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January 11, 2013

Employer Code: 1039  
CalPERS ID: 4352260559  
Job Number: P11-029

Association of California Water Agencies  
Filiberto Gonzalez, Director of Finance and Business Services  
910 K St. Ste. 100  
Sacramento, CA 95814

Dear Mr. Gonzalez:

Enclosed is our final report on the results of the public agency review completed for the Association of California Water Agencies. Your agency's written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Finding 4. Based on our review of the information contained in your agency's response pertaining to Finding 4, our recommendation remains as stated in the report. In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your agency and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

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

Enclosure

cc: Risk and Audit Committee Members, CalPERS  
Peter Mixon, General Counsel, CalPERS  
Karen DeFrank, Chief, CASD, CalPERS  
Anthony Suine, Chief, BNSD, CalPERS

# **Office of Audit Services**



## **State Agency Review**

### **Association of California Water Agencies**

**Employer Code: 1039  
Job Number: P11-029**

**January 2013**

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# ASSOCIATION OF CALIFORNIA WATER AGENCIES

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## TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
Results in Brief.....	1
Association Background.....	1
Scope.....	2
Office of Audit Services Review Results .....	3
Finding 1: Pay Schedule was not Publicly Approved and Available .....	3
Finding 2: Payrates and Earnings were Incorrectly Reported .....	5
Finding 3: Temporary/Part-Time Employee was not Enrolled Timely.....	7
Finding 4: Membership – Affiliate Entity Employees .....	8
Conclusion .....	11
CalPERS Background.....	Appendix A
Objectives .....	Appendix B
Association’s Written Response .....	Appendix C

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# ASSOCIATION OF CALIFORNIA WATER AGENCIES

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## RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the Association of California Water Agencies' (Association) enrolled individuals, member compensation, retirement information and other documentation for individuals included in test samples. This review did not include a determination as to whether the Association is a "public agency" (as that term is used in the California Public Employees' Retirement Law), and OAS therefore expresses no opinion or finding with respect to whether the Association is a public agency or whether its employees are employed by a public agency. 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:

- Pay schedule was not properly approved or publicly available.
- Earnings and payrates were incorrectly reported.
- A temporary/part-time employee was not enrolled in CalPERS membership in a timely manner when membership eligibility was met.
- Individuals from an affiliated entity were incorrectly enrolled in CalPERS membership.

## ASSOCIATION BACKGROUND

The Association was formed in 1910. The Association is a statewide governmental not-for-profit organization, whose purpose is to promote the development, conservation, treatment, distribution and management of water. The Association provides legislative and legal services, communication programs, conferences, seminars, and workshops for its members, associates and affiliates. A Personnel Policy Manual and employment agreements outline all Association employees' benefits and state the terms of employment agreed upon between the Association and its employees.

The Association contracted with CalPERS effective March 1, 1975, to provide retirement benefits for local miscellaneous employees. The Association'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 Association, 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.

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# ASSOCIATION OF CALIFORNIA WATER AGENCIES

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- 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.
- 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 2011/2012, the OAS reviewed the Association's payroll reporting and member enrollment processes as these processes relate to the Association's retirement contract with CalPERS. The review period was limited to the examination of sampled records and processes from April 1, 2009, through March 31, 2012. The on-site fieldwork for this review was conducted on May 1, 2012, through May 4, 2012. The review objectives and a summary of the procedures performed are listed in Appendix B.

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# ASSOCIATION OF CALIFORNIA WATER AGENCIES

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## OFFICE OF AUDIT SERVICES REVIEW RESULTS

**Finding 1:** The Association did not have a publicly available pay schedule that met the requirements of California Code of Regulations Section 570.5.

### ***Recommendations:***

The Association must ensure that reported payrates are set forth in a publicly available pay schedule and meet the definition of payrate under the PERL. Additionally, the Association must ensure that all employees' salaries are properly reviewed, authorized and approved by the Association's Board of Directors in accordance with public meeting laws.

The Association should work with CalPERS 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.

### ***Conditions:***

Pursuant to Government Code Section 20636 and California Code of Regulations Section 570.5, the Association is required to have a publicly available pay schedule to specify the payrates reportable to CalPERS. The Association's Board of Directors approved the Association's budget, which included an amount for employee salaries and temporary labor employees. However, the Association's pay schedule was not properly approved or publicly available as required. The Association's pay schedule consisted of an excel spreadsheet listing positions with the minimum and maximum payrates, which was not included in the publicly approved budget. To enhance disclosure and transparency of employees' payrates, the employees' specific payrate amounts should be listed on a publicly available pay schedule that has been duly approved and adopted by the Association's governing body.

