

Office of Audit Services



Public Agency Review

Merced Irrigation District

**Employer Code: 1607
CalPERS ID: 6334099697
Job Number: P13-060**

June 2014



California Public Employees' Retirement System
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June 30, 2014

Employer Code: 1607
CalPERS ID: 6334099697
Job Number: P13-060

Merced Irrigation District
Jennifer Carter, Director of Administrative Services
744 W. 20th Street
Merced, CA 95340

Dear Ms. Carter:

Enclosed is our final report on the results of the public agency review completed for the Merced Irrigation District (Agency). Your written response, included as an appendix to the report indicates agreement with the issues noted in the report except for Finding 2C and Finding 5. We appreciate the information you provided in your response and the additional information you provided related to Finding 2C. After consideration of this information we have added clarifying language to the condition of Finding 2C, and our recommendation to finding 5 remains as stated in the report. In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your Agency and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Margaret Junker
MARGARET JUNKER, Chief
Office of Audit Services

Enclosure

cc: Board of Directors, Merced Irrigation District
John Sweigard, General Manager, Merced Irrigation District
Risk and Audit Committee Members, CalPERS
Gina M. Ratto, Interim General Counsel, CalPERS
Renee Ostrander, Assistant Division Chief, CASD, CalPERS
Anthony Suine, Chief, BNSD, CalPERS

MERCED IRRIGATION DISTRICT

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MERCED IRRIGATION DISTRICT

RESULTS IN BRIEF

The primary objective of our review was to determine whether the Merced Irrigation District (Agency) complied with applicable sections of the California Government Code, California Code of Regulations (CCR) and its contract with the California Public Employees' Retirement System (CalPERS).

The Office of Audit Services (OAS) noted the following findings during the review. Details are noted in the Results section beginning on page two of this report.

- Pay schedule did not meet all of the requirements of CCR section 570.5.
- Special compensation was not reported as required by CCR 571.
- Regular earnings were not correctly reported.
- Payroll information for Distribution System Operators was not reported correctly.
- Eligible employees were not enrolled into membership.
- Unused sick leave days were not correctly reported.

OAS recommends the Agency comply with applicable sections of the California Government Code, CCR and its contract with CalPERS. We also recommend the Agency work with the appropriate CalPERS divisions to resolve issues identified in this report.

The Agency's response is included as an Appendix

SCOPE

The Agency contracted with CalPERS effective July 1, 1993 to provide retirement benefits for local miscellaneous employees. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and by the Public Employees' Retirement Law (PERL). The Agency also agreed to make its employees members of CalPERS subject to all provisions of the PERL.

As part of the Board approved plan for fiscal year 2013/2014, the OAS reviewed the Agency's payroll reporting and member enrollment processes as these processes relate to the Agency's retirement contract with CalPERS. The review period was limited to the examination of sampled employees, records, and pay periods from July 1, 2010 through June 30, 2013. The on-site fieldwork for this review was conducted from October 15, 2013 through October 18, 2013. The review objectives and a summary of the procedures performed are listed in Appendix A.

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OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The Agency's pay schedule did not meet all the requirements of the CCR.

Condition:

The Agency's pay schedule did not meet the requirements of CCR section 570.5. Specifically, the pay schedule covering the pay period ending June 29, 2013 was not approved by the Agency's governing body. Also, the pay schedule did not include all positions and payrates of Agency employees. For example, a part-time Park Aid and Seasonal Apprentice Distribution Operator positions and payrates were excluded from the pay schedule.

Only compensation earnable as defined under Government Code section 20636 and corresponding regulations can be reported to CalPERS and considered in calculating retirement benefits. For the purposes of determining the amount of compensation earnable, a member's payrate is limited to the amount identified on a publicly available pay schedule. According to CCR section 570.5, a pay schedule, among other things, must:

- Be duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws.
- Identify the position title for every employee position.
- Show the payrate as a single amount or multiple amounts within a range for each identified position.
- Indicate the time base such as hourly, daily, bi-weekly, monthly, bi-monthly, or annually.
- Be 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.
- Indicate an effective date and date of any revisions.
- Be retained by the employer and available for public inspection for not less than five years.
- Not reference another document in lieu of disclosing the payrate.

