11 pay periods between January 7, 2017 and June 9, 2017 for a total of 880 working hours. There was a disparity of \$415.36 between the pay of Heagney and O'Rourke during this period.

46. As a result of the disparity between Heagney's base pay and O'Rourke's base pay during the period of 2011 through June 2017, O'Rourke suffered a loss of \$19,214.00.

V. DISCUSSION¹

The issue in this matter is whether O'Rourke's pay has been in compliance with Mont. Code Ann. § 2-18-301(4), which provides, "The department shall administer the pay program established by the legislature on the basis of competency, internal equity, and competitiveness to the external labor market when fiscally able."

The broadband pay plans that have been in effect during the period of O'Rourke's grievance all set forth internal equity as an agency goal. The broadband pay plan in effect in 2011, which was adopted November 1, 2003, defined the goal of being internally equitable, "That is, provide a salary range for every position that reflects its value compared to all other similar positions in the agency." Ex. JJ, p. 2, ¶ II. Internal equity is listed as FWP's first objective in the one rate pay plan adopted in January 2012. Ex. KK, p. 2, ¶ II. Indeed, internal equity continues to be

¹ Statements of fact in this discussion and analysis are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

the first objective listed in the pay plan adopted December 9, 2015, in addition to the objectives of being externally competitive, rewarding employees for cost savings and efficiency measures, and fiscal responsibility.

The concept of internal equity was addressed by the Montana Supreme Court in a case involving collective bargaining. In *Mashek v. Dep't of Pub. HHS*, the court held that internal equity is not a stand alone right under Mont. Code Ann. §2-18-301(4), but, rather, only one factor that must be considered equally with the other factors listed of competency and competitiveness. The court held:

Regardless of what the phrase “internal equity” means, the conclusion that it serves as a stand-alone right ignores the rest of the statute’s language. The preceding words “shall administer the pay program . . . on the basis of” mean that competency, internal equity, and competitiveness are the factors to be considered in administering the pay program. Merriam-Webster’s Dictionary 102 (11th ed. 2003) (“Basis” means “something on which something else is established.”). However, none of the factors are elevated above the others, thus indicating that competency, internal equity, and competitiveness are factors to be weighed rather than comprising individual requirements. See *Fellows v. DOA*, ¶ 16, 2011 MT 88, 360 Mont. 167, 252 P.3d 196 (affirming District Court’s conclusion that §2-18-301(4), MCA, did not mandate equal pay but required that pay be set on the basis of competency, internal equity, and competitiveness). This is supported by the subsequent language “when fiscally able,” which allows the Legislature to consider financial constraints when administering the pay program.

Mashek v. DPHHS, ¶12, 2016 MT 86, 383 Mont. 168, 369 P.3d 348.

The Board of Personnel Appeals (Board) addressed the concept of employer discretion identified in *Fellows* and in relation to the factors set forth in Mont. Code Ann. § 2-18-301(4) in its Order of Remand in *The Matter of the Compensation Grievance of April Armstrong, et. al., v. State Personnel Division, Dept. Of Admin., Dept. Of Public Health and Human Svcs., Support Enf. Division*, OAH Case No. 1767-2014, issued on October 17, 2016. The Board noted:

As set forth in the Recommended Order, the hearing officer’s analysis fails to establish clear guidance for employers, who must exercise their own discretion in setting pay based on the factors of internal equity, competence and competitiveness. This allowance for employer discretion, within the confines of Mont. Code Ann. §2-18-301(4), is

fundamental to the Montana Supreme Court's decision in *Fellows* [*Fellows v. Dep't of Admin.*, 2011 MT 88, 360 Mont. 167, 252 P.3d 196]. The Hearing Officer's decision to limits [sic] base pay disparity to 105% without a thorough analysis of factors set forth in Mont. Code Ann. §2-18-301(4), is an error of law.

