

# Office of Audit Services



## Public Agency Review

### Santa Margarita Water District

CalPERS ID : 3747071786  
Employer Code: 0989  
Job Number: P12-011

June 2013



California Public Employees' Retirement System  
Office of Audit Services  
P.O. Box 942715  
Sacramento, CA 94229-2715  
TTY: (877) 249-7442  
(916) 795-0802 phone, (916) 795-7836 fax  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

June 4, 2013

Employer Code: 0989  
CalPERS ID: 3747071786  
Job Number: P12-011

Santa Margarita Water District  
Kristin Griffith, Director of Finance  
26111 Antonio Parkway, STE A  
Rancho Santa Margarita, CA 92688

Dear Ms. Griffith:

Enclosed is our report on the results of the public agency review completed for the Santa Margarita Water District. Your District's written response, which is included as Appendix C to the report, indicates agreement with Findings 1 and 4, and disagreement with Findings 2 and 3 as noted in the report.

OAS reviewed your response to the draft report and the supporting documents that were included as attachments. We did not identify any new information to cause us to withdraw any of the findings in our report; therefore, our recommendations remain as stated in the report. However, after review of your written response, we added language to finding 1 to acknowledge pay schedules were approved by the District's governing body subsequent to the completion of our fieldwork. We also removed language from Finding 3 regarding the salary increase effective July 1, 2008 and added language to further clarify the finding and provide information regarding a determination letter from CASD.

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 District 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: Honorable Board of Directors, Santa Margarita Water District  
Risk and Audit Committee Members, CalPERS  
Peter Mixon, General Counsel, CalPERS  
Karen DeFrank, Chief, CASD, CalPERS  
Anthony Suine, Chief, BNSD, CalPERS

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# SANTA MARGARITA WATER DISTRICT

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## TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
Results in Brief.....	1
District Background.....	1
Scope.....	2
Office of Audit Services Review Results .....	3
Finding 1: Pay Schedule .....	3
Finding 2: Multiple Positions.....	5
Finding 3: Compensation Earnable.....	7
Finding 4: Special Compensation .....	9
Conclusion .....	10
CalPERS Background.....	Appendix A
Objectives .....	Appendix B
District's Written Response .....	Appendix C

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# SANTA MARGARITA WATER DISTRICT

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## RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the Santa Margarita Water District's (District) enrolled individuals, member compensation, and retirement information and other documentation for individuals included in test samples. A detail of the findings is noted in the results section beginning on page three of this report. Specifically, the following findings were noted during the review:

- Payrates contained in the pay schedules were not duly approved and adopted by the District's governing body.
- Payrate and earnings were incorrectly reported for employees who simultaneously worked in two positions.
- Payrate and earnings failed to qualify as compensation earnable.
- Uniform allowance was not contained in a written policy or agreement.

## DISTRICT BACKGROUND

The District was established on December 23, 1964 under provisions of the California Water District Law. Memoranda of Understanding (MOU) and employment agreements outline District employees' salaries and benefits and state the terms of employment agreed upon between the District and its employees.

The District contracted with California Public Employees' Retirement System (CalPERS), effective April 16, 1974, to provide retirement benefits for local miscellaneous employees. The District's current contract amendment identifies the length of the final compensation period as twelve months for all coverage groups.

All contracting public agencies, including the District, are responsible for the following:

- Determining CalPERS membership eligibility for its employees.
- Enrolling employees into CalPERS upon meeting membership eligibility criteria.
- Enrolling employees in the appropriate membership category.
- Establishing the payrates for its employees.
- Approving and adopting all compensation through its governing body in accordance with requirements of applicable public meeting laws.
- Publishing all employees' payrates in a publicly available pay schedule.
- Identifying and reporting compensation during the period it was earned.
- Ensuring special compensation is properly identified and reported.
- Reporting payroll accurately.
- Notifying CalPERS when employees meet Internal Revenue Code annual compensation limits.

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# **SANTA MARGARITA WATER DISTRICT**

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- Ensuring the employment of a retired annuitant is lawful and reinstating retired annuitants that work more than 960 hours in a fiscal year.

## **SCOPE**

As part of the Board-approved plan for fiscal year 2012/2013, OAS reviewed the payroll reporting and member enrollment processes as related to the District's retirement contract with CalPERS. The review period was limited to the examination of sampled records and processes from July 1, 2009 through June 30, 2012. The on-site fieldwork for this review was conducted on September 25, 2012 through September 28, 2012. The review objectives and a summary of the procedures performed are listed in Appendix B.

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# SANTA MARGARITA WATER DISTRICT

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## OFFICE OF AUDIT SERVICES REVIEW RESULTS

**Finding 1:** Pay schedules were not approved by the District's governing body in accordance with applicable meeting laws.