Recommendation:

The Agency should ensure its pay schedules meet all of the CCR requirements.

The Agency should work with CalPERS Customer Account Services Division (CASD) to make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

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Criteria:

Government Codes: § 20160, § 20636(a), § 20636(b)(1), § 20636(d)
CCR: § 570.5

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2: The Agency did not report special compensation as required by the CCR.

Condition:

- A. The Agency incorrectly reported special compensation of Rubber Glove Pay for an employee during the pay periods ending June 30, 2012 and June 29, 2013. Pursuant to CCR section 571, Rubber Glove Pay is not reportable because it is not exclusively listed and defined as special compensation and the Agency did not include a description of the pay in a written labor policy. The Agency stated it believed Rubber Glove Pay met the definition under CCR section 571 (a)(2), Government Agency Required Licenses.
- B. The Agency incorrectly reported Sunday Pay as special compensation for an employee during the pay period ending February 25, 2012. Sunday Pay represents compensation paid to hydro department employees for working on Sunday. Sunday Pay is not reportable because it is not exclusively listed and defined as special compensation and the Agency did not include it in a written labor policy.
- C. The Agency incorrectly reported Performance Incentives as special compensation. OAS found the Performance Incentives were a one-time bonus and not historically consistent. Also, while the Agency had a program and system in place to plan and identify performance goals and objectives, the plan allowed for several employees to receive a bonus for less than superior performance, and bonus amounts were paid at the discretion of the General Manager and Department Heads. As a result, the bonus did not meet the definition in CCR section 571 (a) and the criteria listed in the CCR section 571 (b).
- D. The Agency did not report special compensation of Holiday Pay earned by two employees for working on the Fourth of July during the pay period ending July 16, 2011. The two employees were required to work without regard to holidays and received additional compensation. Pursuant to CCR section 571, Holiday Pay met the definition and should have been reported to CalPERS as special compensation.

Reportable special compensation is exclusively listed and defined in the CCR section 571. Reportable special compensation is required to be contained in a written labor policy or agreement, available to all members in the group or class, part of the normally required duties, performed during normal hours of employment, paid periodically as earned, historically consistent with prior payments for the job

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classification, not paid exclusively in the final compensation period, not final settlement pay and not creating an unfunded liability over and above CalPERS actuarial assumptions.

Recommendation:

The Agency should discontinue reporting Rubber Glove Pay, Sunday Pay, and Performance Bonus as special compensation.

The Agency should report Holiday Pay for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regards to holidays.

The Agency should work with CASD to determine the impact of incorrect or non-reporting and make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

Criteria:

Government Codes: § 20120, § 20121, § 20160, § 20636
CCR: § 571

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3: The Agency did not correctly report regular earnings.

Condition:

- A. The Agency reported incorrect earnings for one employee in service period ending June 29, 2013. The employee's normal work schedule was 40 hours per week or 80 hours for the biweekly pay period. The employee worked 80 regular hours during the period; however the Agency reported earnings for 69 hours.
- B. The Agency incorrectly reported retroactive earning adjustments for two employees as special compensation. The retroactive adjustment was for salary increases and as a result should be reported as an adjustment to regular payrate and earnings for the period in which the compensation was earned.

Recommendation:

The Agency should ensure the earnings for all regular hours worked are reported. In addition, the Agency should report earnings that are paid and reported retroactively due to an increase in salary.

The Agency should work with CASD to assess the impact of this incorrect reporting and make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

Criteria:

Government Codes: § 20160, § 20630

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4: The Agency did not correctly report payroll information for Distribution System Operators.

Condition:

- A. The Agency reported an incorrect number of work week hours for Distribution System Operator (DSO) employees. During irrigation season the DSO employees' normal work schedule changes from a 40 hour work week to a 43.75 hour work week. During the pay period ending June 29, 2013, the Agency did not report the correct work week schedule for DSO employees as 43.75.
- B. The Agency incorrectly reported regular earnings up to 40 hours per week for the DSO employees, instead of reporting earnings for the 43.75 hours worked. Government Code 20630 states all earnings worked under a normal schedule should be reported as regular earnings. Therefore, the Agency should have reported regular earnings at 43.75 hours per week for DSO employees during the irrigation season.
- C. The Agency also did not report Fair Labor Standards Act (FLSA) premium pay as special compensation. FLSA pay is a statutory item reportable to CalPERS as special compensation pursuant to Government Code section 20636 (c)(6). FLSA is defined under CCR 571 (a) as compensation paid for normal full-time work schedule including premium pay required by FLSA. The Agency paid employees a half time premium for the 3.75 hours worked between 40 and 43.75. The half time premium pay should be reported as special compensation.

