

# CAPSule

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November 2014, Issue #14-11

## Furlough Back Pay Coming

The furlough decision from the First District Court of Appeal became final late last month. CalHR notified CAPS that it would not file a petition for review with the California Supreme Court. As a result, CAPS is pressing CalHR to immediately cut the checks that are due to all CAPS members affected for the two days in question, plus interest.



The specific wording of the ruling requires the State to “set aside as unlawful the second and third unpaid furlough days in March 2011, and take any and all actions required by law to make those employees whole by providing back pay...” This means that every rank-and-file state scientist covered by the case is due to receive two days back pay, plus interest at the statutory rate of 2.2%.



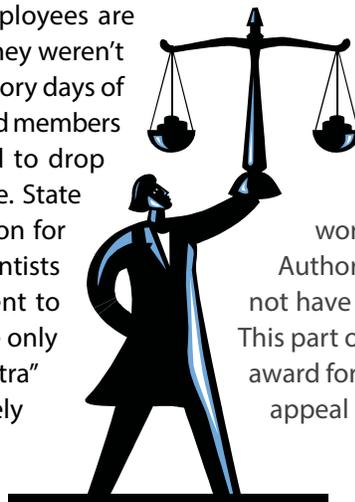
**No Supervisors This Time.** Only rank-and-file state scientists (and state engineers represented by PEGC, which joined CAPS in the case) are eligible to receive this back pay. Supervisors and most other rank-and-file state employees are not covered either because they weren't required to serve those additional two mandatory days of unpaid furlough (as in the case of supervisors and members of SEIU), or their union inexplicably decided to drop out of the case before a final ruling was made. State supervisors saw an 8.5 percent salary reduction for the 2010–11 fiscal year, while rank-and-file scientists received a 9.2 percent reduction — equivalent to two more furlough days. Since the Legislature only authorized an 8.5 percent reduction, this “extra” .7 percent reduction **exceeded** the legislatively authorized reduction.

**Back Pay In ADDITION to Personal Leave.** The back pay award is especially significant because all state scientists affected received 16 hours Personal Leave as compensating time off for the salary reduction. In fact, CalHR was considering a petition for appeal based on the argument that scientists had already been compensated for this time. Had they done so, CAPS is confident it would have prevailed because the program was involuntary — scientists were forced to participate and received a reduced paycheck as a result.



**Base Remediation Element Reversed.** One of CAPS' challenges to this particular episode of mandatory furloughs was rejected. The appellate court reversed the trial court's finding regarding scientists involved in hazardous waste remediation and management on military bases. The appellate court held the Legislature had the authority to furlough these scientists through the State Budget, meaning they won't get additional back pay.

**Off-Budget Makes the Cut.** Finally, the final judgment allows another key part of the original trial court ruling to be implemented. Scientists working in the “off budget” agencies of the Prison Industry Authority and the California Earthquake Authority should not have been furloughed at all and are entitled to back pay. This part of the ruling will result in a more substantial back pay award for this small number of CAPS members. CalHR did not appeal this part of the original ruling by Judge Brick.



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# Bankruptcy Ruling Keeps Pensions Whole

**Editor's Note: Thanks to Californians for Retirement Security, and Sacramento Attorney Robert Bonsall who monitored the case, for key portions of this article.**

Federal bankruptcy court Judge Christopher Klein on October 1 said in a preliminary ruling that federal law treats public pensions just like any other debt — subject to reduction in a bankruptcy proceeding. Then on October 30, Judge Klein formally ruled. He approved Stockton's bankruptcy plan without amendment. That plan left CalPERS retirement benefits for city employees and retirees fully intact. That came as welcome relief to the affected employees and underscores the importance of collective bargaining—not bankruptcy — as the best process for modifying retirement benefits.

## **Franklin Challenged Stockton Plan.**

Stockton's plan was under attack by one of the city's creditors, Franklin High Yield Mutual Fund. Franklin wanted to be paid more on the debt it was owed by Stockton. In order to do that, more money had to be made available, and that could only be accomplished if promised retirement benefits for Stockton City employees and retirees were reduced. Fortunately, Judge Klein rejected every one of Franklin's challenges. Franklin has appealed this ruling.