***Recommendation:***

The District should ensure only compensation earnable, as defined under Government Code Section 20636 and corresponding regulations, is reported to CalPERS and considered in calculating retirement benefits. The District must ensure that reported payrates are set forth in a publicly available pay schedule and meet the definition of payrate under the Public Employees' Retirement Law. Additionally, the District must ensure that all employees' salaries are properly reviewed, authorized and approved by the Board of Directors in accordance with California Code of Regulations Section 570.5 (a). If these are not met the calculation of retirement benefits would be limited to the last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) in accordance with California Code of Regulations Section 570.5 (b).

The District should work with CalPERS Customer Account Services Division (CASD) to determine the impact of this incorrect reporting and determine what adjustments are needed. To the extent that amounts of pay were improperly included in the retirement allowance afforded individuals who have already retired, a correction must be made pursuant to Government Code Section 20160.

***Condition:***

The District did not have pay schedules that were duly approved and adopted by its governing body in accordance with requirements of applicable public meetings laws pursuant to California Code of Regulations Section 570.5. Annual salary increases were adopted as part of the Santa Margarita Water District Employees Associations MOU, effective July 1, 2010 through June 30, 2012; however, the pay schedules were not approved by the District's governing board.

Subsequent to the fieldwork, the District's pay schedules were approved and adopted by its governing body on October 12, 2012. Furthermore, the District's pay schedules were revised and approved on December 7, 2012 by its governing body.

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# SANTA MARGARITA WATER DISTRICT

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***Criteria:***

Government Code § 20049, § 20160, § 20636(d) § 20636(e)(1), § 20636(e)(2)

California Code of Regulations § 570.5

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# SANTA MARGARITA WATER DISTRICT

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**Finding 2:** Payrate and earnings were incorrectly reported for employees who simultaneously worked in two positions.

***Recommendation:***

The District should ensure only compensation earnable, as defined under Government Code Section 20636 and the corresponding regulations, is reported to CalPERS and considered in calculating retirement benefits.

The District should ensure documentation is maintained and provided upon CalPERS' request to verify that payrates and earnings are accurately reported for employees who simultaneously work in multiple positions. Payrates for each position must be clearly set forth in publicly available pay schedules and must be included in public documents available for public scrutiny. The District should report each position to CalPERS as a separate payroll entry. Each position should identify the number of hours worked per pay period and the authorized payrate as set forth in a publicly available pay schedule.

The District should work with CalPERS CASD to assess the impact of this incorrect reporting and determine what adjustments are needed to correct improperly reported compensation amounts and to determine whether retirement benefit amounts must be corrected pursuant to Government Code Section 20160.

***Condition:***

OAS identified one employee who worked for the District concurrently as the General Manager and District Legal Counsel from January 17, 1994, through the employee's retirement on June 30, 2012. The District provided employment agreements, resolutions, Board minutes, personnel action notices, and pay schedules. As noted in Finding 1, the pay schedules were not approved in open Board sessions. After reviewing the documentation provided, OAS determined that the General Manager was also performing duties as District Legal Counsel.

Resolution Number 94-05-04 authorized the General Manager to prepare and/or review or execute on behalf of the District as Legal Counsel. OAS reviewed the personnel action form (PAF) effective July 1, 2007 which identified that separate wages were assigned to each position. The PAF states, "Legal counsel wages increase by \$8,000 (\$47,000/year to \$55,000/year) and General Manager wages increase by \$13,000 (\$207,000 per year to \$220,000 per year." The District incorrectly combined the payrate and earnings for both positions, which resulted in payrates and earnings being over-reported. The District provided information regarding these positions; however, OAS was unable to determine the total hours

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# SANTA MARGARITA WATER DISTRICT

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worked and authorized payrates for each position. The District should have reported the payrate for each position and earnings for hours worked in each position as two separate line items.

In addition, the District incorrectly reported the payrate and earnings for a second employee during the 5/10-3 service period. Specifically, the employee was an Office Specialist with a payrate of \$26.88 per hour; however, effective April 10, 2010, the employee began working as the Executive Assistant with a payrate of \$28.47 per hour. The 5/10-3 service period began on April 19, 2010 and ended on May 2, 2010. The District incorrectly determined the hourly payrate by multiplying 70 hours at the prior payrate of \$26.88 and ten hours at the new payrate of \$28.47. These two totals were combined to incorrectly arrive at the biweekly earnings for both positions as a single payroll entry in the amount of \$2,166.69 which was then divided by 80 hours to derive at the incorrect hourly payrate of \$27.084. The District should have reported the payrate for each position and earnings for hours worked in each position as two separate line items.

CalPERS Public Agency and Schools Reference Guide, states "If a member received a raise in the middle of a pay period, report amounts earned under each payrate separately."

**Criteria:**

Government Code: § 20160, § 20221, § 20222.5, § 20630(b), § 20635, § 20636(a), § 20636(b)(1)

CalPERS Public Agency Reference Guide, page 97.

