

# **Office of Audit Services**



## **Public Agency Review**

### **Westlands Water District**

**Employer Code: 0497  
CalPERS ID: 7559321248  
Job Number: P11-023**

**August 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)

August 8, 2013

Employer Code: 0497  
CalPERS ID: 7559321248  
Job Number: P11-023

Westlands Water District  
Diana Martinez, Human Resources and Administration Manager  
3130 N. Fresno Street  
Fresno, CA 93703-6056

Dear Ms. Martinez:

Enclosed is our final report on the results of the public agency review completed for the Westlands Water District. Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report for Finding 2 and disagreement with Findings 1, 3 and 4. Based on the information contained in your agency's response and our teleconference with your agency on August 5, 2013, our recommendations remain as stated in the report; however, we have added clarifying language based on the teleconference. 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: Risk and Audit Committee Members, CalPERS  
Peter Mixon, General Counsel, CalPERS  
Karen DeFrank, Chief, CASD, CalPERS  
Anthony Suine, Chief, BNSD, CalPERS

---

# WESTLANDS WATER DISTRICT

---

## 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: Public Pay Schedule.....	3
Finding 2: Unused Sick Leave.....	4
Finding 3: Retired Annuitant.....	5
Finding 4: Reportable Compensation.....	6
Conclusion .....	7
CalPERS Background.....	Appendix A
Objectives .....	Appendix B
District's Written Response .....	Appendix C

---

# WESTLANDS WATER DISTRICT

---

## RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the Westlands Water District's (District) enrolled individuals, member compensation, 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 were not listed in a public pay schedule.
- Unused sick leave was over reported.
- Retired annuitant received pay that was higher than employees performing comparable duties.
- Payrate increase was not available to all employees in a group or class.

## DISTRICT BACKGROUND

The District was organized under California state law in 1952 as a California Special District. The District administers delivery of water from the United States Bureau of Reclamation's Central Valley Project to users within the District's boundaries covering approximately 614,700 acres. The governing Board of Directors were elected by district land owners, or their representatives, each voting according to the District's assessed value of the land owner's land within the District. 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 January 1, 1963, to provide retirement benefits for local miscellaneous employees.

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.

---

# WESTLANDS WATER DISTRICT

---

- Notifying CalPERS when employees meet Internal Revenue Code annual compensation limits.
- 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, 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 records and processes from January 1, 2009, through December 31, 2011. In addition, the review period was expanded for one retired annuitant to include the period of February 2008 to December 31, 2011. The on-site fieldwork for this review was conducted on April 2, 2012, through April 6, 2012. The review objectives and a summary of the procedures performed are listed in Appendix B.

---

# WESTLANDS WATER DISTRICT

---

## OFFICE OF AUDIT SERVICES REVIEW RESULTS

**Finding 1:** Pay schedules were not approved and adopted by the District's Board of Directors in an open meeting and did not include payrates for all positions listed.

### ***Recommendations:***

The District should ensure its pay schedules list all position titles and corresponding payrates, and are approved by the District's Board of Directors in a public meeting.

OAS recommends the District work with CalPERS Customer Account Services Division to implement the recommendations noted above and make all necessary adjustments to member's accounts, if any, pursuant to Government Code Section 20160.

### ***Condition:***

OAS found salary schedules were not duly approved and adopted by the District's Board of Directors pursuant to California Code of Regulations Section 570.5. In addition, the District's pay schedules listed all position titles; however, the document did not list payrates for "At-Will" positions. The payrates for "At-Will" positions were blank on the pay schedule and the salary range was listed as "Not Applicable."

In addition, we noted that the General Manager's payrate was approved by the Board of Directors in closed session.

An employee's payrate reportable for pension purposes is limited to the amount listed on a pay schedule that meets all of the requirements listed in California Code of Regulations Section 570.5.

The district observed in its response to the review that California Code of Regulations Section 570.5 was not enacted until August 2011; however, this regulation was a clarifying regulation to existing law, Government Code Section 20636. In the District's response, it provided pay schedules that included the "At-Will" employees; however, CASD will work with the District to ensure it meets all requirements of California Code of Regulations Section 570.5.

