

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS
IN THE MATTER OF CLASSIFICATION APPEAL NO. 1-2017:

COLEEN S. O'ROURKE, PROGRAM)	Case No. 641-2017
SPECIALIST, WILDLIFE DIVISION,)	
MONTANA FISH, WILDLIFE AND)	
PARKS,)	
)	
Appellant,)	
vs.)	ORDER NUNC PRO TUNC
)	
STATE PERSONNEL DIVISION,)	
DEPARTMENT OF ADMINISTRATION,)	
MONTANA FISH, WILDLIFE AND PARKS,)	
)	
Respondent.)	

* * * * *

This order is being issued to correct a mathematical error by the hearing officer that affects the amount of back wages and interest owed to Coleen S. O'Rourke. The following corrections are hereby incorporated into the Findings of Fact; Conclusions of Law; and Recommended Order issued on June 16, 2017.¹

IV. FINDINGS OF FACT

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 \$1.615.

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 \$5,038.80 between the pay of Heagney and O'Rourke during this period.

¹ O'Rourke prepared a spreadsheet which clearly shows where the hearing officer's error was made. Therefore, O'Rourke's spreadsheet shall be incorporated into the recommended order in this matter as Addendum B.

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 \$18,278.00.

VI. CONCLUSIONS OF LAW

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 \$18,278.00 plus prejudgment interest on that amount of \$6,124.68 through June 9, 2017. See Mont. Code. Ann. § 27-1-211. See Addendum B for calculations.

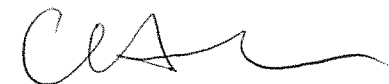
VII. RECOMMENDED ORDER

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 \$18,278.00 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 \$6,124.68 for a total of \$24,402.68. 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 26th day of July, 2017.

BOARD OF PERSONNEL APPEALS

By:



CAROLINE A. HOLIEN
Hearing Officer

Simple Interest Per year (Interest = Principal x rate x time)

time period	heagney	orourke	hourly difference	Principal Pay period Amount	10% interest	# years	pay period interest calculation	Principal Plus Interest
27-Jul-11	21.586	19.390	2.196	\$175.68	10%	5.87	\$103.07	\$278.75
10-Aug-11	21.586	19.390	2.196	\$175.68	10%	5.83	\$102.43	\$278.11
24-Aug-11	21.586	19.390	2.196	\$175.68	10%	5.79	\$101.75	\$277.43
7-Sep-11	21.586	19.390	2.196	\$175.68	10%	5.76	\$101.11	\$276.79
21-Sep-11	21.586	19.390	2.196	\$175.68	10%	5.72	\$100.43	\$276.11
5-Oct-11	21.586	19.390	2.196	\$175.68	10%	5.68	\$99.75	\$275.43
19-Oct-11	21.586	19.390	2.196	\$175.68	10%	5.64	\$99.06	\$274.74
2-Nov-11	21.586	19.390	2.196	\$175.68	10%	5.60	\$98.43	\$274.11
16-Nov-11	21.586	19.390	2.196	\$175.68	10%	5.56	\$97.75	\$273.43
30-Nov-11	21.586	19.390	2.196	\$175.68	10%	5.53	\$97.06	\$272.74
14-Dec-11	21.586	19.390	2.196	\$175.68	10%	5.49	\$96.38	\$272.06
25-Dec-11	21.586	19.390	2.196	\$175.68	10%	5.46	\$95.84	\$271.52
11-Jan-12	21.586	19.971	1.615	\$129.20	10%	5.41	\$69.91	\$199.11
25-Jan-12	21.586	19.971	1.615	\$129.20	10%	5.37	\$69.41	\$198.61
8-Feb-12	21.586	19.971	1.615	\$129.20	10%	5.34	\$68.94	\$198.14
22-Feb-12	21.586	19.971	1.615	\$129.20	10%	5.30	\$68.44	\$197.64
7-Mar-12	21.586	19.971	1.615	\$129.20	10%	5.26	\$67.90	\$197.10
21-Mar-12	21.586	19.971	1.615	\$129.20	10%	5.22	\$67.40	\$196.60
4-Apr-12	21.586	19.971	1.615	\$129.20	10%	5.18	\$66.93	\$196.13
18-Apr-12	21.586	19.971	1.615	\$129.20	10%	5.14	\$66.43	\$195.63
2-May-12	21.586	19.971	1.615	\$129.20	10%	5.10	\$65.93	\$195.13
16-May-12	21.586	19.971	1.615	\$129.20	10%	5.06	\$65.43	\$194.63
30-May-12	21.586	19.971	1.615	\$129.20	10%	5.03	\$64.92	\$194.12
13-Jun-12	21.586	19.971	1.615	\$129.20	10%	4.99	\$64.46	\$193.66
27-Jun-12	21.586	19.971	1.615	\$129.20	10%	4.95	\$63.95	\$193.15
11-Jul-12	21.586	19.971	1.615	\$129.20	10%	4.91	\$63.45	\$192.65
25-Jul-12	21.586	19.971	1.615	\$129.20	10%	4.87	\$62.95	\$192.15
8-Aug-12	21.586	19.971	1.615	\$129.20	10%	4.84	\$62.48	\$191.68
22-Aug-12	21.586	19.971	1.615	\$129.20	10%	4.80	\$61.98	\$191.18
5-Sep-12	21.586	19.971	1.615	\$129.20	10%	4.76	\$61.51	\$190.71
19-Sep-12	21.586	19.971	1.615	\$129.20	10%	4.72	\$61.01	\$190.21
3-Oct-12	21.586	19.971	1.615	\$129.20	10%	4.68	\$60.51	\$189.71
17-Oct-12	21.586	19.971	1.615	\$129.20	10%	4.64	\$60.01	\$189.21
31-Oct-12	21.586	19.971	1.615	\$129.20	10%	4.61	\$59.54	\$188.74
14-Nov-12	21.586	19.971	1.615	\$129.20	10%	4.57	\$59.04	\$188.24