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# SANTA MARGARITA WATER DISTRICT

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**Finding 3:** Payrates were reported during the final compensation period that failed to qualify as compensation earnable.

***Recommendation:***

The District should ensure only compensation earnable, as defined under Government Code Section 20636 and the corresponding regulations, is reported to CalPERS and considered in calculating retirement benefits.

CalPERS CASD should continue to work with the District to conclude the on-going issue noted in the District's response, as well as assess the impact of the incorrect reporting and determine adjustments needed, if any, to correct any improperly reported compensation amounts and any retirement benefit amounts pursuant to Government Code Section 20160.

***Condition:***

OAS found that the former General Manager received a salary increase of 9.27 percent on January 1, 2011, increasing his hourly pay rate from \$148.98 to \$162.79, while employees in the next closest group or class received an annual increase of only two percent during the same period. As noted in Finding 1, the pay schedules were not approved in open Board sessions.

The former General Manager retired on June 30, 2012 and is subject to the limitations set forth in Government Code Section 20636(e)(2) which states, "Increases in compensation earnable granted to an employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, except as may otherwise be determined pursuant to regulations adopted by the Board that establish reasonable standards for granting exceptions."

The District may request an exception from the average pay increase for an employee who is not in a group or class of employment within the meaning of the Public Employees' Retirement Law (PERL). This request must be submitted in writing and reviewed by CalPERS' CASD, pursuant to the California Code of Regulations Section 572. The District did not obtain an exception from CalPERS, and the former General Manager retired on June 30, 2012; therefore, the increases in his compensation earnable may be reduced pursuant to Government Code Section 20636(e)(2).

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# SANTA MARGARITA WATER DISTRICT

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After reviewing the District's response, OAS revised the scope of its review of salary increases to include July 1, 2009 through June 30, 2012 only.

Further, with regard to the District's statement in its response that CASD previously vetted the final compensation, CASD will actually provide its final determination letter to the District following the conclusion of this review.

***Criteria:***

Government Code: § 20160, § 20222.5, § 20630(b), § 20635, § 20636(a), § 20636(b)(1), § 20636(d), § 20636(e)

California Code of Regulations § 570.5, § 572

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# SANTA MARGARITA WATER DISTRICT

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**Finding 4:** The uniform allowance provision was not contained in a written labor policy or agreement that was duly approved and adopted by the District's governing body.

***Recommendation:***

The District should have a written labor policy or agreement defining the uniform allowance provision and ensure that the language meets the criteria for reporting special compensation pursuant to California Code of Regulations Section 571(5)(b).

The District should work with CalPERS CASD to ensure the uniform allowance provisions are included in a written labor policy or agreement.

***Condition:***

The District correctly paid and reported uniform allowance for the sampled employees who are required to wear uniforms in the pay period ending June 10, 2012; however, the amount reported for the monetary value of uniforms and uniform maintenance, a statutory item of special compensation, was not contained in a written labor policy or agreement.

***Criteria:***

Government Code: § 20636(a), § 20636(C)(2), § 20636(C)(6), § 20636(d)

California Code of Regulations: § 571(a), § 571(a)(5), § 571(b)

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# SANTA MARGARITA WATER DISTRICT

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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 B. 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 reported 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

Date: June 2013

Staff: Cheryl Dietz, CPA, Assistant Division Chief  
Diana Thomas, CIA, CIDA, Senior Manager  
Chris Wall, Auditor  
Aileen Wong, Auditor

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**SANTA MARGARITA WATER DISTRICT**

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# APPENDIX A

## BACKGROUND

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# SANTA MARGARITA WATER DISTRICT

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## BACKGROUND

### California Public Employees' Retirement System

CalPERS provides a variety of programs serving members employed by more than 2,500 local public agencies as well as state agencies and state universities. The agencies contract with CalPERS for retirement benefits, with CalPERS providing actuarial services necessary for the agencies to fund their benefit structure. In addition, CalPERS provides services which facilitate the retirement process.

CalPERS CASD manages contract coverage for public agencies and receives, processes, and posts payroll information. In addition, CASD provides eligibility and enrollment services to the members and employers that participate in the CalPERS Health Benefits Program, including state agencies, public agencies, and school districts. CalPERS Benefit Services Division (BNSD) sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits.

Retirement allowances are computed using three factors: years of service, age at retirement and final compensation. Final compensation is defined as the highest average annual compensation earnable by a member during the last one or three consecutive years of employment, unless the member elects a different period with a higher average. State and school members use the one-year period. Local public agency members' final compensation period is three years unless the agency contracts with CalPERS for a one-year period.

The employer's knowledge of the laws relating to membership and payroll reporting facilitates the employer in providing CalPERS with appropriate employee information. Appropriately enrolling eligible employees and correctly reporting payroll information is necessary to accurately compute a member's retirement allowance.

# APPENDIX B

## OBJECTIVES

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# SANTA MARGARITA WATER DISTRICT

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## OBJECTIVES

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

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

This review covers the period of July 1, 2009 through June 30, 2012.