Recommendation:

The Agency should ensure it reports the correct work week schedule, earnings, and special compensation for DSO employees.

The Agency should work with CASD to determine the impact of this incorrect reporting and make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

Criteria:

Government Codes: § 20120, § 20160, § 20630, § 20636
CCR: § 571 (a)(5)

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5: The Agency did not enroll eligible employees into membership.

Condition:

The Agency did not enroll or report employees of an affiliated entity. The Agency created an affiliated entity, Twin Lake Management Company (TLMC), in 2011 to run concessions for nearby lakes. The Agency had previously outsourced this function to an external vendor but in 2011 purchased an affiliated entity to run concessions temporarily. The Agency and TLMC are governed by the same Board. However, the Agency does not enroll TLMC employees into membership.

TLMC is a wholly owned subsidiary of the Agency and as mentioned above is governed by the same Board of Directors as the Agency. In addition, the Agency's website shows the same executives manage both the Agency and TLMC. The Agency's General Manager serves as TLMC's President, the Director of Parks and Recreation serves as Chief Operating Officer, and the Agency's Director of Finance serves as TLMC's Chief Financial Officer. TLMC bylaws state the President provides general supervision, direction, and control of the business and the officers of TLMC. During the on-site fieldwork OAS was informed by the Agency that one individual, the Chief Operating Officer, oversees both the Agency and TLMC. TLMC also does not have separate financial statements but rather its operations are included in the consolidated financials of the Agency. OAS also reviewed various personnel documents for three individuals from the TLMC employee roster. OAS noted the job offer letters, personnel action forms, and evaluation forms for these individuals were signed by Agency management. Based on the OAS analysis of the information provided by the Agency and the documents reviewed, OAS determined that the Agency had ultimate control over the TLMC employees and an employer/employee relationship existed. As a result, any and all employees who qualify for CalPERS membership should be brought into membership (based on criteria including, but not limited to, time base, tenure, intent upon hire).

For the purposes of the Public Employees' Retirement Law (PERL) and for programs administered by the Board of Administration of CalPERS (Board), the standard used for determining whether an individual is the employee of another person is the California common law as set forth in the California Supreme Court case titled *Tieberg v. Unemployment Ins. App. Bd.*, (1970) 2 Cal. 3d 943, which was cited with approval in *Metropolitan Water Dist. v. Superior Court (Cargill)*, (2004) 32 Cal. 4th 491, and which was adopted by the Board in a precedential decision, *In the Matter of Lee Neidengard*, Precedential Decision No. 05-01, effective April 22, 2005.

Applying the California common law, the most important factor in determining whether an individual performs services for another as employee is the right of the

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principal to control the manner and means of job performance and the desired result, whether or not this right is exercised. Where there is independent evidence that the principal has the right to control the manner and means of performing the service in question, CalPERS will determine that an employer-employee relationship exists between the employee and the principal.

Where there is no clear independent evidence that the principal has the right to control the manner and means of an individual's performance of the services in question, CalPERS, applying the California common law, will consider the following additional factors in determining whether an individual is an employee:

- (a) whether or not the one performing services is engaged in an Agency occupation or business;
- (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal or by a specialist without supervision;
- (c) the skill required in the particular occupation;
- (d) whether the principal or the individual performing the services supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (e) the length of time for which the services are to be performed;
- (f) the method of payment, whether by the time or by the job;
- (g) whether or not the work is a part of the regular business of the principal; and
- (h) whether or not the parties believe they are creating the relationship of employer-employee.

Recommendation:

The Agency should ensure that common law employees that meet membership eligibility requirements are enrolled and reported to CalPERS.