A correct application of Mont. Code Ann. §2-18-301(4) requires the hearing officer to consider the totality of circumstances in weighing all three factors without raising one factor above the rest. Proper regard should be given to the employer's decisions concerning pay disparities unless such decisions appear to be factually unsupported. Lacking proper regard for the employer's decisions, the Recommended Order fails to establish evidence related to, and analyze the application of, factors other than internal equity. Therefore, the Board remands this matter to the Office of Administrative Hearings for further proceedings and consideration of Mont. Code Ann. §2-18-301(4) consistent with this order.

Armstrong, "Order of Remand," pp. 3-4, "Discussion."

It is undisputed that Heagney and O'Rourke are both classified as Program Specialists in the same job band. There was no evidence offered suggesting their job duties are so different as to not warrant the same classification and, ultimately, the same rate of pay. The only apparent difference between the two positions is that Heagney's position is within the Fisheries Bureau and O'Rourke's position is within the Wildlife Bureau. See Exs. D, I, and K. However, both positions are within the same agency. Despite having the same classification and working for the same agency, Heagney has been paid more than O'Rourke since his hiring in 2011.

FWP argues Heagney's pay was properly set as part of his lateral transfer from Parks to Fisheries. O'Rourke argues Heagney's hiring should not be treated as a lateral transfer because it was actually a demotion in that Heagney moved from a Parks Specialist II position (Job Code 131955) that had a higher rate of compensation than the FAS Program Manager position (Job Code 131235) he assumed in 2011. O'Rourke rightly points out that FWP offered no written justification for Heagney's pay being higher than the entry rate.

The same classification, in the same Job Band, in two different divisions of the same state agency might justifiably command different wages and still satisfy internal equity if competency or competitiveness justified the difference. However, there is nothing in the record to support the contention that competency and competitiveness considerations factored into FWP's decision to continue to allow

Heagney's base pay to be greater than that of O'Rourke. Adding to the confusion regarding Heagney's initial hire is the fact that his Payroll Authorization lists a Job Code number for his former position which allowed him a higher rate of pay. The argument that Heagney's pay was as a result of a negotiation that somehow insulates FWP from having to adhere to the stated principle of internal equity is not persuasive. FWP was aware or should have been aware of the pay discrepancy as soon as Heagney was hired in 2011 and continuing through 2016. Under the facts presented and the applicable law, O'Rourke established that she was aggrieved by an unfair pay difference that dates back to Heagney's hire in July 2011.

VI. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction to hear and decide this matter. Mont. Code Ann. § 2-18-1011.

2. Grievant Coleen S. O'Rourke was aggrieved by a serious matter in her employment, being paid less than other FWP employees each also employed as Band 5 Program Specialists (Job Code 131235) from July 16, 2011 through the present. Mont. Code Ann. §§ 39-3-104 and 87-1-205.

3. The proper remedy to address this grievance is set forth in Finding of Fact 46, which will resolve the grievance of the aggrieved employee by redressing the disparity of the aggrieved employee's pay and the pay of another employee who held a substantially similar position with the same or similar duties during the period in question. Mont. Code. Ann. § 2-18-1012.

4. O'Rourke is entitled to be made whole for the losses resulting from the disparity in pay between herself and Heagney. O'Rourke is entitled to back pay in the amount of \$19,214.00 plus prejudgment interest on that amount of \$2,104.97 through June 9, 2017. See Mont. Code. Ann. § 27-1-211. See Addendum A for calculations.

5. The 30-day limitation imposed in Mont. Code Ann. § 2-18-203(3) is not proper in this case, because this is not a pay band allocation appeal. O'Rourke is entitled to recover wages owed to her going back to July 2011.