## SUMMARY

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

- ✓ Reviewed:
  - Provisions of the Contract and contract amendments between the District and CalPERS
  - Correspondence files maintained at CalPERS
  - District Board minutes and resolutions
  - District written labor policies and agreements
  - District salary, wage and benefit agreements including applicable resolutions
  - District personnel records and employee hours worked records
  - District payroll information including Summary Reports and CalPERS listings
  - Other documents used to specify payrate, special compensation, and benefits for all employees
  - District ordinances as necessary
  - Various other documents as necessary
- ✓ Reviewed District payroll records and compared the records to data reported to CalPERS to determine whether the District correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to District 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 District's governing body in accordance with requirements of applicable public meeting laws.
- ✓ Reviewed CalPERS listing reports to determine whether the payroll reporting elements were reported correctly.

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# SANTA MARGARITA WATER DISTRICT

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- ✓ Reviewed the District's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the District's enrollment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ Reviewed the District's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the District's affiliated entities to determine if the District shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the District or by the affiliated entity.

# APPENDIX C

## DISTRICT'S WRITTEN RESPONSE

**NOTE: Due to confidentiality, copies of the attachments referred to in the District's written response were omitted from this Appendix.**



Indian Wells  
(760) 568-2611

Irvine  
(949) 263-2600

Los Angeles  
(213) 617-8100

Ontario  
(909) 989-8584

**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

3390 University Avenue, 5th Floor, P.O. Box 1028, Riverside, CA 92502  
Phone: (951) 686-1450 | Fax: (951) 686-3083 | www.bbklaw.com

Sacramento  
(916) 325-4000

San Diego  
(619) 525-1300

Walnut Creek  
(925) 977-3300

Washington, DC  
(202) 785-0600

Isabel C. Safie  
(951) 826-8309  
isabel.safie@bbklaw.com

April 19, 2013

VIA OVERNIGHT COURIER AND E-MAIL  
MARGARET\_JUNKER@CALPERS.CA.GOV

Margaret Junker, Chief  
Office of Audit Services  
CalPERS  
P.O. Box 942701  
Sacramento, CA 94229-2701

Re: *Response by Santa Margarita Water District to March 21, 2013 Draft Audit Report*

Dear Ms. Junker:

We submit the following on behalf of our client, Santa Margarita Water District ("District"). The District is in receipt of the Office of Audit Services' ("OAS") March 21, 2013 draft audit report ("Draft Report") related to the District's contract with the California Public Employees' Retirement System ("CalPERS"). The District appreciates the efforts of OAS in performing its compliance review and the opportunity to comment on the Draft Report. Although our written response was due April 10, 2013, the District was graciously given an extension until April 22, 2013 to provide this response. We thank you for granting us this additional time to prepare our response.

As detailed below, we do not dispute Finding 4. While we agree with Finding 1, we respectfully draw your attention to the fact that the District is currently in compliance with the requirements of Section 570.5. Therefore, no further action is necessary with respect to Finding 1. However, we respectfully disagree with Findings 2 and 3.

It is our hope that this response will provide you with additional information that will change OAS' determinations with respect to Finding 2 and Finding 3. As such, we respectfully request that you review this response with care and that you consider revising the Draft Report as we request prior to issuing the final audit report.



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Margaret Junker, Chief  
April 19, 2013  
Page 2

FINDINGS, RECOMMENDATIONS AND THE DISTRICT'S RESPONSE

In order to facilitate your review of the District's position with respect to each of the four findings noted in the Draft Report, we have organized our comments in chronological order based on the order of the findings.

*FINDING 1: PAY SCHEDULES WERE NOT APPROVED BY THE DISTRICT'S GOVERNING BODY IN ACCORDANCE WITH APPLICABLE MEETING LAWS.*

Response:

In the first paragraph of the *Recommendation*, the Draft Report refers to "City" and "City Council." While a minor error, we are understandably concerned that OAS was not specifically reviewing data provided by the District. Please revise this section of the Draft Report to note that the District is a California Water District governed by a board of directors. More importantly, please confirm that no other agency's data was inadvertently reviewed or used in connection with the findings noted in the Draft Report.

Please rest assured that District staff ensures that only compensation earnable, as defined under Government Code Section 20636 and corresponding regulations, is reported to CalPERS. Further, please note that the District is in compliance with the requirements of California Code of Regulations Section 570.5 ("Section 570.5"). Specifically, the District's Pay Schedule was approved by the Santa Margarita Water District Board of Directors ("Board") at their publicly held meeting on October 12, 2012. While the Pay Schedule was revised two months later, the revised Pay Schedule was further approved by the Board at its publicly held meeting on December 7, 2012. Resolution No. 2012-12-01 of the Board of Directors of Santa Margarita Water District Amending the Santa Margarita Water District Pay Schedule Effective December 2012 is enclosed as Attachment A.