**Slashing Pensions No Cure.** Among his most significant rulings were these: Judge Klein found that Stockton had no legal obligation to reject its contract with CalPERS. Instead, he agreed that Stockton had a legitimate concern that impairing the CalPERS contract would cause a flight of workers to other agencies, particularly police and fire. The Court recognized this would cause further stress for the City. Judge Klein didn't question the City's conclusion that CalPERS was the "low cost provider" and that there were "no better options"

available for public employee pensions. (CalPERS had said that if Stockton left the state retirement system, the city would immediately owe it \$1.6 billion — far more than the city's current bill to the pension plan.)

## **Judge Rejects "Collusion" Argument.**

Perhaps most importantly, Judge Klein found that Stockton's plan was proposed in good faith, contrary to Franklin's suggestion that the City had somehow colluded with the employees' union representatives to benefit their members unfairly. He rejected Franklin's argument that the employees were unaffected, citing significant concessions made during the negotiations between the parties. In fact, Judge Klein characterized Franklin's claim as comparatively small in light of the concessions made by the active and retired employees.

## **Public Pensions Should NOT Be Vulnerable in Bankruptcy.**

In CAPS' view Judge Klein incorrectly ruled that a municipality's pension obligations to CalPERS may lawfully be impaired during bankruptcy. Fortunately, he rejected all challenges to the Stockton Plan of Adjustment which did not impair the employees' pension rights. Equally important, Judge Klein stated that the Stockton bankruptcy should serve as a cautionary tale for any public agency which contemplates a reorganization of its debts. It is an expensive, complex, time consuming process for any municipality. The best course is to refrain from impairing pension obligations to employees.

## **EnCAPSulations...**

**Bonus Checks For Retired Annuitants?** Nearly all of the \$1,000 MOU bonus checks have been distributed. Where they are due and not received, CAPS has intervened. One group still in question is retired annuitants. The initial determination by CalHR is that retired annuitants are not members of the bargaining unit and thus not entitled to this check. CAPS believes CalHR is mistaken, based on a 2011 unit modification jointly agreed to by CalHR and CAPS that made retired annuitants part of Bargaining Unit 10. Any retired annuitant who is working in Unit 10 can expect final resolution in the coming weeks. If checks are ultimately distributed to this group, CAPS will make it known.

**Reclassification and Pay Project.** The CAPS Bargaining Team has now met several times with CalHR and various state departments to develop new classification options. The first stage of the project is the review and modernization of the state scientific classifications themselves, ending with up to nine separate classification headings. The goal will be to consolidate hundreds of existing Unit 10 state scientific classifications into one of these nine new classification series. The second phase is the establishment of a new salary range for each new classification series and negotiations for existing salaries. CAPS wants YOU to review options before they are implemented. Some of these have already been posted on the CAPS Discussion Forum. If you haven't already registered for the Forum, you can do so here: [www.capsscintistsforum.org](http://www.capsscintistsforum.org).

**Business and Travel Increases Effective October 1.** The new, higher rates were effective October 1: <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx> Reimbursement for travel claims since July 2013 remain in dispute, and are now subject to resolution through a CAPS court case.



# Giving Thanks

By David Miller, President

There's always something important to do. I have a long list of these things.

It's also important to pause and reflect from time to time. To be thankful for the many things already done, things we already have. This month, with Thanksgiving looming, is a good time for that.

From CAPS' perspective, there are many things for which I am thankful. There's an MOU in place. It provided a badly needed cash bonus for all state scientists, just in time for the holidays. It includes a modest salary boost next spring. Most importantly, it provides a pathway to salary equity via the Reclassification and Pay Project.

We won the furlough lawsuit. That means two day's back pay for all rank-and-file state scientists who were forced to donate the time as a mandatory unpaid furlough during March 2011. Those checks are coming soon.

Salary equity is already a reality for some state scientific supervisors. The August 20 CalHR pay letter implemented salary increases of between 28% and 43% for most supervisors associated with Bargaining Unit 10. There's much more work to do via the Reclassification and Pay Project, but this was a major first step by the Brown Administration in restoring salary equity for ALL state scientists.

State budget revenues continue to exceed projections. During October, receipts exceeded expectations by 12.3%. Assuming this trend continues — and I expect it to — lack of money won't be a reason the state can't fund future salary increases for state scientists. Those increases are long overdue, based on the lack of salary growth we've had to endure for the last 10 years.