VII. RECOMMENDED ORDER

The Board of Personnel Appeals orders Montana Department of Fish, Wildlife and Parks to advance O'Rourke's pay retroactively to the same pay level as Heagney, with the same employer contributions and benefits, with the appropriate withholding, effective July 16, 2011 (the effective date of Heagney's hire). The total

retroactive adjustment is \$19,214.00 based upon the continuing disparity between Heagney's base pay and O'Rourke's base pay. Additionally, O'Rourke is owed prejudgment interest in the amount of \$2,104.97 for a total of \$21,318.97. FWP may deduct withholding for taxes, social security, and medicare from the wage portion but not the interest portion. FWP shall immediately pay to O'Rourke the additional wages due from said adjustments, making the appropriate deductions, withholding, and contributions.

DATED this 16th day of June, 2017.

BOARD OF PERSONNEL APPEALS

By: /s/ CAROLINE A. HOLIEN
CAROLINE A. HOLIEN
Hearing Officer

NOTICE: Pursuant to Admin. R. Mont. 24.26.222, the above RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are postmarked no later than July 23, 2017. This time period includes the 20 days provided for in Admin. R. Mont. 24.26.222, and the additional 3 days mandated by Rule 6(e), M.R.Civ.P., as service of this Order is by mail.

The notice of appeal shall consist of a written appeal of the decision of the hearing officer which sets forth the specific errors of the hearing officer and the issues to be raised on appeal. Notice of appeal must be mailed to:

Board of Personnel Appeals
Department of Labor and Industry
P.O. Box 201503
Helena, MT 59620-1503

10% Simple Interest Per Year

Period 07/16/11 - 12/31/11

Time Period	Pay Date	Amount	
Bi-Week 1	27-Jul-11	\$ 175.68	\$ 1.35
Bi-Week 2	10-Aug-11	\$ 351.36	\$ 2.70
Bi-Week 3	24-Aug-11	\$ 527.04	\$ 4.05
Bi-Week 4	7-Sep-11	\$ 702.72	\$ 5.41
Bi-Week 5	21-Sep-11	\$ 878.40	\$ 6.76
Bi-Week 6	5-Oct-11	\$ 1,054.08	\$ 8.11
Bi-Week 7	19-Oct-11	\$ 1,229.76	\$ 9.46
Bi-Week 8	2-Nov-11	\$ 1,405.44	\$ 10.81
Bi-Week 9	16-Nov-11	\$ 1,581.12	\$ 12.16
Bi-Week 10	30-Nov-11	\$ 1,756.80	\$ 13.51
Bi-Week 11	14-Dec-11	\$ 1,932.48	\$ 14.87
Bi-Week 12	25-Dec-11	\$ 2,108.16	\$ 16.22
Total		\$ 2,108.16	\$ 105.41

12 Bi-Weekly Pay Periods	\$ 2,213.57
Plus interest at 10%	

Period 12/31/11 - 06/29/13

Time Period	Pay Date	Amount	
Bi-Week 1	11-Jan-12	\$ 153.20	\$ 1.18
Bi-Week 2	25-Jan-12	\$ 306.40	\$ 2.36
Bi-Week 3	8-Feb-12	\$ 459.60	\$ 3.54
Bi-Week 4	22-Feb-12	\$ 612.80	\$ 4.71
Bi-Week 5	7-Mar-12	\$ 766.00	\$ 5.89
Bi-Week 7	21-Mar-12	\$ 919.20	\$ 7.07
Bi-Week 8	4-Apr-12	\$ 1,072.40	\$ 8.25
Bi-Week 9	18-Apr-12	\$ 1,225.60	\$ 9.43
Bi-Week 10	2-May-12	\$ 1,378.80	\$ 10.61
Bi-Week 11	16-May-12	\$ 1,532.00	\$ 11.78
Bi-Week 12	30-May-12	\$ 1,685.20	\$ 12.96
Bi-Week 14	13-Jun-12	\$ 1,838.40	\$ 14.14
Bi-Week 15	27-Jun-12	\$ 1,991.60	\$ 15.32
Bi-Week 16	11-Jul-12	\$ 2,144.80	\$ 16.50
Bi-Week 17	25-Jul-12	\$ 2,298.00	\$ 17.68
Bi-Week 18	8-Aug-12	\$ 2,451.20	\$ 18.86