Given that the District first became compliant with Section 570.5 *prior* to when the Draft Report was issued, and currently meets the requirements of Section 570.5, we respectfully submit that no further action is warranted with respect to Finding 1. Further, any suggestion that the requirements of Section 570.5 were applicable to the District prior to August 10, 2011, that date that Section 570.5 became effective, is not only incorrect but unfair and, therefore, we hope that CalPERS will not consider any detrimental action against District employees and retirees as a result of this perceived failure. Finally, although OAS may have not been able to determine whether *salary schedules* were approved by the Board, there is no question that the *payrates* reported to CalPERS were properly authorized by the Board. The District is a public agency



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Margaret Junker, Chief  
April 19, 2013  
Page 3

and there is no way that the salaries of its employees would have been established without the necessary approval by the Board.

***FINDING 2: PAYRATE AND EARNINGS WERE INCORRECTLY REPORTED FOR EMPLOYEES WHO SIMULTANEOUSLY WORKED IN TWO POSITIONS.***

**Response:**

**General Manager Position**

OAS states that, *"After reviewing the documentation provided, OAS determined that one employee was working for the District as both the General Manager and District Legal Counsel. The District incorrectly combined the payrate and earnings for both positions which resulted in payrates and earnings being over-reported. The District provided information regarding these positions; however, OAS was unable to determine the total hours worked and authorized payrates for each position."*

**We strongly disagree with the foregoing determination.** The District did not provide information that one employee was working in two positions. On the contrary, the District provided documentation that demonstrated that the former General Manager held a single position that primarily included management duties but also had some legal duties. Although OAS did not explain how it reached this erroneous conclusion despite the overwhelming evidence to the contrary which was presented by the District, the Draft Report acknowledges that OAS could not "determine the total hours worked and authorized payrates for each position." This statement supports the fact that the former General Manager held a single position. In other words, there was no need to identify the hours or payrate of any position other than the position of general manager because the former General Manager served only in that capacity.

The foregoing is significant because the statutory basis for the determination in Finding 2 as it relates to the former General Manager is Government Section 20635. This section provides that compensation based on overtime is not reportable as compensation earnable and specifically addresses circumstances in which a member serves in two or more positions as follows:

If a member concurrently renders service in two or more positions, *one or more of which is full time*, service in the part-time position shall constitute overtime. If two or more positions are permanent and full time, the position with the highest payrate or base pay shall be reported to this system. This provision shall apply only to service rendered on or after July 1, 1994. (Emphasis added).



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April 19, 2013  
Page 4

Notably, the term “overtime” is defined by Section 20635 as “the aggregate service performed by an employee as a member for all employers and in all categories of employment in excess of the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid.” (Emphasis added). Thus, in order for Section 20635 to apply, it must be demonstrated that the former General Manager held “two or more positions” or that he worked hours in excess of the hours considered normal for employees on a full-time basis. Neither of these two conditions were present. However, the former General Manager did not serve in two or more positions. He also did not work more hours than were normal for a general manager of a water district.

The former General Manager held a single position compensated at a single payrate pursuant to the terms of a single contract. During the field audit, the District provided to the field auditor, \_\_\_\_\_ documents and information confirming that the former General Manager’s duties, as delineated by the Board at the time that the former General Manager was hired, included legal duties that the Board determined were necessary for its general manager to possess.

As agencies serving the public interest, it behooves any public entity to employ measures that result in greater efficiency – this includes recruiting employees that possess a set of skills that are both germane to the position they will serve and that will result in better service to the public entity. For example, it is not uncommon for general managers of water districts to possess and utilize engineering skills in the performance of their general manager duties. Similarly, finance directors of municipal entities commonly serve as city treasurers, and public works directors both manage a public works department and serve as city engineers. The fact that an employee’s job description incorporates skills that are germane to the position served by the employee is a common practice. What is germane to a position, however, is not static. Rather, a particular set of skills may be of greater importance to a public entity depending on the issues facing the entity at any given time.

The foregoing is highlighted by the set of circumstances that led the District to hire the former General Manager. At the time that the District began the recruitment process for a new general manager in 1993, the District found itself facing significant problems that highlighted the need for a general manager with knowledge of and sensitivity to various legal matters, including the water code, conflict of interest provisions and labor negotiations. As such, the former General Manager’s candidacy was of particular note to the Board given that not only was he capable of operating an organization such as the District, but was also a member of the bar with experience in the laws applicable to public agencies. After weighing many candidates, the Board decided to hire the former General Manager with the expectation that he would use



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Margaret Junker, Chief  
April 19, 2013  
Page 5

his legal skills to steer the District in the right direction. This was well known in the community as evidenced by a December 16, 1993 article in the Los Angeles Times by Mark Platte who reported that “[w]ith a law degree and undergraduate degree in business, he was chosen for his broad knowledge of water issues, the law and finance.” A copy of this article is enclosed as Attachment B. This was a significantly important decision for the District because a candidate for the general manager position with his portfolio of skills and experience was precisely what the Board determined was necessary for the District. Thus, the former General Manager was hired on January 17, 1994 as the general manager of the District from among a field of 138 candidates because of his legal background. The skills brought by the former General Manager were particularly critical to the District because of a number of conflicts of interest issues that needed to be resolved.