### ***Criteria:***

Government Code: § 20160, § 20636(b)(1), § 20636(d)

California Code of Regulations: § 570.5

---

# WESTLANDS WATER DISTRICT

---

**Finding 2:** Unused sick leave was over reported.

***Recommendation:***

The District should ensure the amount of unused sick leave credit is certified to CalPERS for retiring members and does not exceed its six month maximum.

OAS recommends Benefit Services Division (BNSD) deny the 29.95 days of unused sick leave credit that was over-reported and adjust the member's service credit received at retirement pursuant to Government Code Section 20160.

***Condition:***

The District certified an incorrect number of sick leave days for a retiree. 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. The retiring member had a balance of 1,279.5 unused sick leave hours, which equated to 159.95 days at retirement. The District should have certified the maximum allowed, six months or 1,040.0 hours, which equates to 130 days. The District incorrectly certified an additional 29.95 days of unused sick leave.

The District's Rules and Regulations, Article 11, requires upon separation from the District, an employee who is then eligible for retirement under the CalPERS shall have remaining unused medical leave converted on an hour-for-hour basis to service credit, up to a maximum of six months additional service credit, subject to the rules and regulations promulgated by CalPERS regarding such conversion."

***Criteria:***

Government Code: § 20160, § 20965

---

# WESTLANDS WATER DISTRICT

---

**Finding 3:** A retired annuitant received compensation that exceeded the amount paid to those performing comparable duties.

***Recommendation:***

The District should ensure that retired annuitants' compensation is in compliance with Government Code Section 21224.

OAS recommends that the District work with BNSD to determine the impact of this excessive compensation issue and make the necessary adjustments to the members' accounts, if any, pursuant to Government Code Section 20160.

***Condition:***

OAS noted that the Deputy General Manager had been working for the District at an hourly rate of \$55.29 prior to retiring on May 6, 2009. OAS found the retired Deputy General Manager returned to work ten days later as a retired annuitant in the same position with an hourly payrate of \$75.00, which was a 35.6 percent increase.

Pursuant to Government Code Section 21224, a retired person's rate of pay shall not exceed that paid by the employer to other employees performing comparable duties.

***Criteria:***

Government Code: § 20160, § 21224, § 21220

---

# WESTLANDS WATER DISTRICT

---

**Finding 4:** An increase in reportable compensation was granted to an employee within two years immediately preceding the final compensation period.

***Recommendations:***

The District should ensure that compensation reported to CalPERS meets the definition of reportable compensation pursuant to Government Code Section 20636.

OAS recommends that the District work with CASD to make the necessary adjustments to the members' account pursuant to Government Code Section 20160.

***Conditions:***

OAS identified an employee who retired from the District on July 26, 2009, with a final compensation period of August 2008 to July 2009. Prior to retiring from the District, the employee worked as the Assistant General Manager. On March 1, 2008, the Assistant General Manager received an increase in pay from \$14,084 to \$16,667, an 18 percent increase in pay granted approximately five months prior the member's final compensation period. Furthermore, the District confirmed that this was the only employee who received the 18 percent increase.

Pursuant to Government Code Section 20636(e)(2), 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 classifications.

Pursuant to Government Code Section 20636(b)(1), a group or class of employment means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work-related grouping. One employee may not be considered a group or class.

In its response, the District stated it is not constrained by a salary schedule for management employees; however, for pension reporting purposes Government Code Sections 20636 requires all salaries to be included in a pay schedule.

***Criteria:***

Government Code: § 200160, § 20636, § 20636(b)(1), § 20636(e)(2)

---

# WESTLANDS WATER DISTRICT

---

## 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 District'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 District 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

Date: August 2013

Staff: Cheryl Dietz, CPA, Assistant Division Chief  
Diana Thomas, CIA, CIDA, Manager  
Carol Northrup, Auditor  
Aileen Wong, Auditor

---

**WESTLANDS WATER DISTRICT**

---

# **APPENDIX A**

## **BACKGROUND**

---

# WESTLANDS WATER DISTRICT

---

## 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 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.

---

**WESTLANDS WATER DISTRICT**

---

# **APPENDIX B**

## **OBJECTIVES**

---

# WESTLANDS WATER DISTRICT

---

## 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 January 1, 2009, through December 31, 2011. In addition, the review period was expanded for one retired annuitant to include the period of February 2008 to December 31, 2011.

