

Question: Can you confirm that if the SCGA sought to become a CalPERS employer, it would be limited to a PEPRAs complaint contract and benefit, even for classic CalPERS employees?

BB&K Answer: That is correct. Any employer establishing a new CalPERS contract on or after January 1, 2013 is limited to the PEPRAs formulas for all employees, including classic employees. The only exception to this is for a contract that is established on or after January 1, 2013 as a successor to a contract that was in place prior to January 1, 2013. In that case, the successor contract is limited to the classic formula(s) offered under the contract that it is assuming.

Question: Can the RWA contract with the SCGA JPA to provide services and not run afoul of CalPERS pension requirements?

BB&K Answer: If the SCGA remains as an independent agency that directs the activities of the RWA staff, that staff would not accrue CalPERS-eligible retirement associated with the time spent working on SCGA tasks. An important test is if the "Common Law Employee Relationship" is broken. That test may fail if the RWA Employees are not under the direction of the RWA, but rather the SCGA as envisioned under this scenario. It should be noted that the test for a common law employee relationship is balanced among different criteria, but it would appear to be broken under this scenario.

Question: If SGA was to expand its JPA to include the City of Rancho Cordova and City of Elk Grove, would it have any bearing on maintaining the existing CalPERS contract?

BB&K Answer: Modifying the JPA would not change in any way the existing CalPERS relationship of SGA.

Question: If SGA was to expand its JPA to include the City of Rancho Cordova and City of Elk Grove, could new committees or councils be formed that are distinct to the North American and South American basins and not run afoul of the CalPERS requirements?

BB&K Answer: This will not run afoul of the CalPERS requirements and will not sever the common law employee relationship between SGA and its staff so long as the committees are a component of SGA and subordinate to the SGA Board of Directors. I recommend discussing this with the authority's general counsel to determine if the new authority along with the new committees would be able to accommodate SGMA requirements.

Question: Are there any other circumstances under which the RWA could provide staffing services to SCGA members (such as under an RWA subscription program) to implement a SGMA-compliant groundwater sustainability program while having RWA employees accrue CalPERS-eligible time? Under this scenario, the current SCGA JPA would dissolve and would be replaced by a MOA. Mutual members of the MOA and the RWA could establish a subscription program. Would that concept run afoul of the RWA maintaining a common law employee relationship or run afoul of the CalPERS pension requirements?

BB&K Answer: This scenario would not run afoul of CalPERS requirements if: (a) the subscription service is focused on a specific project rather than being open ended (e.g., the purpose of the subscription service is to implement a SGMA-compliant groundwater sustainability program; (b) the subscription service is provided to an RWA member; and (c) RWA staff is not involved in ongoing day to day operation of the member's program (involvement in the start-up phase is acceptable but the goal of the service should be to give the member the tools to manage the program itself). If the expectation here is

that RWA will manage the program on an ongoing basis, then the entire program should be contracted out to RWA to the extent permitted under the SGMA so that only RWA staff are involved in the operation of the program and under the sole direction of RWA management or its board of directors.

Question: Could you protect and indemnify the RWA under such a scenario?

BB&K Answer: I assume this question is in the context of the MOA between RWA and the participant in the subscription service. If so, this is a matter the terms of the MOA and I recommend that RWA seek the advice of its general counsel on how to protect the parties.