Bi-Week 20	22-Aug-12	\$	2,604.40	\$	20.03
Bi-Week 21	5-Sep-12	\$	2,757.60	\$	21.21
Bi-Week 22	19-Sep-12	\$	2,910.80	\$	22.39
Bi-Week 23	3-Oct-12	\$	3,064.00	\$	23.57
Bi-Week 45	17-Oct-12	\$	5,974.80	\$	45.96
Bi-Week 25	31-Oct-12	\$	3,370.40	\$	25.93
Bi-Week 27	14-Nov-12	\$	3,523.60	\$	27.10
Bi-Week 24	28-Nov-12	\$	3,676.80	\$	28.28
Bi-Week 25	12-Dec-12	\$	3,830.00	\$	29.46
Bi-Week 26	26-Dec-12	\$	3,983.20	\$	30.64
Bi-Week 27	9-Jan-13	\$	4,136.40	\$	31.82
Bi-Week 28	23-Jan-13	\$	4,289.60	\$	33.00
Bi-Week 29	6-Feb-13	\$	4,442.80	\$	34.18
Bi-Week 30	20-Feb-13	\$	4,596.00	\$	35.35
Bi-Week 31	6-Mar-13	\$	4,749.20	\$	36.53
Bi-Week 32	20-Mar-13	\$	4,902.40	\$	37.71
Bi-Week 33	3-Apr-13	\$	5,055.60	\$	38.89
Bi-Week 34	17-Apr-13	\$	5,208.80	\$	40.07
Bi-Week 35	1-May-13	\$	5,362.00	\$	41.25
Bi-Week 36	15-May-13	\$	5,515.20	\$	42.42
Bi-Week 37	29-May-13	\$	5,668.40	\$	43.60
Bi-Week 38	12-Jun-13	\$	5,821.60	\$	44.78
Bi-Week 39	26-Jun-13	\$	5,974.80	\$	45.96
Total		\$	5,974.80	\$	682.33

39 Bi-Weekly Pay Periods	\$	6,657.13
Plus interest at 10%		

Period 06/29/13 - 11/15/14

Time Period	Pay Date	Amount		
Bi-Week 1	10-Jul-13	\$	133.12	\$ 1.02
Bi-Week 2	24-Jul-13	\$	399.36	\$ 3.07
Bi-Week 3	7-Aug-13	\$	266.24	\$ 2.05
Bi-Week 4	21-Aug-13	\$	532.48	\$ 4.10
Bi-Week 5	4-Sep-13	\$	665.60	\$ 5.12
Bi-Week 6	18-Sep-13	\$	798.72	\$ 6.14
Bi-Week 7	2-Oct-13	\$	931.84	\$ 7.17
Bi-Week 8	16-Oct-13	\$	1,064.96	\$ 8.19