Per Government Code Section 20636, an employee's payrate is the base pay pursuant to publicly available pay schedules and shall be public records available for public scrutiny. Only compensation earnable, as defined under Government Code Section 20636 and corresponding regulations, can be reported to CalPERS and considered in calculating retirement benefits. The Association must ensure that reported payrates are set forth in a publicly available pay schedule that meets all of the following requirements:

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# ASSOCIATION OF CALIFORNIA WATER AGENCIES

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

***Criteria:***

Government Code: § 20160, § 20636

California Code of Regulations: § 570.5

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# ASSOCIATION OF CALIFORNIA WATER AGENCIES

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**Finding 2:** The Association incorrectly reported payrates and earnings to CalPERS.

***Recommendation:***

The Association should pay and report payrates in accordance with appropriate pay schedules.

The Association should work with CalPERS CASD to determine the impact of this incorrect reporting and determine what adjustments are needed to reported payrates, service credit or other areas needing adjustment pursuant to Government Code Section 20160 and to deny all incorrectly reported payrates and earnings.

***Condition:***

***Payrates and reported were under and over-reported***

OAS compared the reported payrates to an excel spreadsheet that the Association used to designate payrates and found the payrates for three employees were incorrectly reported to CalPERS in sampled service period 2/12-3. Specifically, OAS found the following:

- The Association reported a payrate of \$21.82 per hour for a Web Communications Coordinator employee. However, the excel spreadsheet listed the pay range for the Web Communication Coordinator position as \$45,026 to \$58,533.00 per year (\$23.09 to \$30.02 per hour).
- The Association reported a monthly payrate of \$9,276.74 (\$111,321.00 annually) for an employee working as a Sr. Regulatory Advocate; however, the excel spreadsheet listed a pay range of \$84,903 to \$110,373 annually (\$7,075.25, to 9,197.75 per month) for the position. Also, the Association reported a payrate of \$38.55 per hour for an employee working as a Publications Editor; however, the excel spreadsheet listed a pay range from \$52,123 to \$67,760 annually (\$26.73 to 34.75 per hour) for the position.

***Earnings and payrate incorrectly reported***

The Association incorrectly reported the payrate for a sampled employee that concurrently worked in two positions that had different payrates. One position paid an hourly rate of \$15.45 while the other paid an hourly payrate of \$17.59. The employee earned \$618.00 from the \$15.45 position and \$615.30 from the \$17.23 position in the service period reviewed; however, the Association incorrectly added the earnings together and reported earnings of \$1,233.30 and an hourly rate of



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## ASSOCIATION OF CALIFORNIA WATER AGENCIES

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\$15.45. The Association should have reported the payrate and earnings for each position as two separate line items to CalPERS.

*Retroactive payment not reported to CalPERS*

OAS found that in service period 2/12-3, a sampled employee's payrate increased by \$0.35 per hour retroactive to January 1, 2012; however, the retroactive payment was not reported to CalPERS. The Association should have reported the retroactive payrate with the corresponding earnings and identified the pay periods in which the earnings were earned.

**Criteria:**

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

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# ASSOCIATION OF CALIFORNIA WATER AGENCIES

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**Finding 3:** The Association did not enroll an eligible temporary/part-time employee into CalPERS membership in a timely manner.

***Recommendation:***

The Association should enroll all eligible employees into CalPERS membership when eligibility requirements are met pursuant to Government Code Section 20305.

The Association should work with CalPERS CASD to assess the impact of this membership eligibility issue and determine what adjustments, if any, are needed.

***Condition:***

OAS examined the number of hours worked in fiscal year 2008/2009, for a sampled part-time employee that worked for the Association. The hours were examined to determine whether the employee met CalPERS membership eligibility requirements and if so, was enrolled timely into CalPERS membership. OAS found that the part-time employee worked a total of 1,554.9 hours for the Association, but the employee was not enrolled into CalPERS membership in a timely manner. Specifically, the part-time employee met CalPERS membership on February 21, 2009, by working 1,033.33 hours; however, the employee was not enrolled into CalPERS membership until May 31, 2010. The part-time employee should have been enrolled into CalPERS membership no later than the first day of the first pay period in March 2009.

***Criteria:***

Government Code: § 20305(a)(3)(B)

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# ASSOCIATION OF CALIFORNIA WATER AGENCIES

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**Finding 4:** The Association improperly enrolled into CalPERS membership individuals that were not common law employees of the Association.

**Recommendation:**

The Association should ensure that only its common law employees are enrolled and reported to CalPERS. The Association should not report the common law employees of other entities.

