

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Of:

GERE SIBBACH,

Respondent,

and

CITY OF MORRO BAY,

Respondent.

Case No. 2013-0552

OAH No. 2014110220

**PROPOSED DECISION**

This hearing in this matter was conducted telephonically by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on November 30, 2015.

Wesley E. Kennedy, Senior Staff Attorney, represented Complainant Karen DeFrank, Chief, Customer Account Services Division, Board of Administration, California Public Employees' Retirement System (CalPERS).

Stephen E. Sibbach, Attorney at Law, represented Gere Sibbach (Respondent).

Michael C. Houston, Attorney at Law, represented City of Morro Bay (Respondent City).

The parties stipulated in writing that the matter may be heard telephonically. They stipulated that the matter would be submitted based on documentary evidence, and agreed to the receipt into evidence of the specific documents that would constitute the record. After the submission of their written stipulation, CalPERS submitted two additional exhibits, numbers 7 and 8, and Respondent submitted one additional exhibit, number C. All exhibits were received in evidence; Exhibit C was received over the relevancy objections of Complainant and Respondent City. The parties presented written and oral argument, and the matter was submitted for decision on November 30, 2015.

Respondent worked for Respondent City, a CalPERS contract employer, from December 22, 1980 to November 18, 1983. On October 17, 1983, Respondent started working

PUBLIC EMPLOYEES RETIREMENT SYSTEM

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*Maureen M. George*

for the County of San Luis Obispo (County), and became member of the San Luis Obispo County Pension Trust (SLOCPT). On November 18, 1983, he withdrew his contributions to CalPERS and terminated his membership in the system. Effective April 19, 1984, CalPERS and the County entered into a reciprocity agreement. On July 1, 1984, the County informed Respondent that he may have some benefits as a result of the reciprocity agreement. Respondent thereafter contacted CalPERS, and on August 7, 1987, was informed that he could reinstate his membership in CalPERS by redepositing \$8,532.29 to restore 3.311 years of service credit. The letter also informed Respondent that he would receive a CalPERS benefit based on service credited in CalPERS employment, as long as he concurrently retired from both systems.

Respondent did not redeposit his contributions in 1987, but on May 4, 2012, as he was nearing retirement, Respondent sought another cost estimate. On November 29, 2012, CalPERS provided the estimate. CalPERS also informed Respondent that because of his concurrent employment with Respondent City and the County in 1983 he would not be able to use salary earned with the County to establish his CalPERS benefit. The CalPERS allowance would be based on earnings in CalPERS employment or an annuity based on the redeposited contributions, whichever was higher.

In his appeal, Respondent does not dispute that concurrent employment in both systems would normally preclude the application of full reciprocity, including the benefit referred to as "final compensation exchange" or final compensation reciprocity through which a member of the two systems involved may receive a retirement allowance based on the aggregate number of years in both systems and the highest salary earned in either system. However, Respondent maintains that he is entitled to relief under the equitable doctrine of promissory estoppel because he relied on the promises made by CalPERS in the 1987 letter that he would be entitled to full reciprocity.

CalPERS and Respondent City counter that the equitable doctrine may not be applied to give Respondent a benefit to which he would not be statutorily entitled. They argue that, consistent with the law and the statements in the 1987 letter, Respondent can receive some benefits of reciprocity, such as vesting benefits (he would not vest in CalPERS based solely on his service credits in CalPERS-covered employment), but he is not entitled to the benefit he seeks, final compensation reciprocity, because of his concurrent employment with Respondent City and the County.

#### FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in her official capacity.
2. Respondent first became eligible for CalPERS membership while working at California Polytechnic State University, San Luis Obispo (Cal Poly San Luis Obispo), from October 28, 1975, to March 19, 1976.

3. On December 22, 1980, Respondent was hired by Respondent City as its Finance Director, and again became eligible for CalPERS benefits. Respondent worked for Respondent City until November 18, 1983.

4. On November 18, 1983, Respondent terminated his membership with CalPERS, and elected to receive a refund of his total accumulated contributions. His contributions were refunded on December 9, 1983.

5. Respondent was hired by the County on October 17, 1983, and became a member of SLOCPT.

6. During the period of October 17, 1983 to November 18, 1983, Respondent held concurrent employment with Respondent City and with the County. He actually worked five eight-hour days and used his paid vacation leave for the rest of the period.

7. Respondent submitted a letter signed December 11, 2014, by Paul Baxter, former City Administrator of Respondent City to explain the circumstances of his concurrent employment. The letter states, in pertinent part:

"[A]s I'm sure you remember, Morro Bay had the responsibility of financing the joint Cayucos-Morro Bay waste water treatment and outfall projects during the summer of 1983. You were critical with providing financial information to the underwriter, bond counsel, and issuer in addition to preparing staff for our annual audit. When you accepted your next position with San Luis Obispo County, you gave me more than adequate notice so we could recruit and fill your position. But, as things unfolded, we were not able to complete our recruitment in a timely manner and had no one on staff to backfill so I asked if you could give the City 3-4 days after you left to oversee and coordinate our waste water financing project as well as keep clerical staff on track for audit preparation.

"The County of San Luis Obispo had 'loaned' critical staff to Morro Bay on occasion (the most notable was Kent Taylor, Deputy County Administrator who served as Acting City Administrator before I was hired) and I appreciated the County's willingness to allow you to help the City during this transitional period as well. At no time did I think your work was permanent or working for two public agencies at the same time, but to help our small City in a time of need. [¶] . . . [¶]. (Exh. B.)