9-Jun-17 end date

Pay Difference	\$2,108.16	Finding 33 Pay Difference	\$2,108.16
Interest subtotal	\$1,193.06	Interest subtotal	\$1,193.06
2011 Total	\$3,301.22	Finding 33 Total	\$3,301.22

Simple Interest Per year (Interest = Principal x rate x time)

time period	heagney	orourke	hourly difference	Principal Pay period Amount	10% interest	# years	pay period interest calculation	Principal Plus Interest	9-Jun-17 end date
28-Nov-12	21.586	19.971	1.615	\$129.20	10%	4.53	\$58.53	\$187.73	Pay Difference \$3,359.20
12-Dec-12	21.586	19.971	1.615	\$129.20	10%	4.49	\$58.03	\$187.23	Interest subtotal \$1,656.63
26-Dec-12	21.586	19.971	1.615	\$129.20	10%	4.45	\$57.53	\$186.73	2012 Total \$5,015.83
9-Jan-13	21.586	19.971	1.615	\$129.20	10%	4.42	\$57.06	\$186.26	
23-Jan-13	21.586	19.971	1.615	\$129.20	10%	4.38	\$56.56	\$185.76	
6-Feb-13	21.586	19.971	1.615	\$129.20	10%	4.34	\$56.09	\$185.29	
20-Feb-13	21.586	19.971	1.615	\$129.20	10%	4.30	\$55.59	\$184.79	
6-Mar-13	21.586	19.971	1.615	\$129.20	10%	4.26	\$55.02	\$184.22	
20-Mar-13	21.586	19.971	1.615	\$129.20	10%	4.22	\$54.52	\$183.72	
3-Apr-13	21.586	19.971	1.615	\$129.20	10%	4.18	\$54.05	\$183.25	
17-Apr-13	21.586	19.971	1.615	\$129.20	10%	4.14	\$53.55	\$182.75	
1-May-13	21.586	19.971	1.615	\$129.20	10%	4.11	\$53.04	\$182.24	
15-May-13	21.586	19.971	1.615	\$129.20	10%	4.07	\$52.54	\$181.74	
29-May-13	21.586	19.971	1.615	\$129.20	10%	4.03	\$52.04	\$181.24	
12-Jun-13	21.586	19.971	1.615	\$129.20	10%	3.99	\$51.57	\$180.77	
26-Jun-13	21.586	19.971	1.615	\$129.20	10%	3.95	\$51.07	\$180.27	
10-Jul-13	22.234	20.570	1.664	\$133.12	10%	3.91	\$52.10	\$185.22	
24-Jul-13	22.234	20.570	1.664	\$133.12	10%	3.88	\$51.58	\$184.70	
7-Aug-13	22.234	20.570	1.664	\$133.12	10%	3.84	\$51.10	\$184.22	
21-Aug-13	22.234	20.570	1.664	\$133.12	10%	3.80	\$50.59	\$183.71	
4-Sep-13	22.234	20.570	1.664	\$133.12	10%	3.76	\$50.10	\$183.22	
18-Sep-13	22.234	20.570	1.664	\$133.12	10%	3.73	\$49.59	\$182.71	
2-Oct-13	22.234	20.570	1.664	\$133.12	10%	3.69	\$49.07	\$182.19	
16-Oct-13	22.234	20.570	1.664	\$133.12	10%	3.65	\$48.55	\$181.67	
30-Oct-13	22.234	20.570	1.664	\$133.12	10%	3.61	\$48.03	\$181.15	
13-Nov-13	22.234	20.570	1.664	\$133.12	10%	3.57	\$47.55	\$180.67	
27-Nov-13	22.234	20.570	1.664	\$133.12	10%	3.53	\$47.04	\$180.16	Pay Difference \$3,410.16
11-Dec-13	22.234	20.570	1.664	\$133.12	10%	3.49	\$46.52	\$179.64	Interest subtotal \$1,340.53
25-Dec-13	22.234	20.570	1.664	\$133.12	10%	3.46	\$46.00	\$179.12	2013 Total \$4,750.69
1-Jan-14	22.234	20.570	1.664	\$133.12	10%	3.44	\$45.78	\$178.90	
22-Jan-14	22.234	20.570	1.664	\$133.12	10%	3.38	\$45.00	\$178.12	
5-Feb-14	22.234	20.570	1.664	\$133.12	10%	3.34	\$44.52	\$177.64	
19-Feb-14	22.234	20.570	1.664	\$133.12	10%	3.31	\$44.00	\$177.12	
5-Mar-14	22.234	20.570	1.664	\$133.12	10%	3.26	\$43.41	\$176.53	
19-Mar-14	22.234	20.570	1.664	\$133.12	10%	3.22	\$42.89	\$176.01	