Thus, from the very beginning, the former General Manager’s duties as general manager included application of his legal skill set to inform the proper management of the District. These were the duties that the Board expected the former General Manager to perform and were the standard by which his performance was evaluated for every year of his more than 18 years of employment with the District. In other words, the evaluation and application of the law, were part of the former General Manager’s normally required duties as general manager.

Further evidence of this practice was the District’s selection of its current General Manager. Specifically, the District has been facing a period of significant infrastructure improvements and the current General Manager was selected, in part, as the general manager because his portfolio of experience includes being a registered professional engineer. As such, he is called upon to review projects, plans and reports on behalf of the District. He performs these duties as a part of his general manager duties, as were legal duties performed as part of the former General Manager’s duties. Each of them has served during times when the needs of the District were quite distinct and it would be patently unfair to penalize the former General Manager for serving in a capacity for which he was selected.

In addition to the foregoing, the District has routinely provided employment agreements to CalPERS which document a single pay rate for the former General Manager. All employment agreements, meeting minutes and personnel action forms have consistently identified only one rate of pay and one position for the former General Manager – that of the District’s general manager. Any references made to allocations of money attributed to legal services was done for internal accounting purposes only and to provide clarification on how the single rate of pay was established in comparison to other general managers that had a narrower or different set of duties.



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April 19, 2013  
Page 6

Also significant is that the District has never had a general counsel classification. These services have always been rendered by outside counsel not by an employee of the District. Instead, the former General Manager only served in the capacity of general manager and as a function of that role he performed a limited amount of legal duties as was recognized by the Board in Resolution No. 94-05-04. A copy of Resolution No. 94-05-04 is enclosed as Attachment C. The resolution language is very clear – the *General Manager was authorized to perform specified legal counsel duties*. The former General Manager was never appointed as general counsel and, contrary to the conclusion stated in the Draft Report, he did not serve in concurrent positions with the District. The former General Manager's hours simply would not support the proposition that he worked either two separate full-time positions or one full-time and one part-time position for the District. Rather, the former General Manager generally worked similar hours as other general managers at adjoining districts and similar hours to the hours that the current General Manager works. In other words, the former General Manager did not work more hours as a result of the use of his legal skills than the hours that are normally rendered by other general managers with a different set of skills. Rather, the normal general manager hours were inclusive of legal duties. Thus, the former General Manager did not incur "overtime" as defined in Section 20635 nor were the hours inconsistent with similar general manager positions because he served in a single full-time exempt position.

For purposes of considering the preceding, we believe it would be helpful to refer you to CalPERS' own Precedential Decision 00-06 ("Decision"), a copy of which we enclosed for your reference as Attachment D. The issue in the Decision was whether the compensation received by a retiree, \_\_\_\_\_, during his last year of employment with the City of Indio when working as the interim City Manager, while simultaneously serving in his primary capacity as Police Chief, could be treated as final compensation for the purpose of calculating his CalPERS' service retirement benefits. While the Board of Administration ultimately concluded that it could not, that only \_\_\_\_\_ compensation as the Police Chief could be considered, the Decision is instructive in that it highlights the facts that led to the final determination – all facts that are not present in our situation.

First, when \_\_\_\_\_ assumed the position of interim City Manager, he did so while maintaining his position and duties as Police Chief turning a 40 hour workweek into a 60+ hour workweek. In contrast, over the course of his more than 18 years of employment the former General Manager did not assume any additional duties beyond those that were agreed to at the time he was first appointed as General Manager on January 17, 1994. Further, he did not increase his hours over the hours that he was expected to serve when he was first appointed as general manager. As stated earlier, he generally worked no more hours than other general managers. In other words, unlike \_\_\_\_\_ whose duties as interim City Manager were in addition to his normally required duties as Police Chief, the former General Manager's normally



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ATTORNEYS AT LAW

Margaret Junker, Chief  
April 19, 2013  
Page 7

required duties included certain legal duties. Whether the prior or current general manager had similar duties is not relevant because as was explained earlier, each District employee, including the general manager, is chosen by the global set of skills that they bring to the District and the District's particular need at that time. At the time that the former General Manager was hired, the District was in need of a general manager with a legal background. That was no longer the case when the former General Manager retired and that is a reflection of the stellar job that the former General Manager did throughout his more than 18 years as the District's general manager.

