



California Public Employees' Retirement System
Customer Account Services Division
Retirement Account Services
P.O. Box 942709
Sacramento, CA 94229-2709
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888 CalPERS (or 888-225-7377) phone • (916) 795-4166 fax
www.calpers.ca.gov

February 20, 2013

Joseph S. Joswiak, Chief Financial Officer
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Dear Mr. Joswiak:

The California Public Employees' Retirement System (CalPERS) has recently completed a review of compensation reported by the Chino Basin Watermaster (Agency) on Mr. Alvarez's behalf and has found compensation that does not comply with the California Public Employees' Retirement Law (PERL).

The compensation reported that is not pursuant to a publicly available pay schedule for Mr. Alvarez's position of Chief Executive Officer does not comply with the PERL. The Agency reported an annual salary of \$228,000.00 which calculates to a monthly amount of \$19,000.00. The \$19,000.00 monthly amount was reported to CalPERS from May 3, 2011 through May 4, 2012.

The reported payrate does not meet the definition of "Payrate" as provided in Government Code (GC) §20636(b) (1).

GC §20636(b) (1) defines "Payrate" in relevant part as:

"(b) (1) "Payrate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. "Payrate," for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e)."



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"Payrate" must also meet specific provisions in the California Code of Regulations (CCR) §570.5.

CCR §570.5 states:

(a) For purposes of determining the amount of "compensation earnable" pursuant to Government Code Sections 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

- (1) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;**
- (2) Identifies the position title for every employee position;**
- (3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;**
- (4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;**
- (5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;**
- (6) Indicates an effective date and date of any revisions;**
- (7) Is retained by the employer and available for public inspection for not less than five years; and**
- (8) Does not reference another document in lieu of disclosing the payrate.**

(b) Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:

- (1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;**
- (2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;**
- (3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;**

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(4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms to the requirements of subdivision (a) of a former CalPERS employer.

CalPERS has determined that the Agency reported a payrate for Mr. Alvarez that is not pursuant to a publicly available pay schedule that complies with all of the criteria set forth in CCR §570.5. In reviewing Mr. Alvarez's reported compensation the Agency provided CalPERS Mr. Alvarez's Employment Agreement effective May 3, 2011.

This Agreement indicates a position title of Chief Executive Officer. The Agency provided a document titled CHINO BASIN WATERMASTER SALARY MATRIX 2012/2013. Mr. Alvarez's position of Chief Executive Officer is not located on this document nor does any classification contained therein provide for a salary of \$228,000.00. The Agreement is signed by Kenneth Willis, Chairman of the Watermaster Board; however, as indicated by March 31, 2011 Agency Board Minutes the Agreement was approved in confidential session at a closed session special meeting.

CalPERS' fiduciary responsibility to all of its participants and business partners dictates that CalPERS use only the amount approved by a publicly available pay schedule that complies with CCR 570.5 to calculate final compensation.

The City of Downey provided CalPERS with a pay schedule effective October 22, 2007 through April 30, 2011, that does show Mr. Alvarez's position of Deputy City Manager Special Projects and does comply with CCR 570.5.

The City also provided for Employer Paid Member Contributions (EPMC) reported as special compensation pursuant to CCR §566.1, which states in pertinent part:

(a) A contracting agency or school employer may report the value of all or part of the normal contributions required to be paid by a member, for an individual or "group or class" of employees. A contracting agency may also, by contract amendment(s), convert Employer-Paid Member Contributions (EPMC) to compensation earnable for a group or class of employees, only during the period of final compensation. A school employer may also, by contract amendment(s), convert EPMC to compensation earnable if all districts under the County Office of Education pass Resolutions for same.

Either provision: (1) reporting the value of EPMC as compensation; or (2) converting EPMC to compensation earnable, can only be

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provided to an individual if the most closely related group also has the same EPMC provision.

The City of Downey reported the value of EPMC each bi-weekly pay period as special compensation to be used in Mr. Alvarez's retirement benefit calculation.

Therefore, CalPERS will use the monthly rate and special compensation reported by the City of Downey to calculate Mr. Alvarez's retirement benefits.

CalPERS requests the Agency reverse all earnings and contributions reported outside of the Agency's pay schedule.