The Agency should work with CASD to assess the impact of non-reporting and make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

Criteria:

Government Codes: § 20028, § 20056 § 20125 § 20160

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6: The Agency reported incorrect unused sick leave balances.

Condition:

The Agency certified an incorrect number of sick leave days for two retirees. In one instance, the Agency certified a projected balance of 272.375 days. However, the employee retired with a balance of 260 days. As a result, sick leave days were over reported by 12.375 days. In another instance, the Agency did not report an unused sick leave balance for an employee that had 564.55 hours or 70.569 days of unused sick leave at the time of retirement. Retiring members are eligible for additional service credit for unused sick leave accrued by the member during the normal course of employment. The total number of unused sick leave hours at retirement is converted to days to determine the additional service credit.

Recommendation:

The Agency should ensure the correct amount of unused sick leave for retiring members is reported to CalPERS.

The Agency should work with CASD to assess the impact of this incorrect reporting and make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

Criteria:

Government Codes: § 20160, § 20965

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CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as outlined in Appendix A. OAS limited the test of transactions to employee samples selected from the Agency's payroll records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code except as noted.

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the Agency of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 days of the date of the mailing of the determination letter, in accordance with Government Code section 20134 and sections 555-555.4, Title 2, California Code of Regulations.

Respectfully submitted,

Original signed by Margaret Junker
MARGARET JUNKER, CPA, CIA, CIDA
Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Alan Feblowitz, CFE, Manager
Zachary Barlow, Auditor

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APPENDIX A

OBJECTIVES

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OBJECTIVES

The objectives of this review were limited to the determination of:

- Whether the Agency complied with applicable sections of the California Government Code (sections 20000 et seq.) and Title 2 of the CCR.
- Whether prescribed reporting and enrollment procedures as they relate to the Agency's retirement contract with CalPERS were followed.

This review covers the period of July 1, 2010 through June 30, 2013. This review did not include an assessment as to whether the Agency is a "public agency", and expresses no opinion or finding with respect to whether the Agency is a public agency or whether its employees are employed by a public agency.

SUMMARY

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the Agency's personnel and payroll procedures, reviewed documents, and performed the following procedures.

- ✓ Reviewed:
 - Provisions of the contract and contract amendments between the Agency and CalPERS
 - Correspondence files maintained at CalPERS
 - Agency Board minutes and Agency Board resolutions
 - Agency written labor policies and agreements
 - Agency salary, wage and benefit agreements including applicable resolutions
 - Agency personnel records and employee hours worked records
 - Agency payroll information including Contribution Detail Transaction History reports
 - Other documents used to specify payrate, special compensation, and benefits for all employees
 - Various other documents as necessary
- ✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Agency public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the Agency's governing body in accordance with requirements of applicable public meeting laws.

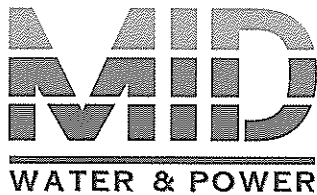
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- ✓ Reviewed CalPERS Contribution Detail Transaction History reports to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ Reviewed the Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency's affiliated entities to determine if the Agency shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Agency or by the affiliated entity.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

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APPENDIX B

Agency's Written Response



MERCED IRRIGATION DISTRICT

June 4, 2014

Via Email and U.S. Mail

Ms. Margaret Junker, Chief
California Public Employees Retirement System
Office of Audit Services
PO Box 942701
Sacramento, CA 94229-2701

Re: *Response by the Merced Irrigation District to May 2014 Draft Audit Report*
Employer Code: 1607
CalPERS ID: 6334099697
Job Number: P13-060

Dear Ms. Junker:

The Merced Irrigation District ("District") is in receipt of the draft audit report prepared by the California Public Employees' Retirement System ("CalPERS"). The District was graciously given an extension until June 4, 2014 to provide this response to the draft audit report.¹ The District intends to work with CalPERS' staff to make any amendments required. However, the District does dispute some of the Findings and Recommendations. The District's rationale is set forth below.

FINDINGS, RECOMMENDATIONS, AND DISTRICT RESPONSE

CalPERS made the following proposed findings and recommendations, which are set forth below and followed by the District's response to each finding and recommendation.