Second, [redacted], increase in salary was striking in that it was all paid over the last six months of his employment with the City of Indio concurrently with when he took on the duties as interim City Manager and, thus, was not historically consistent with his prior compensation. In contrast, the increase in the former General Manager's compensation was not concurrent with or a result of his undertaking additional duties. Rather, from inception, the legal duties were part of his normally required job duties as general manager.

Further, unlike [redacted] who was compensated for two separate positions, the General Manager was compensated for a single position. This is consistent with the personnel action notices that were previously provided to OAS that identify a single rate of pay and with the District's classification listing which identified a single rate of pay for the general manager position and did not identify a general counsel position because some of these duties, like many other public agencies, were carried out by outside counsel. While the increased salary paid to [redacted] generated a concern that accepting such compensation as compensation earnable would generate a sizable unfunded liability, such is not the case with the former General Manager's rate of pay because his rate of pay has been historically consistent, with adjustments that were consistent with other employees' adjustments. This is significant because it highlights that the District funded the appropriate employer and normal member contributions throughout the former General Manager's 18 years of employment with the District in contrast to the City of Indio which only funded six months worth of [redacted] purported final compensation.

We have highlighted the Decision for several reasons. First, to demonstrate that the concerns present in situations where final compensation is reduced are simply not present in this case. Second, to demonstrate that the dual position scenario is not applicable to the former General Manager since he was selected precisely because of his legal background rather than having an additional position assigned to him as was the case in the Decision. Third, and more importantly, to highlight that the proposed determination with respect to the former General Manager as documented in Finding 2 is inconsistent with CalPERS' position regarding the discretion of member agencies. That is, CalPERS has historically taken the position that it does not tell its member agencies how to manage its staff or benefits. However, the general tone of



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Margaret Junker, Chief  
April 19, 2013  
Page 8

the Draft Report implies that CalPERS is prescriptively mandating how job descriptions, positions and duties are to be established at the District. The proposed determination in Finding 2, as it applies to the former General Manager, is simply not consistent with this position.

On the basis of the foregoing, we respectfully request that CalPERS eliminate Finding 2 of the Draft Report as it relates to the former General Manager.

**Office Specialist Position**

The Draft Report also states that the District incorrectly reported the payrate and earnings for a second employee. The District, as a business decision, requested an Office Specialist to periodically perform out of scope duties as an Executive Assistant. The employee was compensated at a higher rate while performing those out of scope duties. The employee did not work in excess of 40 hours.

The District recognizes that the employee must receive the payrate established for the position of Office Specialist when working in that capacity and must receive the payrate established for the position of Executive Assistant when working in that capacity. For any pay period in which the employee worked in both capacities, the payrates will be reported to CalPERS in two separate line items. In the pay period immediately following the conclusion of the audit (Pay Period 20; Pay Date October 5, 2012), the employee happened to perform work in both positions and the District reported it to CalPERS correctly in two separate line items. The Payroll Listing is enclosed as Attachment E to this response.

***FINDING 3: PAYRATES WERE REPORTED DURING THE FINAL COMPENSATION PERIOD THAT FAILED TO QUALIFY AS COMPENSATION EARNABLE.***

**Response:**

We note that the Draft Report reflects two critical mistakes in the application of Section 20636(e)92. **Therefore, the District strongly disagrees with Finding 3 and the characterization of the salary increases given to the former General Manager and those given the employees in the next closest group or class.** As a result, it is important that OAS revise Finding 3 to correct these mistakes.

In order to adequately appreciate the character and extent of these mistakes, it is necessary that we identify the statutory rules that form the basis of Finding 3. Government



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Margaret Junker, Chief  
April 19, 2013  
Page 9

Code Section 20636(a) defines “compensation earnable” as “payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752.5.”

Since the Draft Report calls into question what was properly reportable as “payrate” on behalf of the former General Manager, it is also necessary to state the definition that applies to a member who is not in a group or class, as would be the case with the chief executive of any contracting agency. Thus, in relevant part, Section 20636(b)(1) provides that:

“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). (Emphasis added).

Section 20636(e)(2), as referenced in the foregoing definition, provides that:

Increases in compensation earnable granted to an employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, except as may otherwise be determined pursuant to regulations adopted by the board that establish reasonable standards for granting exceptions.

The District has a one year final compensation period. Therefore, to determine whether the payrate reported on behalf of the former General Manager is consistent with Section 20636(e)(2), the relevant period is the former General Manager’s final year of employment before retirement, i.e., July 1, 2011 to June 30, 2012, plus the two years immediately preceding the final compensation period (“Look Back Period”). Thus, the Look Back Period for the former General Manager is a three year period which began on July 1, 2009 and ended on June 30, 2012. However, the Draft Report uses a four year Look Back Period by including the 12.68 percent increase in salary granted to the former General Manager on July 1, 2008. This is a mistaken application of Section 20636(e)(2) which must be corrected by limiting the Look Back Period to a three year period. During this three year period, a single increase in salary in the amount of 9.27 percent was granted to the former General Manager on January 11, 2011.

