

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent James D. Gates (Mr. Gates), is currently employed by respondent Eastern Municipal Water District, and is a miscellaneous member of CalPERS. Respondent Kathleen J. Gates (Mrs. Gates), his ex-wife, is employed by the Hemet Unified School District, and is a miscellaneous member of CalPERS.

On March 18, 2009, Mrs. Gates was awarded 13.244 years of Mr. Gates' accumulated service credit as part of the property settlement in their dissolution of marriage. Upon implementation of this order, the 13.244 years of service were transferred into a nonmember account for the benefit of Mrs. Gates. Mr. Gates was advised by staff that:

"If the nonmember receives a lump sum distribution by either a refund (or rollover) of the contributions and interest credited to the nonmember account, you will have the right to redeposit those contributions, plus interest, and restore the service credit to your account. You will be sent written notification should Kathleen Gates elect to receive a refund (or rollover) from their nonmember account with instructions how to purchase the service credit that was transferred to this nonmember account..."

Effective August 1, 2009, Mrs. Gates service retired, using the service credits in her "nonmember" account with CalPERS. On or around January 27, 2010, CalPERS received a Request for Service Credit Cost Information - Redeposit of Withdrawn Contributions (RED-CP) from Mr. Gates. In this request, Mr. Gates checked the box indicating that his nonmember spouse had withdrawn her retirement funds. On May 12, 2010, CalPERS mistakenly provided Mr. Gates with an estimate of the cost for a redeposit of the 13.244 years of service credit at a lump sum cost of \$95,300.66. On June 15, 2010, CalPERS received Mr. Gates' signed election to redeposit and his payment.

On or about November 14, 2011, while completing a retirement estimate requested for Mr. Gates, CalPERS staff discovered that Mrs. Gates had in fact not withdrawn and refunded the 13.244 years of service credit. CalPERS staff informed Mr. Gates that 13.244 years of service credit would again be removed from his account and the amount paid would be refunded to him. He was also advised of his right to appeal. Mr. Gates refused to provide information requested for transfer of his redeposit amount. Mr. Gates filed a timely appeal. The appeal was limited to the issue of whether Mr. Gates was eligible to redeposit and acquire the 13.244 years of service credit that was awarded to his nonmember spouse.

A hearing was held on February 13, 2013, before an Administrative Law Judge (ALJ). Mr. Gates was present, and represented himself. Mrs. Gates was present but only in the capacity of a witness. Eastern Municipal Water District did not appear. Evidence, both oral and documentary, was presented by Mr. Gates and CalPERS. Following the

receipt of testimony, including that of Mr. Gates, his financial advisor, Mrs. Gates, and CalPERS staff representative, the ALJ issued a Proposed Decision on March 13, 2013. The ALJ found, inter alia, that CalPERS had mistakenly permitted Mr. Gates to proceed with a redeposit. The ALJ also found that Mr. Gates had erroneously informed CalPERS that Mrs. Gates had refunded and withdrawn her contributions in the nonmember account, when in fact she had used the service credit to service retire.

The ALJ concluded that CalPERS was entitled to correct the error and to reverse the redeposit, returning the amount paid to Mr. Gates. The ALJ also concluded that should Mr. Gates wish, he could request that CalPERS distribute to him any interest on his account attributable to the monies returned, or he could leave the interest earned in his retirement account.

The Proposed Decision is consistent with the law and facts. For the reasons stated above, staff argues that the Board should adopt the Proposed Decision as its final decision in this matter.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The Respondents may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

May 15, 2013

  
WESLEY E. KENNEDY  
Senior Staff Attorney