Finding 35 Pay Difference	\$5,038.80
Interest subtotal	\$2,359.34
Finding 35 Total	\$7,398.14

Simple Interest Per year (Interest = Principal x rate x time)

time period	heagney	orourke	hourly difference	Principal Pay period Amount	10% interest	# years	pay period interest calculation	Principal Plus Interest
2-Apr-14	22.234	20.570	1.664	\$133.12	10%	3.19	\$42.41	\$175.53
16-Apr-14	22.234	20.570	1.664	\$133.12	10%	3.15	\$41.90	\$175.02
30-Apr-14	22.234	20.570	1.664	\$133.12	10%	3.11	\$41.38	\$174.50
14-May-14	22.234	20.570	1.664	\$133.12	10%	3.07	\$40.86	\$173.98
28-May-14	22.234	20.570	1.664	\$133.12	10%	3.03	\$40.34	\$173.46
11-Jun-14	22.234	20.570	1.664	\$133.12	10%	2.99	\$39.86	\$172.98
25-Jun-14	22.234	20.570	1.664	\$133.12	10%	2.96	\$39.34	\$172.46
9-Jul-14	22.234	20.570	1.664	\$133.12	10%	2.92	\$38.83	\$171.95
23-Jul-14	22.234	20.570	1.664	\$133.12	10%	2.88	\$38.31	\$171.43
6-Aug-14	22.234	20.570	1.664	\$133.12	10%	2.84	\$37.83	\$170.95
20-Aug-14	22.234	20.570	1.664	\$133.12	10%	2.80	\$37.31	\$170.43
3-Sep-14	22.234	20.570	1.664	\$133.12	10%	2.77	\$36.83	\$169.95
17-Sep-14	22.234	20.570	1.664	\$133.12	10%	2.73	\$36.31	\$169.43
1-Oct-14	22.234	20.570	1.664	\$133.12	10%	2.69	\$35.79	\$168.91
15-Oct-14	22.234	20.570	1.664	\$133.12	10%	2.65	\$35.28	\$168.40
29-Oct-14	22.234	20.570	1.664	\$133.12	10%	2.61	\$34.76	\$167.88
12-Nov-14	22.234	20.570	1.664	\$133.12	10%	2.58	\$34.28	\$167.40
26-Nov-14	23.345	21.599	1.746	\$139.68	10%	2.54	\$35.42	\$175.10
10-Dec-14	23.345	21.599	1.746	\$139.68	10%	2.50	\$34.88	\$174.56
24-Dec-14	23.345	21.599	1.746	\$139.68	10%	2.46	\$34.34	\$174.02
7-Jan-15	23.345	21.599	1.746	\$139.68	10%	2.42	\$33.83	\$173.51
21-Jan-15	23.345	21.599	1.746	\$139.68	10%	2.38	\$33.29	\$172.97
4-Feb-15	23.345	21.599	1.746	\$139.68	10%	2.35	\$32.79	\$172.47
18-Feb-15	23.345	21.599	1.746	\$139.68	10%	2.31	\$32.24	\$171.92
4-Mar-15	23.345	21.599	1.746	\$139.68	10%	2.26	\$31.62	\$171.30
18-Mar-15	23.345	21.599	1.746	\$139.68	10%	2.23	\$31.08	\$170.76
1-Apr-15	23.345	21.599	1.746	\$139.68	10%	2.19	\$30.57	\$170.25
15-Apr-15	23.345	21.599	1.746	\$139.68	10%	2.15	\$30.03	\$169.71
29-Apr-15	23.345	21.599	1.746	\$139.68	10%	2.11	\$29.49	\$169.17
13-May-15	23.345	21.599	1.746	\$139.68	10%	2.07	\$28.94	\$168.62
27-May-15	23.345	21.599	1.746	\$139.68	10%	2.03	\$28.40	\$168.08
10-Jun-15	23.345	21.599	1.746	\$139.68	10%	2.00	\$27.90	\$167.58
24-Jun-15	23.345	21.599	1.746	\$139.68	10%	1.96	\$27.35	\$167.03
8-Jul-15	23.345	21.599	1.746	\$139.68	10%	1.92	\$26.81	\$166.49
22-Jul-15	23.345	21.599	1.746	\$139.68	10%	1.88	\$26.27	\$165.95
5-Aug-15	23.345	21.599	1.746	\$139.68	10%	1.84	\$25.76	\$165.44