In addition to the preceding error, the comparison between the former General Manager’s increase in salary during the Look Back Period and the increase in salary of



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Margaret Junker, Chief  
April 19, 2013  
Page 10

employees in the next closest group or class during the same period was done incorrectly. Specifically, Section 20636(e)(2) employs the term “average” rather than “actual.” However, while the Draft Report refers to the average salary increases given to the next closest group or class of employees, it unfairly compared it to the salary increase given to the former General Manager in one year rather than the average over the three year Look Back Period.

The former General Manager received an increase in salary in only one of the three years during the Look Back Period. In contrast, the employees in the next closest group or class received increases in each of the three years, with the exception of an employee who did not receive an increase in 2009. If we average the salary increases given to the former General Manager over the Look Back Period, as required under Section 20636(e)(2), we get an average increase of 5.49 percent, while the average increase for the employees in the next closest group or class for the same period was 4.35 percent. This results in a difference of 1.14 percent between the average increase the former General Manager received and the average increase the employees in the next closest group or class received – a much smaller difference than the 7.94 percent and the 7.27 percent identified in the Draft Report. Therefore, Finding 3 must be revised to correct this mistaken application of Section 20636(e)(2).

Notably, we understand that the former General Manager’s salary has already been adjusted to account for this slight difference. This is because the former General Manager’s final compensation was thoroughly vetted for several months by \_\_\_\_\_ (PERS Compensation Review). This review included several exchanges between him and our Human Resources Manager. During these exchanges, \_\_\_\_\_ was given information demonstrating that the former General Manager’s average increase in salary during the Look Back Period was consistent with average increases given to other District employees in the next closest group or class during the same period. Notwithstanding the information provided, we are informed that a reduction of approximately 10 percent in the former General Manager’s final compensation resulted from this review. Although the District was informed by \_\_\_\_\_, on more than one occasion during the Fall of 2012, that a letter explaining the reduction was forthcoming, neither the District nor the former General Manager have received such explanation. Thus, we expect that no further reduction will be made in the former General Manager’s final compensation as a result of Finding 3 and, in fact, we expect that the yet to be explained 10 percent reduction in his final compensation will be reduced to the extent that the sole basis of that determination was a mistaken application of Section 20636(e)(2).

On a related note, the District fully paid to CalPERS both the employee contribution and the employer contribution for the former General Manager throughout the duration of his tenure at the District. If CalPERS moves forward with reducing the final compensation of the former General Manager as stated above, then the District overpaid the employee and employer



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Margaret Junker, Chief  
April 19, 2013  
Page 11

contributions and is, therefore, requesting a complete and detailed accounting of the actions taken to reduce the former General Manager's final compensation along with the calculations made to determine the final compensation figure. After its review, and unless CalPERS modifies the reduction in favor of the former General Manager, the District reserves all rights to request reconsideration and/or a refund or credit of all excess contributions that were made by the District.

On the basis of the foregoing, we respectfully request that CalPERS revise the Draft Report to eliminate Finding 3 and that it take action to reduce the previously determined reduction in the former General Manager's final compensation.

*FINDING 4: THE UNIFORM ALLOWANCE PROVISION WAS NOT CONTAINED IN A WRITTEN LABOR POLICY OR AGREEMENT THAT WAS DULY APPROVED AND ADOPTED BY THE DISTRICT'S GOVERNING BODY.*

Response

The District is currently in the process of negotiating with its employees' association. The current memorandum of understanding expires June 30, 2013, and it is the District's intent to incorporate language into the next memorandum of understanding regarding the District's uniform allowance.

CONCLUSION

The District will continue to provide any documentation necessary in order for OAS to complete the audit. In summary, the District does agree with Finding 1 and Finding 4. With regard to Finding 2, the District objects to the statement that the former General Manager held two positions. The District has provided solid documentation and explanations in support of the fact that the former General Manager only held one position. However, the District does concur with OAS on the determination and recommendation on the employee serving in the Office Specialist position that occasionally works in the capacity of Executive Assistant and has already taken corrective action and is compliant with the regulation. Lastly, the District objects to Finding Number 3 in its entirety.



**BEST BEST & KRIEGER LLP**  
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Margaret Junker, Chief  
April 19, 2013  
Page 12

In closing and on the basis of the preceding, we respectfully request that CalPERS reconsider its findings and recommendations with respect to Finding 2 and Finding 3 as discussed in detail above. We thank you for the opportunity to submit this written response and we look forward to working with OAS and CASD to ensure that the final recommendations and the implementation of said recommendations are not only appropriate but equitable.

Respectfully submitted,

A handwritten signature in cursive script that reads "Isabel C. Safie".

Isabel C. Safie  
for BEST BEST & KRIEGER LLP

cc: Daniel R. Ferons, General Manager  
Elizabeth Hull, General Counsel

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