OAS recommends CASD work with the Association to assess the impact of the misreported individuals, and determine what adjustments, if any, are needed.

**Condition:**

In order to determine the membership eligibility status of employees performing services for the Health Benefit Authority (HBA), a separate entity affiliated with the Association, OAS reviewed Association and HBA documentation to determine the relationship between the two entities.

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

Applying the California common law, the most important factor in determining whether an individual performs services for another as employee is the right of the principal to control the manner and means of job performance and the desired result, whether or not this right is exercised. Where there is independent evidence that the principal has the right to control the manner and means of performing the service in question, CalPERS will determine that an employer-employee relationship exists between the employee and the principal.

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

(a) whether or not the one performing services is engaged in a distinct occupation or business;

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# ASSOCIATION OF CALIFORNIA WATER AGENCIES

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

OAS identified the following common facts which support a finding of control and that the individuals were common law employees of the HBA and not of the Association.

1. The Association and the HBA have separate boards independent of each other.
2. The Association was hired by the HBA as a contractor to provide the HBA with Professional services to administer the HBA functions.
3. The HBA Board through Board actions directed the Association when to promote or pay the employees working for the Board.
4. The HBA reimbursed the Association for the cost of the HBA services. The cost included the actual direct costs, and normal employee costs including workers' compensation coverage, payroll taxes, current employee benefits (health and pension), unemployment insurance, and other mandated employer expenses, plus an administrative fee of 20 percent.
5. The HBA staff only provided services to the HBA and not to the Association.
6. The HBA Board had direction and control over the operations of the employees enrolled under the Association.
7. The Association charged the HBA for the costs associated with housing the HBA employees. The charges included rent, supplies and equipment, and postage.
8. The HBA Board had fiscal independence (i.e. collect distribute funds; incur debts, liabilities or obligations)
9. The HBA had the ability to hire and fire employees.
10. The HBA had the authority to contract.
11. The HBA had the power to sue and be sued.

OAS concluded that five individuals were common-law employees of the HBA, but were reported to CalPERS as if they were common law employees of the Association. OAS recommends that the CASD work with the Association to finalize these determinations for the individuals identified and any other individual present or past that may be identified.

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# ASSOCIATION OF CALIFORNIA WATER AGENCIES

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***Criteria:***

Government Code: § 20028(b), § 20056, § 20125, § 20160 (a), § 20502

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# ASSOCIATION OF CALIFORNIA WATER AGENCIES

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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.

Since OAS did not review whether the Association is a "public agency" (as that term is used in the California Public Employees' Retirement Law), this report expresses no opinion or finding with respect to whether the Association is a public agency or whether its employees are employed by a public agency.

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

Respectfully submitted,

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

Date: January 2013  
Staff: Michael Dutil, CIA, Senior Manager  
Alan Feblowitz, CFE, Manager  
Nuntawan Camyre  
Jose Martinez

# APPENDIX A

## BACKGROUND

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# ASSOCIATION OF CALIFORNIA WATER AGENCIES

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## BACKGROUND

### California Public Employees' Retirement System

The 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 Customer Account Services Division (CASD) manages contract coverage for public agencies and receives, processes, and posts payroll information. In addition, CASD provides services for eligible members who apply for service or disability retirement. 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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# ASSOCIATION OF CALIFORNIA WATER AGENCIES

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## OBJECTIVES

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

- Whether the Association 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 Association's retirement contract with CalPERS were followed.

This review did not include a determination as to whether the Association is a "public agency", and expresses no opinion or finding with respect to whether the Association is a public agency or whether its employees are employed by a public agency. This review covers the period of April 1, 2009, through March 31, 2012.

## SUMMARY

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

- ✓ Reviewed:
  - Provisions of the Contract and contract amendments between the Association and CalPERS
  - Correspondence files maintained at CalPERS
  - Association's Board minutes and Association's Board resolutions
  - Association written labor policies and agreements
  - Association salary, wage and benefit agreements including applicable resolutions
  - Association personnel records and employee hours worked records
  - Association 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 Association payroll records and compared the records to data reported to CalPERS to determine whether the Association correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Association 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

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# ASSOCIATION OF CALIFORNIA WATER AGENCIES

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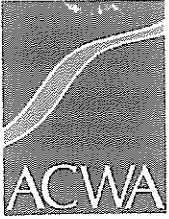
Association's governing body in accordance with requirements of applicable public meeting laws.

