

# **Office of Audit Services**



## **Public Agency Review**

## **Niland Sanitary District**

**CalPERS ID: 5901106013**  
**Job Number: P16-004**

**April 2017**



California Public Employees' Retirement System  
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April 27, 2017

CalPERS ID: 5901106013  
Job Number: P16-004

Debbie Salas, President  
Niland Sanitary District  
P.O. Box 40  
Niland, CA 92257

Dear Ms. Salas:

Enclosed is our final report on the results of the public agency review completed for the Niland Sanitary District (Agency). Your written responses have been included as an appendix to 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. We appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Beliz Chappuie

BELIZ CHAPPUIE, Chief  
Office of Audit Services

Enclosure

cc: Board of Directors, Niland Sanitary District  
Dennis Morita, Legal Counsel, Niland Sanitary District  
Risk and Audit Committee Members, CalPERS  
Matthew G. Jacobs, General Counsel, CalPERS  
Anthony Suine, Chief, BNSD, CalPERS  
Renee Ostrander, Chief, EAMD, CalPERS  
Carene Carolan, Chief, MAMD, CalPERS  
Arnita Paige, Chief, PCMSPP, CalPERS

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## RESULTS IN BRIEF

The objective of our review was to determine whether the Niland Sanitary District (Agency) complied with applicable sections of the California Government Code (Government Code), California Public Employees' Pension Reform Act of 2013 (PEPRA), 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.

- The Agency did not provide specific information deemed necessary to determine the accuracy of retirement benefits and reportable compensation.
- The Agency did not enroll a full-time employee into membership.
- The Agency did not submit payroll reports and remit retirement contributions and payments to CalPERS.
- The Agency did not have a pay schedule that met all of the Government Code and CCR requirements.

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

## SCOPE

The Agency contracted with CalPERS effective October 1, 1995 to provide retirement benefits for local miscellaneous employees. On February 12, 2015, the Agency adopted a resolution to terminate its retirement contract with CalPERS and the Agency's contract was terminated on May 12, 2016. The Pension Contract Management Services and Prefunding Programs Division (PCMSPP) requested the OAS to perform a final audit of the Agency's rate plan. The information from the audit report will be used by CalPERS Actuarial Office (ACTO) to perform the Agency's final valuation and to determine its final unfunded liability.

By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and the Public Employees' Retirement Law (PERL). The Agency also agreed to make its employees members of CalPERS subject to all provisions of the PERL. OAS reviewed the Agency's payroll reporting and member enrollment processes related to the Agency's retirement contract with CalPERS. The review was limited to the examination of all employees, records, and pay periods for the period July 1, 2013 through June 30, 2016, with the exception of the Agency's Governing Body who were excluded by the contract. The review objectives and methodology are listed in Appendix A.

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## OFFICE OF AUDIT SERVICES REVIEW RESULTS

**1:** The Agency did not provide specific information deemed necessary to determine the accuracy of retirement benefits and reportable compensation.

### ***Condition:***

Prior to the on-site visit in December 2016, OAS requested pertinent information to determine the accuracy of employees' retirement benefits and reportable compensation. Subsequent to the on-site visit, OAS made several requests for additional information to determine whether employees, who were not former or current CalPERS members, met CalPERS eligibility requirements. Based on the information made available, eight employees may not meet eligibility requirements. However, the Agency could not provide the following documents for OAS to make a final determination:

- Employment contracts
- Hiring documents
- Personnel files
- Timesheets
- Member self-certification forms
- Board meeting minutes approving the written labor agreement and pay schedule

### ***Recommendation:***

The Agency must provide information that CalPERS requires in the administration of the system per Government Code Section 20221. The Agency must also provide information requested by CalPERS during the course of a review as deemed necessary for determining the accuracy of retirement benefits and reportable compensation per Government Code Section 20222.5.