9-Jun-17 end date

Finding 37 Pay Difference	\$4,792.32
Interest subtotal	\$1,555.06
Finding 37 Total	\$6,347.38

Pay Difference	\$3,480.80
Interest subtotal	\$1,021.88
2014 Total	\$4,502.68

Simple Interest Per year (Interest = Principal x rate x time)

time period	heagney	orourke	hourly difference	Principal Pay period Amount	10% interest	# years	pay period interest calculation	Principal Plus Interest
19-Aug-15	23.345	21.599	1.746	\$139.68	10%	1.81	\$25.22	\$164.90
2-Sep-15	23.345	21.599	1.746	\$139.68	10%	1.77	\$24.72	\$164.40
16-Sep-15	23.345	21.599	1.746	\$139.68	10%	1.73	\$24.17	\$163.85
30-Sep-15	23.345	21.599	1.746	\$139.68	10%	1.69	\$23.63	\$163.31
14-Oct-15	23.345	21.599	1.746	\$139.68	10%	1.65	\$23.09	\$162.77
28-Oct-15	23.345	21.599	1.746	\$139.68	10%	1.61	\$22.54	\$162.22
11-Nov-15	23.345	21.599	1.746	\$139.68	10%	1.58	\$22.04	\$161.72
25-Nov-15	23.345	21.599	1.746	\$139.68	10%	1.54	\$21.50	\$161.18
9-Dec-15	23.345	21.599	1.746	\$139.68	10%	1.50	\$20.95	\$160.63
23-Dec-15	23.345	21.599	1.746	\$139.68	10%	1.46	\$20.41	\$160.09
6-Jan-16	23.845	22.099	1.746	\$139.68	10%	1.43	\$19.90	\$159.58
20-Jan-16	23.845	22.099	1.746	\$139.68	10%	1.39	\$19.36	\$159.04
3-Feb-16	23.845	22.099	1.746	\$139.68	10%	1.35	\$18.86	\$158.54
17-Feb-16	23.845	22.099	1.746	\$139.68	10%	1.31	\$18.31	\$157.99
2-Mar-16	23.845	22.099	1.746	\$139.68	10%	1.27	\$17.73	\$157.41
16-Mar-16	23.845	22.099	1.746	\$139.68	10%	1.23	\$17.19	\$156.87
30-Mar-16	23.845	22.099	1.746	\$139.68	10%	1.19	\$16.65	\$156.33
13-Apr-16	23.845	22.099	1.746	\$139.68	10%	1.16	\$16.14	\$155.82
27-Apr-16	23.845	23.373	0.472	\$37.76	10%	1.12	\$4.22	\$41.98
11-May-16	23.845	23.373	0.472	\$37.76	10%	1.08	\$4.07	\$41.83
25-May-16	23.845	23.373	0.472	\$37.76	10%	1.04	\$3.92	\$41.68
8-Jun-16	23.845	23.373	0.472	\$37.76	10%	1.00	\$3.79	\$41.55
22-Jun-16	23.845	23.373	0.472	\$37.76	10%	0.96	\$3.64	\$41.40
6-Jul-16	23.845	23.373	0.472	\$37.76	10%	0.93	\$3.49	\$41.25
20-Jul-16	23.845	23.373	0.472	\$37.76	10%	0.89	\$3.35	\$41.11
3-Aug-16	23.845	23.373	0.472	\$37.76	10%	0.85	\$3.21	\$40.97
17-Aug-16	23.845	23.373	0.472	\$37.76	10%	0.81	\$3.06	\$40.82
31-Aug-16	23.845	23.373	0.472	\$37.76	10%	0.78	\$2.93	\$40.69
14-Sep-16	23.845	23.373	0.472	\$37.76	10%	0.74	\$2.78	\$40.54
28-Sep-16	23.845	23.373	0.472	\$37.76	10%	0.70	\$2.63	\$40.39
12-Oct-16	23.845	23.373	0.472	\$37.76	10%	0.66	\$2.49	\$40.25
26-Oct-16	23.845	23.373	0.472	\$37.76	10%	0.62	\$2.34	\$40.10