- ✓ Reviewed CalPERS listing reports to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the Association's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Association'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 Association's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Association's affiliated entities to determine if the Association shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Association or by the affiliated entity.
- ✓ Reviewed the Association's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

# APPENDIX C

## WRITTEN RESPONSE

**NOTE: The Association provided additional informational attachments to the response which have been intentionally omitted from this appendix.**



**Association of California Water Agencies**

Leadership · Advocacy · Information · Since 1910

December 19, 2012

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

RE: Draft Compliance Report  
Employer Code: 1039  
CalPERS ID: 4352260559  
Job Number: P11-029

Dear Ms. Junker:

Please find enclosed our response to the draft report on CalPERS's compliance review.

Sincerely,

Fili T. Gonzalez  
Director of Finance and Business Services

## CalPERS Compliance Report of October 26, 2012

### Association of California Water Agencies (ACWA) Response

(Due: December 19, 2012)

#### Finding 1: Pay Schedule Was Not Properly Approved or Publicly Available

- Agree/Disagree: Agree
- Response: ACWA is not subject to the Brown Act and as such believed it was not required to comply with the public salary disclosure requirement. However, ACWA now understands that because of its participation in CalPERS, CalPERS expects its members' salary information to be made available to the public. Hence, ACWA has added a statement on our web site that states "Our pay schedule is available to the public at the ACWA Office (910 K Street, Suite 100) from 9:00 a.m. to 4:00 p.m., Monday through Friday." The members' salary information will be maintained and provided to the public as requested.

#### Finding 2: The Association Incorrectly Reported Pay Rates and Earnings to CalPERS

- Agree/Disagree: Agree
- Response: We will take each case separately:
  - ██████████ - In 2012, ██████████ position title and responsibilities were redefined and he was moved from Range 12 to Range 15. His salary was to be adjusted in two steps. The first step was implemented in 2012. The second step to move him into the new range fully was to occur in 2013. In October, ██████████ resigned from ACWA and is no longer employed.
  - ██████████ - ██████████ was promoted from a Regulatory Specialist to a Regulatory Advocate in the fall of 2005. His salary was adjusted accordingly from 1999 to 2005. However, the position also should have been adjusted to a new range (from 2005 to Present) to reflect that increase.
  - ██████████ - An association-wide employee salary and benefits survey was conducted in 2004. ██████████ position as Publications Editor was included in

that survey. The survey data indicated that the salary range had decreased for similar positions in the market. The salary range for the position was adjusted accordingly, but the decision was made to leave the long-term employee at her current salary. The decision was also made that if the position became vacant, the salary would be adjusted to fit within the new, *lesser*, range. ACWA will work with CalPERS CASD to determine the impact of the incorrect reporting and determine what adjustments are needed to correct the inadvertent errors.

**Finding 3: The Association Did Not Enroll an Eligible Temporary/Part-time Employee into CalPERS Membership in a Timely Manner**

- Agree/Disagree: Agree
- Response: At the time, ACWA did not use an automated payroll system. Since the audit, ACWA uses an automated payroll system that tracks employees' hours. Through the automated tracking, ACWA will be better prepared to identify employees who need to be enrolled in CalPERS and will do so in a timely manner. ACWA will work with CalPERS CASD to assess the impact of this member eligibility issue to determine if further adjustments are needed.

**Finding 4: The Association Improperly Enrolled Into CalPERS Membership Individuals That Were Not Common Law Employees of the Association**

- Agree/Disagree: Disagree
- Response: The scope of this audit was limited to April 1, 2009 through March 31, 2012. The field work occurred May 1, 2012 to May 4, 2012. The scope of the audit is relevant because the entity referred to as the "HBA" was a fully integrated component of ACWA before it transitioned into a separate entity. In June 2010, the HBA formed a joint powers agency apart from ACWA, However, the employees who performed duties in support of the HBA remained ACWA employees. ACWA's Executive Director retained ultimate control over the employees until the HBA and ACWA separated entirely in or about June 2012. A copy of the joint powers agreement ("JPA") is attached. ACWA's responsibilities with respect to the discipline, pay and benefits of ACWA/HBA employees continued until June 2012.

The transition of HBA from a component of ACWA to a separate entity was done over a long transitional period. The agreed upon plan between the HBA and ACWA included an

eventual transfer of ACWA employees who performed HBA functions to HBA's payroll when it was a standalone entity. The HBA's independence was delayed somewhat and it was not until July 1, 2012 that all employees associated with the "spin off" had separated their employment from ACWA. HBA disbanded after the "spin-off" and only three of its employees were hired by the ACWA JPIA. Effective July 1, 2012, ACWA no longer included any of the identified employees with its CalPERS submissions. It is on these grounds that ACWA disputes the conclusions of the audit staff and seeks reconsideration as to this finding.