## 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 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
  - 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.

---

## WESTLANDS WATER DISTRICT

---

- ✓ 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.
- ✓ Reviewed the District's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

---

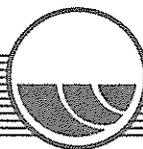
# WESTLANDS WATER DISTRICT

---

# APPENDIX C

# DISTRICT RESPONSE

Note: The District provided an attachment to the response that was intentionally omitted from this appendix.



## Westlands Water District

3130 N. Fresno Street, P.O. Box 6056, Fresno, California 93703-6056, (559) 224-1523, FAX: (559) 241-6277

June 20, 2013

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

**Employer Code: 0497**  
**CalPERS ID: 7559321248**  
**Job Number: P11-023**

Dear Ms. Junker:

Westlands Water District (District) is in receipt of the May 2013 draft compliance review report in relation to the District's contract with CalPERS for the period January 1, 2009 through December 31, 2011. This letter serves as a response to the findings and recommendations included in the draft report. After your consideration of the response here, the District would request another opportunity to review and/or comment on a second draft report of your findings and recommendations, including your responses to this letter, before you issue the final report.

**Finding 1: Public pay schedules were not approved by the District's Board of Directors.**

The District disagrees with the compliance review Finding 1 and the related recommendations. As drafted, the finding and recommendations indicate that the District was not in compliance with the law during the review period. However, the District asserts that it was in full compliance with the law governing these matters for substantially all, and arguably all, of the compliance review period.

Among the criteria on which the finding and recommendations are based is California Code of Regulations, Title 2, Section 570.5. However, CCR Section 570.5 did not become operative until August 10, 2011, covering just a little more than 4 months at the end of the 3-year compliance review period. Your draft compliance review report also cites as bases for your finding and recommendations Government Code Sections 20160, 20636(b)(1), and 20636(d), none of which mandate that public pay schedules be

CalPERS: Office of Audit Services  
Employer Code: 0497, CalPERS ID: 7559321248  
Job Number: P11-023  
June 20, 2013  
Page 2 of 4

approved by the governing body of a contracting agency. Since the law governing these matters changed during the course of the compliance review period, the District's compliance with same, or lack thereof, should be evaluated in that context.

Government Code section 20636(b)(1) merely defines "payrate." This provision of the Government Code contains no active language that creates a mandate for the District.

Section 20636(d) does mandate that "payrate and special compensation schedules, ordinances or similar documents shall be public records available for public scrutiny". At all times during the compliance review period, the District complied with this mandate. All payrates, including those for members listed in Appendix C of the draft compliance review report, were maintained as public records available for public scrutiny, and in fact were periodically produced for inspection as public records.

The District acknowledges that the pay schedule provided to you during the course of your field work contained actual payrates only for those positions covered by the District's two bargaining units or classified as confidential. To rectify this oversight, attached is the District's pay schedule for the positions in the Executive, Senior Management and Management groups for the same period. (Exhibit 1)

Subsequent to the compliance review period, the District's Board of Directors approved a pay schedule that conforms in all respects to CCR Section 570.5. (See attached Exhibit 2). Action to approve the pay schedule was taken at the conclusion of protracted negotiations with the District's two bargaining units. From the operative date of CCR Section 570.5 to the Board's approval of the new pay schedule, there were no salary adjustments provided to any District employee, except for three employees with pre-existing contractual arrangements. Accordingly, the previously approved pay schedules, in compliance with Section 20636(d), remained operative during this period. The District believes this constitutes adherence to the law.

**Finding 2: Unused sick leave was over reported.**

The District agrees with the compliance review Finding 2 which recommends that CalPERS Benefit Services Division (BNSD) deny 29.95 days of unused sick leave credit and adjust the retired member's service credit.

During the compliance review, it was discovered that District staff certified an incorrect number of sick leave hours for a retiring member. The District has attempted to have this error corrected. On May 10, 2012, the District sent a letter to the retired member informing the retiree of the District's error. The District prepared and submitted an Amended Employer Certification form to CalPERS on July 11, 2012. (See attached Exhibit 3).