You have the right to appeal the decision referred to in this letter if you desire to do so, by filing a written appeal with CalPERS, in Sacramento, within thirty days of the date of the mailing of this letter, in accordance with Government Code section 20134 and sections 555-555.4, Title 2, California Code of Regulations. An appeal, if filed, should set forth the factual basis and legal authorities for such appeal. A copy of the applicable statute and Code of Regulations sections are included for your reference. If you file an appeal, the Legal Office will contact you and handle all requests for information.

Your appeal will be set for hearing with the Office of Administrative Hearings (OAH). The assigned CalPERS attorney will contact you to coordinate a hearing date. Depending on the current caseload of the OAH and the assigned attorney, the hearing date may be set several months after the case is opened. The OAH will typically offer its earliest available hearing date that meets the schedule of both parties.

If you choose not to be represented by an attorney, the assigned CalPERS lawyer will be in direct communication with you during the appeal process. If you do hire an attorney, please let CalPERS know immediately so our attorney can work directly with him or her.

Enclosed is an informational brochure on the General Procedures for Administrative Hearings.

After the hearing is completed, the Administrative Law Judge will issue a Proposed Decision in approximately 30 days. The CalPERS Board of Administration will then make a determination whether to accept or reject that Proposed Decision. If the Board rejects the Proposed Decision, they will hold a Full Board Hearing in order to review the entire hearing record again before finalizing their decision.

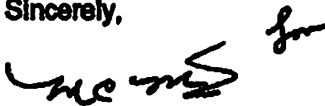
Your appeal should be mailed to the following address:

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**KAREN DEFRANK, Division Chief
Customer Account Services Division
P.O. Box 942709
Sacramento, CA 94229-2709**

**If you have any questions or concerns regarding this matter, please contact
Nicole Homing at 888 CalPERS (or 888-225-7377).**

Sincerely,



**TOMI JIMENEZ, Manager
Compensation and Employer Review
Customer Account Services Division**

Enclosure

**cc: KAREN DEFRANK, Division Chief
Desi Alvarez**

§555. Action of Executive Officer.

The Executive Officer is hereby authorized to act: on any application for refund of contributions, crediting of service, correction of records, retirement for disability or service, and death benefits and allowances; and to fix and authorize the payment of any refund, allowance or benefit to which such applicant may be found to be entitled; to cause medical examination of retired persons; and to reinstate such persons from retirement upon his determination that disability does not exist. The Executive Officer may refer the question of an applicant's entitlement to any refund, allowance or benefit or of his reinstatement from retirement to a hearing officer for hearing.

The Executive Officer is hereby authorized and empowered to delegate to his subordinates authority to take any such action on his behalf.

§555.1. Right of Appeal.

Any applicant dissatisfied with the action of the Executive Officer on his application, other than his referral of the matter for hearing, may appeal such action to the Board by filing a written notice of such appeal at the offices of the Board within thirty days of the date of the mailing to him by the Executive Officer, at his most recent address of record, of notice of the action and right of appeal. An appeal shall contain a statement of the facts and the law forming the basis for appeal. Upon a satisfactory showing of good cause, the Executive Officer may grant additional time not to exceed 30 days, within which to file such appeal.

§555.2. Statement of Issues.

Any applicant filing an appeal shall be entitled to a hearing, and upon the filing of an appeal in accordance with these rules, or upon the Executive Officer's referral of any question for hearing, the Executive Officer shall execute a statement of issues. Such action of the Executive Officer shall not preclude the Board from recalling the proceedings for its review or hearing.

§555.3. Accusation.

Any member whose retirement for disability has been requested by his employer shall be entitled to a hearing. The Executive Officer, upon determination that a member shall be retired for disability on such application, shall file an accusation and serve a copy thereof on the member and his employer.

§555.4. Hearings.

All hearings shall be conducted in accordance with the provisions of Chapter 5, Part 1, Division 3, Title 2 of the Government Code. Each case shall be heard by the hearing officer alone. All proposed decisions of hearing officers shall be referred to the Board. The Executive Officer is hereby authorized and empowered to take, in the name and on behalf of the Board, any action which the Board is authorized or directed by law to take with respect to procedural and jurisdictional matters in connection with any case in which a statement of issues or accusation has been filed.