9-Jun-17 end date

Pay Difference	\$3,631.68		
Interest subtotal	\$704.65	Finding 39 Pay Difference	\$4,190.40
2015 Total	\$4,336.33	Interest subtotal	\$829.19
		Finding 39 Total	\$5,019.59

Finding 41 Pay Difference	\$977.76
Interest subtotal	\$124.24
Finding 41 Total	\$1,102.00

Simple Interest Per year (Interest = Principal x rate x time)								
time period	heagney	orourke	hourly difference	Principal Pay period Amount	10% interest	# years	pay period interest calculation	Principal Plus Interest
9-Nov-16	23.845	23.373	0.472	\$37.76	10%	0.58	\$2.20	\$39.96
23-Nov-16	23.845	23.373	0.472	\$37.76	10%	0.54	\$2.06	\$39.82
7-Dec-16	23.845	23.373	0.472	\$37.76	10%	0.51	\$1.91	\$39.67
21-Dec-16	23.845	23.373	0.472	\$37.76	10%	0.47	\$1.76	\$39.52
4-Jan-17	24.345	23.873	0.472	\$37.76	10%	0.43	\$1.63	\$39.39
18-Jan-17	24.345	23.873	0.472	\$37.76	10%	0.39	\$1.48	\$39.24
1-Feb-17	24.345	23.873	0.472	\$37.76	10%	0.36	\$1.34	\$39.10
15-Feb-17	24.345	23.873	0.472	\$37.76	10%	0.32	\$1.20	\$38.96
1-Mar-17	24.345	23.873	0.472	\$37.76	10%	0.27	\$1.03	\$38.79
15-Mar-17	24.345	23.873	0.472	\$37.76	10%	0.23	\$0.88	\$38.64
29-Mar-17	24.345	23.873	0.472	\$37.76	10%	0.19	\$0.73	\$38.49
12-Apr-17	24.345	23.873	0.472	\$37.76	10%	0.16	\$0.60	\$38.36
26-Apr-17	24.345	23.873	0.472	\$37.76	10%	0.12	\$0.45	\$38.21
10-May-17	24.345	23.873	0.472	\$37.76	10%	0.08	\$0.30	\$38.06
24-May-17	24.345	23.873	0.472	\$37.76	10%	0.04	\$0.16	\$37.92
7-Jun-17	24.345	23.873	0.472	\$37.76	10%	0.01	\$0.02	\$37.78
21-Jun-17	24.345	23.873	0.472	\$37.76	10%	0.03	\$0.13	\$37.89
5-Jul-17			0.000	\$0.00	10%			
19-Jul-17			0.000	\$0.00	10%			

		9-Jun-17 end date	
Pay Difference	\$1,797.12		
Interest subtotal	\$197.98		
2016 Total	\$1,995.10	Finding 43 Pay Difference	\$755.20
		Interest subtotal	\$56.94
		Finding 43 Total	\$812.14
Pay Difference	\$490.88	Finding 45 Pay Difference	\$415.36
Interest subtotal	\$9.94	Interest subtotal	\$6.84
2017 Total	\$500.82	Finding 45 Total	\$422.20

	heagney	orourke	# PP (80hrs)		difference
July 1, 2011	21.586	19.390	960	\$2,108.16	2.196
December 31, 2011	21.586	19.971	3120	\$5,038.80	1.615
June 29, 2013	22.234	20.570	2880	\$4,792.32	1.664
November 15, 2014	23.345	21.599	2400	\$4,190.40	1.746
January 9, 2016	23.845	22.099	560	\$977.76	1.746
April 16, 2016	23.845	23.373	1600	\$755.20	0.472
January 2, 2017	24.345	23.873	880	\$415.36	0.472
				\$18,278.00	