The Agency should work with the CalPERS Employer Account Management Division (EAMD) and the CalPERS Benefit Services Division (BNSD) to provide documentation and information deemed necessary to determine the accuracy of retirement benefits and reportable compensation.

### ***Criteria:***

Government Codes: § 20160, § 20221, and § 20222.5

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**2:** The Agency did not enroll a full-time employee into CalPERS membership.

***Condition:***

The Operator-in-Training who was hired on August 1, 2014 worked for the Agency on a full-time basis. However, the employee was not enrolled into CalPERS membership. Government Code Section 20505 states that every employee who enters or reenters service with a contracting agency on and after January 1, 1992, shall immediately become a member of this system irrespective of any probationary period, if the employee would otherwise be eligible for membership.

***Recommendation:***

The Agency should work with EAMD to assess the impact of this issue and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

***Criteria:***

Government Codes: § 20160, § 20281, § 20283, and § 20505

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**3:** The Agency did not submit payroll reports and remit retirement contributions and payments to CalPERS.

***Condition:***

The Agency submitted payroll reports and reported compensation earnable for two employees, an Operations Supervisor and a Wastewater Treatment Plant Supervisor, from their date of hire until October 31, 2013. However, the Agency failed to submit the required contributions to CalPERS totaling \$21,561.50. In addition, the Agency did not submit payroll reports to report compensation earnable or make contribution payments for the employees subsequent to October 31, 2013. Specifically,

- A. The Agency submitted payroll information for the Operations Supervisor for the period August 1, 2006 through October 31, 2013. The amount of contributions owed to CalPERS was \$16,799.57; however, the Agency did not remit any payments for this period. In addition, the employee continued to work for the Agency until pay period ended March 31, 2014. However, the Agency did not submit payroll information for the period November 1, 2013 through March 31, 2014. The employee's total earnings from November 1, 2013 through March 31, 2014 were \$15,466.00.
- B. The Agency submitted payroll information for the Wastewater Treatment Plant Supervisor for the period of February 1, 2011 through October 31, 2013. The amount of contributions owed to CalPERS was \$4,761.93; however, the Agency did not remit any payments for this period. In addition, the employee worked continuously for the Agency with no break in service and was the Wastewater Treatment Plant Supervisor as of the contract termination date, May 12, 2016. However, the Agency did not submit payroll information from November 1, 2013 through June 30, 2016. The employee's earnings from November 1, 2013 through June 30, 2014 were \$19,834.50. Total earnings for Fiscal Years 2014-15 and 2015-16 were \$32,760.00 and \$33,430.00 respectively.

***Recommendation:***

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

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***Criteria:***

Government Codes: § 20160, § 20221, § 20222.5, and § 20572

CCR: § 565 and § 565.1



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**4:** The Agency's pay schedule did not meet all of the Government Code and CCR requirements.

The Agency did not have a publicly available pay schedule that was approved in accordance with Government Code Section 20636 and CCR Section 570.5. Specifically, the Agency's salary schedule was included in the Agency's policy and procedures manual. However, the Agency was unable to provide board meeting minutes approving the salary schedule in effect for Fiscal Years 2013-14, 2014-15, and 2015-16. In addition, the salary schedule did not include the position title and payrate for a Chief Plant Operator and Wastewater Treatment Plant Supervisor.

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 purposes of determining the amount of compensation earnable, a member's payrate is limited to the amount identified on a publicly available pay schedule. Per 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; and
- Not reference another document in lieu of disclosing the payrate.

Pay amounts reported for positions that do not comply with the payrate definition and pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636(b)(1). When an employer does not meet the requirements for a publicly available pay schedule, CalPERS, in its sole discretion, may determine an amount that will be considered to be payrate as detailed in CCR Section 570.5.

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***Recommendation:***

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

***Criteria:***

Government Codes: § 20160 and § 20636  
CCR: § 570.5

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## CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives outlined in Appendix A. The procedures performed provide reasonable, but not absolute, assurance that the Agency complied with the specific provisions of the PERL and CalPERS contract 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, of California Code of Regulations.