The California election outcome from November 4 was mostly good news. There were big changes on the national scene, but here in California, all of the statewide officers are friends of state scientists. Both houses of the Legislature remain solidly in friendly hands. This outcome helps in our quest for salary equity.

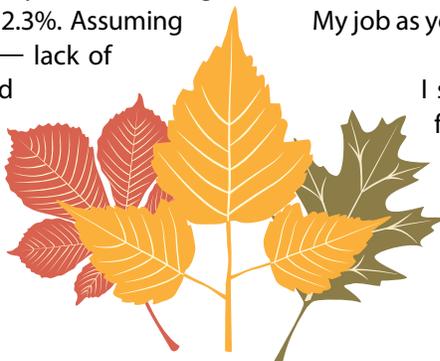
Our retirement plan is secure. Public retirements in California are still under attack, but ours remains whole. Sure, we involuntarily implemented retirement "reform" in 2011. That resulted in some additional contribution increases, but it preserved our defined benefit formula via state law and thus further protects our post-retirement benefits. Bankruptcies in San Bernardino and Stockton have demonstrated just how tenuous public retirements can be for agencies that contract with CalPERS. In contrast, Detroit retirees have seen their benefits slashed as a result of that municipal bankruptcy, a horrific tragedy. We are fortunate to have kept our outstanding retirement plan fully intact.

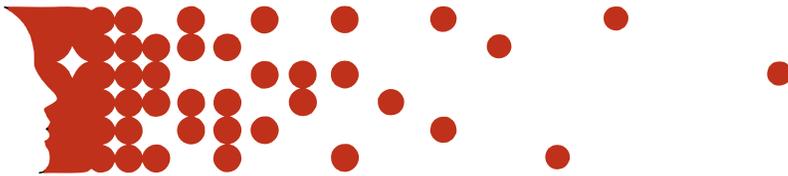
*"Our retirement plan is secure."*

We have excellent health benefits via CalPERS as active and retired state employees. The cost and quality of these benefits can change from year to year, which is largely out of our control — this year we saw a substantial premium increase for one of the major plans. And the unfunded liability for post-retirement health benefits is about \$65 billion, a bill that has to be paid sooner or later.

Nevertheless, our health benefits are among the best. My job as your CAPS President is to keep it that way.

I see the year ahead and challenges we face. Yet at this moment, I am thankful. Happy Thanksgiving!





## CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS

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## More CAPS Grants!

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The CAPS Grants program has been in continuous operation for over 20 years. CAPS proudly awards professional development grants of \$300 every quarter to each of four CAPS members—16 annually. State departments don't do enough to support scientists' professional development, so CAPS does its part to fill the void. ANY CAPS member can apply for a CAPS grant via the CAPS webpage: [www.capsscience.org](http://www.capsscience.org). Congratulations to these grant recipients for the fourth quarter of 2014:

**Staff Toxicologist (Specialist) ChingYi Jennifer Hsieh, Ph.D. of the Office of Environmental Health Hazard Assessment in Sacramento** used her grant to offset the costs in attending the annual meeting of the Society of Toxicology in Phoenix during March 2014, where she presented a poster regarding assessment on the evidence of the carcinogenicity of a substance listed under Proposition 65.

**Environmental Scientist Rhiannon Klingonsmith of the Department of Water Resources in West Sacramento** will use her grant to offset the costs of attending the annual meeting of the Western Section of The Wildlife Society in Santa Rosa during January 2015. Klingonsmith is an avian specialist and has been an active member of The Wildlife Society for over 10 years and is Professional Development Chair for her local chapter.

**Environmental Scientist Gina Radieva of the Department of Water Resources in West Sacramento** will use her grant to attend the 2015 California Native Plant Society Conservation Conference in San Jose where climate change in California and its impact on plant and animal life will be a primary topic.

**Environmental Scientist Jeff Villepique, Ph.D. of the Department of Fish and Wildlife in Big Bear City** used his grant to present results of his research at the annual conference of The Wildlife Society in Pittsburgh, Pennsylvania during October 2014. His focus is on relationships between mountain lions and bighorn sheep in the Sierra Mountains.

*Note: the CAPS Grant program is independent from the two days of professional development earned by every state scientist annually in accordance with Section 15.3 (G) of the CAPS MOU.*