**Finding 3: A retired annuitant received compensation that exceeded the amount paid to those performing comparable duties.**

The District disagrees with compliance review Finding 3 and the related recommendation. The retired annuitant's employment was in the same capacity as that before retirement. The retired annuitant's position before retirement was/is included in a group or class of employment where its members perform comparable duties. Based upon the range of compensation of this group, the retired annuitant's compensation complied in all respects with Government Code Section 21224.

As stated above, the retired annuitant's employment was in the same capacity in which he served as an employee. As an employee prior to retirement, the retired annuitant was a member of the District's Senior Management group. Over the years, this group has consisted of between 5 and 10 employees, all performing comparable duties due to their responsibilities for managing significant activities and/or programs of the District. Accordingly, the Senior Management group is a group as defined by Government Code Section 20636(e)(1).

At the time of the retired annuitant's employment, Section 21224 provided that the rate of pay for the employment shall not be less than the minimum, or exceed that paid by the employer to other employees performing comparable duties. During this same period, the range of pay for the Senior Management group was \$43 to \$96 per hour. Clearly then, the retired annuitant's hourly payrate of \$75 after returning to work fully complied with Section 21224.

To support the District's assertions, attached is a listing of the employees that comprised the District's Senior Management group and their annual salaries during 2009. Also attached are the job descriptions for the positions included in the Senior Management group and the District's organization chart showing these positions' standings in the hierarchy. (Exhibit 4)

**Finding 4: An increase in reportable compensation was granted to an employee within two years immediately proceeding the final compensation period.**

The District disagrees with compliance review Finding 4 and the related recommendations. The employee's position was/is included in a group or class of employment where its members perform comparable duties. Accordingly, the employee's compensation reported to CalPERS meets the definition of reportable compensation pursuant to Government Code Section 20636.

The employee, working as the Assistant General Manager, at all times during the compliance review period (as well as prior to this period) was a member of the District's Senior Management group. Over the years, this group has consisted of between 5 and 10 employees, all performing comparable duties due to their significant responsibilities for managing significant activities and/or programs of the District. Accordingly, the Senior Management group is a group as defined by Government Code Section

CalPERS: Office of Audit Services  
Employer Code: 0497, CalPERS ID: 7559321248  
Job Number: P11-023  
June 20, 2013  
Page 4 of 5

20636(e)(1). Further, and based upon the foregoing facts, the limitations contained in Government Code Section 20636(e)(2) are not applicable.

Pursuant to the District's Rules and Regulations, the District's General Manager is responsible for the management of all the activities of the District and for the employment of all personnel in the District. The General Manager is responsible for determining and approves all position requirements, including education, experience, knowledge, skill, desirable qualifications or special requirements for the position and establishes salary based on those qualifications. For the Senior Management and Management groups, salary adjustments are considered by the General Manager in the course of each employees' tenure and such adjustments are not constrained by a salary code structure, such as the one implemented for the bargaining unit and confidential (non-management group) employees. Historically, such salary adjustments are variable from position-to-position and are based upon equity within the groups, performance, knowledge, skills and other factors deemed applicable by the General Manager.

To support the District's assertions, attached is a listing of the employees that comprised the District's Senior Management group and their annual salaries during 2009. Also attached are the job descriptions for the positions included in the Senior Management group and the District's organization chart showing these positions' standings in the hierarchy. (Refer back to Exhibit 4).

In conclusion, the District would like to express its appreciation for Carol Northrup's professionalism during the on-site fieldwork and subsequent follow-up. The District is committed to working with CalPERS in resolving any and all matters and complying with the law and regulations adopted by the Board of Administration.

As noted previously, the District requests an opportunity to review and/or comment on a second draft report before issuance of a final report. Because of the differences noted in three of the four findings and recommendations between CalPERS and the District, we believe this would be a prudent and equitable approach.

Please contact Bobbie Ormonde, Director of Finance and Administration at (559) 241-6203 or Diana Martinez, Supervisor of Human Resources and Administration at (559) 241-6205 for any further clarification or information you may need and to schedule a follow-up conference call.

Sincerely,



Thomas W. Birmingham  
General Manager

Attachments