Respectfully submitted,

Original signed by Beliz Chappuie

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BELIZ CHAPPUIE, CPA, MBA  
Chief, Office of Audit Services

Staff: Alan Feblowitz, CFE, Assistant Division Chief  
Chris Wall, MBA, Senior Manager  
Aileen Wong, MBA, Lead Auditor

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# **APPENDIX A**

## **OBJECTIVES**

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## OBJECTIVES

The objectives of this review were limited to determine whether the Agency complied with:

- Applicable sections of the Government Code (Sections 20000 et seq.), PEPRA, and Title 2 of the CCR.
- Reporting and enrollment procedures prescribed in the Agency's retirement contract with CalPERS.

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.

## METHODOLOGY

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 between the Agency and CalPERS
  - Correspondence files maintained at CalPERS
  - Agency Board minutes
  - Agency written labor policy and agreement
  - Agency salary, wage, and benefit agreement
  - Agency personnel records and employee time records
  - Agency payroll information
  - Documents related to employee payrate, earnings, and benefits
  - Various other relevant documents
- ✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.
- ✓ Reviewed 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 meetings laws.
- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.

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- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when unlawful employment occurs.
- ✓ 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 entity organizational structure to determine whether employees of the affiliated entity qualified for CalPERS membership and were enrolled as required.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide additional service credits for unused sick leave.

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# **APPENDIX B**

**AGENCY'S WRITTEN RESPONSES**

**DENNIS H. MORITA**

A Professional Corporation  
Attorney At Law

3205 South Dogwood Road, Suite B  
El Centro, California 92243  
Telephone (760) 353-3232  
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E-mail: [dmorita@morita-law.com](mailto:dmorita@morita-law.com)

April 6, 2017

Via email [chris.wall@calpers.ca.gov](mailto:chris.wall@calpers.ca.gov)

California Public Employees' Retirement System  
Office of Audit Services  
P.O. Box 942701  
Sacramento, California 94229-2701  
Attn: Chris Wall

**RE: Niland Sanitary District  
Response to March 1, 2017, Draft Report**

Dear Mr. Wall:

I am an attorney and have been asked to communicate the District's response to the draft report dated March 1, 2017. In that regard, I am informed the District has also contacted other counsel for assistance in the handling of this matter.

The District appreciates the opportunity to respond. As you know from your visits to the District offices, current staff and board have virtually no personal knowledge of any of the facts or circumstances associated with the history of CalPers and the District. While the District has no basis for disagreement with respect to the statements of law contained in the recommendations, the District questions its obligations under those statutes under the circumstances of this case. In adopting the resolution to "terminate" the agreement with CalPers, I am informed the board expressed doubt as to validity/enforceability of the underlying agreement.



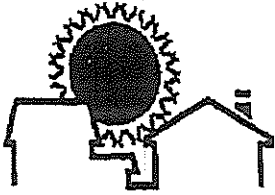
Very truly yours,

DENNIS H. MORITA, APC



By: Dennis H. Morita

Original signed by Dennis H. Morita



## NILAND SANITARY DISTRICT

125 W. Alcott Road / PO Box 40  
Niland, CA 92257

*Telephone #. (760) 359-0454*  
*Fax #. (760) 359-0108*

April 6, 2017

Dear Chris,

I have read your report regarding CALPERS and your audit. I am answering only on my behalf, my own opinion, not the board. There were several documents that you had asked for that were not found in our office. Some of the employees that you requested information on, I was unable to for I did not know of the past employees and no records found. I got on the board in December 2015 and was told that CALPERS was already being terminated. Also the operator in training, [REDACTED] requested not to be involved with the CALPERS. The CALPERS is going back when the contract was signed in December of 1995 and the board now was unaware of this until the termination was submitted. So in my behalf, I feel we should not pay such penalties.

Thank you,

Debbie Salas