Bi-Week 9	30-Oct-13	\$	1,198.08	\$	9.22
Bi-Week 10	13-Nov-13	\$	1,331.20	\$	10.24
Bi-Week 11	27-Nov-13	\$	1,464.32	\$	11.26
Bi-Week 12	11-Dec-13	\$	1,838.40	\$	14.14
Bi-Week 13	25-Dec-13	\$	1,991.60	\$	15.32
Bi-Week 14	1-Jan-14	\$	2,144.80	\$	16.50
Bi-Week 15	22-Jan-14	\$	1,996.80	\$	15.36
Bi-Week 16	5-Feb-14	\$	2,129.92	\$	16.38
Bi-Week 17	19-Feb-14	\$	2,263.04	\$	17.41
Bi-Week 18	5-Mar-14	\$	2,396.16	\$	18.43
Bi-Week 19	19-Mar-14	\$	2,529.28	\$	19.46
Bi-Week 20	2-Apr-14	\$	2,662.40	\$	20.48
Bi-Week 21	16-Apr-14	\$	2,795.52	\$	21.50
Bi-Week 22	30-Apr-16	\$	2,928.64	\$	22.53
Bi-Week 23	14-May-14	\$	3,061.76	\$	23.55
Bi-Week 24	28-May-14	\$	3,194.88	\$	24.58
Bi-Week 25	11-Jun-14	\$	3,328.00	\$	25.60
Bi-Week 26	25-Jun-14	\$	3,461.12	\$	26.62
Bi-Week 27	9-Jul-14	\$	3,594.24	\$	27.65
Bi-Week 28	23-Jul-14	\$	3,727.36	\$	28.67
Bi-Week 29	6-Aug-14	\$	3,860.48	\$	29.70
Bi-Week 30	20-Aug-14	\$	3,993.60	\$	30.72
Bi-Week 31	3-Sep-14	\$	4,126.72	\$	31.74
Bi-Week 32	17-Sep-14	\$	4,259.84	\$	32.77
Bi-Week 33	1-Oct-14	\$	4,392.96	\$	33.79
Bi-Week 34	15-Oct-14	\$	4,526.08	\$	34.82
Bi-Week 35	29-Oct-14	\$	4,659.20	\$	35.84
Bi-Week 36	12-Nov-14	\$	4,792.32	\$	36.86
Total		\$	4,792.32	\$	688.01

36 Bi-Weekly Pay Periods	\$	5,480.33
Plus interest at 10%		

Period 11/15/14 - 01/09/16

Time Period	Pay Date	Amount		
Bi-Week 1	26-Nov-14	\$	139.68	\$ 1.07
Bi-Week 2	10-Dec-14	\$	279.36	\$ 2.15

Bi-Week 3	24-Dec-14	\$	419.04	\$	3.22
Bi-Week 4	7-Jan-15	\$	558.72	\$	4.30
Bi-Week 5	21-Jan-15	\$	698.40	\$	5.37
Bi-Week 6	4-Feb-15	\$	838.08	\$	6.45
Bi-Week 7	18-Feb-15	\$	977.76	\$	7.52
Bi-Week 8	4-Mar-15	\$	1,117.44	\$	8.60
Bi-Week 9	18-Mar-15	\$	1,257.12	\$	9.67
Bi-Week 10	1-Apr-15	\$	1,396.80	\$	10.74
Bi-Week 11	15-Apr-15	\$	1,536.48	\$	11.82
Bi-Week 12	29-Apr-15	\$	1,676.16	\$	12.89
Bi-Week 13	13-May-15	\$	1,815.84	\$	13.97
Bi-Week 14	27-May-15	\$	1,955.52	\$	15.04
Bi-Week 15	10-Jun-15	\$	2,095.20	\$	16.12
Bi-Week 16	24-Jun-15	\$	2,234.88	\$	17.19
Bi-Week 17	8-Jul-15	\$	2,374.56	\$	18.27
Bi-Week 18	22-Jul-15	\$	2,514.24	\$	19.34
Bi-Week 19	5-Aug-15	\$	2,653.92	\$	20.41
Bi-Week 20	19-Aug-15	\$	2,793.60	\$	21.49
Bi-Week 21	2-Sep-15	\$	5,447.52	\$	41.90
Bi-Week 22	16-Sep-15	\$	3,072.96	\$	23.64
Bi-Week 23	30-Sep-15	\$	3,212.64	\$	24.71
Bi-Week 24	14-Oct-15	\$	3,352.32	\$	25.79
Bi-Week 25	28-Oct-15	\$	3,492.00	\$	26.86
Bi-Week 26	11-Nov-15	\$	3,631.68	\$	27.94
Bi-Week 27	25-Nov-15	\$	3,771.36	\$	29.01
Bi-Week 28	9-Dec-15	\$	3,911.04	\$	30.08
Bi-Week 29	23-Dec-15	\$	4,050.72	\$	31.16
Bi-Week 30	6-Jan-16	\$	4,190.40	\$	32.23
Total		\$	4,190.40	\$	518.96