Finding 1: The Agency's pay schedule did not meet all of the requirements of the CCR.

Recommendation:

The Agency should ensure its pay schedules meet all of the CCR requirements.
The Agency should work with CalPERS Customer Account Services Division (CASD) to make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

¹ The District believes that it is premature to file a formal appeal at this time as no final decision has been made on any of the findings. However, in the event that CalPERS is of the belief that its draft audit report triggers any timeline to file a formal appeal, PERS may consider this response the District's formal appeal of its decision and request for an administrative appeal pursuant to Title 2, California Code of Regulations, section 555.1.

District's Response to Finding and Recommendation 1:

The District agrees with CalPERS' Finding and Recommendation. The District has taken additional steps to comply with 2 CCR section 570.5. Specifically, the District's Board of Directors adopted pay schedules, effective April 1, 2014, at its April 15, 2014 and May 1, 2014 meeting and the pay schedules have been published on the District's website. (See [http://www.mercedid.org/index.cfm/careers/salary-schedules/.](http://www.mercedid.org/index.cfm/careers/salary-schedules/)) The District has also added all employee job titles and pay rates to its pay schedules. The District will work with CalPERS' staff to make any additional necessary corrections.

Finding 2: The Agency did not report special compensation as required by the CCR.

Recommendation:

The Agency should discontinue reporting Rubber Glove Pay, Sunday Pay, and Performance Bonus as special compensation.

The Agency should report Holiday Pay for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regards to holidays. The Agency should work with CASD to determine the impact of incorrect or nonreporting and make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

District's Response to Finding and Recommendation 2:

A. Rubber Glove Reporting

The District agrees with CalPERS' Finding and Recommendation and has discontinued reporting Rubber Glove Pay, effective May 23, 2014. The District will work with CalPERS' staff to make any necessary corrections.

B. Sunday Pay Reporting

The District agrees with CalPERS' Finding and Recommendation and has discontinued reporting Sunday Pay, effective May 23, 2014. The District will work with CalPERS' staff to make any necessary corrections.

C. Performance Incentive Pay Reporting

The District disputes the Finding and Recommendation that the Performance Incentive is not reportable as special compensation.

The District contends that the Performance Incentives qualify as "Bonus" pay under 2 CCR 571(a). The Performance Incentive payments were made based on performance under a program to identify performance goals and objectives. At the beginning of 2011 the District established performance goals and objectives based on the employee's position. Employees were then evaluated against the goals and objectives at the end of the year and provided with a bonus of between 0-5.5%, depending on the employee's achievement of the performance goals and objectives.

The District can supply any necessary documentation or information regarding the Performance Incentive program in order to assist CalPERS in determining whether the payment is properly qualified as a "Bonus." To the extent that the District has not complied with any of the requirements in 2 CCR 571(b), the District will work with CalPERS to supply additional information

and to correct any error or oversight. Furthermore, the District was previously informed orally by CalPERS' staff in the Customer Account Services Division that the payment should be reported.

Thus, the Performance Incentive payment was properly reported as an item of special compensation because it qualifies as a "Bonus."

D. Holiday Pay Reporting

The District agrees with CalPERS' Finding and Recommendation and began reporting Holiday Pay for work on established holidays, effective November 11, 2013. The District will work with CalPERS' staff to make any necessary corrections.

Finding 3: The Agency did not correctly report regular earnings.

Recommendation:

The Agency should ensure the earnings for all regular hours worked are reported. In addition, the Agency should report earnings that are paid and reported retroactively due to an increase in salary. The Agency should work with CASD to assess the impact of this incorrect reporting and make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

District's Response to Finding and Recommendation 3:

The District agrees with CalPERS' Finding and Recommendation. The District has put in place new safeguards to prevent future reporting oversights, including a new Financial Management System. The District will work with CalPERS' staff to make any necessary corrections.

Finding 4: The Agency did not correctly report payroll information for Distribution System Operators.

Recommendation:

The Agency should ensure it reports the correct work week schedule, earnings, and special compensation for DSO employees.