30 Bi-Weekly Pay Periods	\$	4,709.36
Plus interest at 10%		

Period 01/09/16 - 04/16/16

Time Period	Pay Date	Amount		
Bi-Week 1	20-Jan-16	\$	139.68	\$ 1.07
Bi-Week 2	3-Feb-16	\$	279.36	\$ 2.15

Bi-Week 3	17-Feb-16	\$	419.04	\$	3.22
Bi-Week 4	2-Mar-16	\$	558.72	\$	4.30
Bi-Week 5	16-Mar-16	\$	698.40	\$	5.37
Bi-Week 6	30-Mar-16	\$	838.08	\$	6.45
Bi-Week 7	13-Apr-16	\$	977.76	\$	7.52
Total		\$	977.76	\$	30.08
7 Bi-Weekly Pay Periods		\$	1,007.84		
Plus interest at 10%					

Period 04/16/16 - 01/07/17

Time Period	Date	Amount			
Bi-Week 1	27-Apr-16	\$	37.76	\$ 0.29	
Bi-Week 2	11-May-16	\$	75.52	\$ 0.58	
Bi-Week 3	25-May-16	\$	113.28	\$ 0.87	
Bi-Week 4	8-Jun-16	\$	151.04	\$ 1.16	
Bi-Week 5	22-Jun-16	\$	188.80	\$ 1.45	
Bi-Week 6	6-Jul-16	\$	226.56	\$ 1.74	
Bi-Week 7	20-Jul-16	\$	264.32	\$ 2.03	
Bi-Week 8	3-Aug-16	\$	302.08	\$ 2.32	
Bi-Week 9	17-Aug-16	\$	339.84	\$ 2.61	
Bi-Week 10	31-Aug-16	\$	377.60	\$ 2.90	
Bi-Week 11	14-Sep-16	\$	415.36	\$ 3.20	
Bi-Week 12	28-Sep-16	\$	453.12	\$ 3.49	
Bi-Week 13	12-Oct-16	\$	490.88	\$ 3.78	
Bi-Week 14	26-Oct-16	\$	528.64	\$ 4.07	
Bi-Week 15	9-Nov-16	\$	566.40	\$ 4.36	
Bi-Week 16	23-Nov-16	\$	604.16	\$ 4.65	
Bi-Week 17	7-Dec-16	\$	641.92	\$ 4.94	
Bi-Week 18	21-Dec-16	\$	679.68	\$ 5.23	
Bi-Week 19	4-Jan-17	\$	717.44	\$ 5.52	
Bi-Week 20	18-Jan-17	\$	755.20	\$ 5.81	
Total		\$	755.20	\$ 61.00	
20 Bi-weekly Pay Periods		\$	816.20		
Plus interest at 10%					

Period 01/07/17 - 06//09/17					
Time Period	Date	Amount			
Bi-Week 1	1-Feb-17	\$	37.76	\$	0.29
Bi-Week 2	15-Feb-17	\$	75.52	\$	0.58
Bi-Week 3	1-Mar-17	\$	113.28	\$	0.87
Bi-Week 4	15-Mar-17	\$	151.04	\$	1.16
Bi-Week 5	29-Mar-17	\$	188.80	\$	1.45
Bi-Week 6	12-Apr-17	\$	226.56	\$	1.74
Bi-Week 7	26-Apr-17	\$	264.32	\$	2.03
Bi-Week 8	10-May-17	\$	302.08	\$	2.32
Bi-Week 9	24-May-17	\$	339.84	\$	2.61
Bi-Week 10	7-Jun-17	\$	377.60	\$	2.90
Bi-Week 11	6/21/2017	\$	415.36	\$	3.20
Total		\$	415.36	\$	19.17
11 Bi-Weekly Pay Periods		\$	434.53		
Plus interest at 10%					