The Agency should work with CASD to determine the impact of this incorrect reporting and make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

District's Response to Finding and Recommendation 4:

The District agrees with CalPERS' Finding and Recommendation. The District has taken appropriate action and has begun reporting the additional hours worked as regular earnings and the Fair Labor Standards Act Premium Pay as special compensation. The District will work with CalPERS' staff to make any necessary corrections.

Finding 5: The Agency did not enroll eligible employees into membership.

Recommendation:

The Agency should ensure that common law employees that meet membership eligibility requirements are enrolled and reported to CalPERS.

The Agency should work with CASD to assess the impact of non-reporting and make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

District's Response to Finding and Recommendation 5:

The District disagrees with this Finding and Recommendation. The Twin Lakes Management Company ("TLMC") is an independent company and the employees working for TLMC are not common law employees of the District.

In determining whether an individual is an "employee" for the purposes of enrollment in CalPERS membership, CalPERS applies the common law control test as set forth in *Tieberg v. Unemployment Ins. App. Bd.* (1970) 2 Cal.3d 943, 949 and *Metropolitan Water Dist. of Southern California v. Superior Court (Cargill)* (2004) 32 Cal.4th 491, 496. The most important factor is whether the principal has the right to control the manner and means of job performance and the desired result. TLMC is maintained as a separate entity from the District and TLMC's employees are not subject to the District's direct control. However, CalPERS may also consider additional secondary factors.

The District is not required to provide recreational opportunities on the marinas or lakes within its jurisdiction and purchased TLMC to operate these services on the water. TLMC maintains its own bank account, has its own tax identification number, and keeps its own profits from its services and operations on the water. TLMC employees are paid out of TLMC's own separate bank account and not out of District funds. When employees of TLMC perform any service that benefits the District, the District is billed by TLMC for any services provided. Similarly, all services performed by employees of the District for TLMC are billed to TLMC. The District and TLMC also maintain separate board policies and employee handbooks to govern the conduct of the entities' respective employees. Moreover, the District and TLMC are subject to separate wage laws. The District is subject to and pays employees according to the Fair Labor Standards Act and TLMC is subject to and pays employees according to the California wage and hour laws. The District and TLMC maintain and observe separate financial and legal formalities in their operations without comingling.

There are overlaps between the District and TLMC's boards and management; however, the District and TLMC are maintained as separate entities and District employment and TLMC employment is separate and performed at the direction of the entity for which the individual is directly employed. The District and TLMC boards have separate meetings, separate agendas, and take independent action on behalf of the entities. The entities, through their respective boards and authority delegated by the boards, direct and control their own employees.

The District and TLMC have maintained separate legal and financial entities and have separated all direction and control of the entities' respective employees. Based on this separation of direction and control and observance of the formalities to maintain their independent status, TLMC employees are not working at the direction and control of the District and are not common law employees of the District as set forth in *Cargill* and *Tieberg*.

Therefore, the employees of TLMC should not be enrolled in CalPERS membership because they are not employees of the District.

Finding 6: The Agency reported incorrect unused sick leave balances.

Recommendation:

The Agency should ensure the correct amount of unused sick leave for retiring members is reported to CalPERS.

The Agency should work with CASD to assess the impact of this incorrect reporting and make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

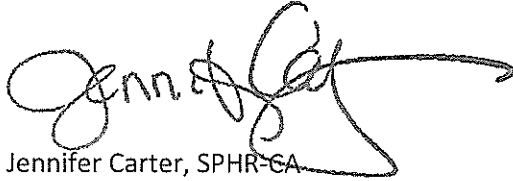
District's Response to Finding and Recommendation 6:

The District agrees with CalPERS' Finding and Recommendation. The District has put in place new safeguards and crosschecks to ensure that the sick leave balance reported to CalPERS is consistent with the balance the employee has at retirement. The District will work with CalPERS' staff to make any necessary corrections.

CONCLUSION

The District objects to some of the Findings and Recommendations set forth above. However, the District will assist CalPERS by providing additional documentation or information required by CalPERS to assess the Findings and Recommendations disputed above. As to the Findings and Recommendations not disputed by the District, the District will work with CalPERS' staff in order to make the necessary corrections.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jennifer Carter", with a long horizontal flourish extending to the right.

Jennifer Carter, SPHR-CA
Director of Administrative Services
Merced Irrigation District