8. a. At the time Respondent started working for the County, CalPERS did not have a reciprocity agreement with the County. However, effective April 19, 1984, CalPERS' Board of Administration and the County Board of Supervisors entered into a reciprocity agreement (Reciprocity Agreement), in which they "agree to extend each to the other reciprocal benefits as provided by Sections 20042, 40043, 31840.2, 53222, and 45310.5 of the

Government Code, which benefits are more particularly set forth in Exhibit A, attached hereto and incorporated herein." <sup>1</sup> (Exh. 4a.)

b. The reciprocal benefits described in the Reciprocity Agreement included counting service credit in both systems toward the vesting requirements in each system, coordination of death benefits, and coordination of disability benefits. With respect to computation of final compensation, the agreement stated: "The average monthly salary during any period of service as a member of a reciprocal system shall be considered compensation earnable by a covered employee of this system for purposes of computing final compensation for such covered employees, provided said covered employee retires concurrently under both systems, and provided further that said covered employee is credited with such period of service under said reciprocal system at the time of retirement." (Exh. 4a, at p. 2.)

9. On July 1, 1984, the County informed employees about the reciprocity agreement. The letter explained that "[R]eciprocity between [SLOCPT] and [CalPERS] provides for coordination of benefits to employees who move from a position covered by one retirement system into a position covered by a reciprocal retirement system. To be eligible, an employee must accept employment in a position covered by a reciprocal retirement system within six months of termination of employment covered by another reciprocal system. Depending upon category of employee identified at the end of this memo, those coordinated benefits can include: [¶] 1. Upon retirement, concurrent benefits may be received from both systems based upon [the] employee's age at retirement from either system, and [the] highest compensation earned in either system. [¶] ... [¶].

Four categories of employees were identified in the memorandum, including category four, which applies to Respondent. As pertinent to his situation, the notice stated: "[F]ollowing is a summary of the rights resulting from reciprocity between the [SLOCPT] and [CalPERS] by category of certain affected employees: [¶] ... [¶] 4. [SLOCPT] employees hired before April 19, 1984, who were previous members of [CalPERS] or a [CalPERS] reciprocal system, but who terminated membership in [CalPERS]: [¶] The right of such employees to enjoy reciprocal benefits is based exclusively upon the ability of [CalPERS] or the [CalPERS] reciprocal system to retroactively reinstate employees. It is currently our understanding that the [CalPERS] system will permit retroactive enrollment into the [CalPERS] to former members. If you are such an employee and wish information regarding your rights to reinstate your membership, you should directly contact the retirement system of which you previously were a member. ..."

(Exh. 4p, at p. 7.)

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<sup>1</sup> The provisions of the Public Employees' Retirement Law (PERL), Government Code section 20000 et seq., were reorganized in 1996 (Senate Bill 541, Chapter 379, Stats. of 1995) and 1997 (Senate Bill 1859, Chapter 906, Stats. of 1996). As pertinent to this matter, Government Code section 20042 is current Government Code section 20351. The language of section 20351 has not materially changed since 1983. All further statutory references are to the Government Code.

10. On September 9, 1986, Respondent wrote a letter to CalPERS, inquiring about retroactive reinstatement of his membership.

11. a. Following receipt of Respondent's request, CalPERS staff sought information from Respondent City about Respondent's employment between October 17, 1983, and November 18, 1983, the period of concurrent employment with the County. Susan L. Parks, Assistant Clerk for Respondent City, wrote that "[Respondent] was employed on a full time basis during the period indicated, but as the attached schedule shows, he did take some vacation time." (Exh. 4i; emphasis in original.) The attachment indicated that Respondent had worked eight hours on five separate days.

b. CalPERS staff internally discussed the impact of the concurrent employment. The last memorandum in the exchange contained the following: "Reciprocity will apply for [Respondent]. There has been some recent decisions (Legal Executive) that are changing the way reciprocity is determined – one of them concerns overlaps in employment. If the member is not physically on the job at the [CalPERS] agency during the overlapping period or if they only work a day or two (4 days in [Respondent]'s case) we are still granting reciprocity." (Exh. 4l.)

12. a. On August 7, 1987, CalPERS wrote to Respondent:

"[Y]ou may now, while a member of the [SLOCPT] redeposit contributions withdrawn from [CalPERS] and re-establish your membership in [CalPERS] for retirement purpose[s.] Your election to redeposit will restore 3.311 year(s) of credit for the following service[:]

<u>"Employer</u>	<u>From</u>	<u>To</u>
"Cal Poly, San Luis Obispo	10-28-75	12-31-75
"Cal Poly, San Luis Obispo	1-9-76	3-19-76
"Morro Bay City	12-22-80	11-18-83

"The amount due, if paid in full, is \$8,532.29. Payment may also be made by sending monthly payments directly to [CalPERS] . . . .

"To contribute for this service, please indicate your choice of payment on the enclosed election from PERS-MEM-8 and return the form to this office[.] Once made, this election cannot be cancelled as long as you remain a member of PERS[.]

[¶] . . . [¶]

"Upon CONCURRENT retirement from [CalPERS] and the above named retirement system, you will receive a separate benefit from [CalPERS] based on the service credited in [CalPERS.] YOU MUST FILE AN APPLICATION FOR RETIREMENT WITH EACH SYSTEM IN ORDER TO INITIATE RETIREMENT FROM EACH SYSTEM[.]" (Exh. 4k; emphasis in original.)

b. A second letter dated August 7, 1987, which referred to employment at Cal Poly San Luis Obispo for the period of January 2 to August 31, 1975, informed Respondent that it would cost \$75.53 to reinstate .320 years of CalPERS service credit.

13. a. In order to show the manner in which it administers the PERL, and the information that it provides members, CalPERS submitted the January 1997, May 2000, and November 2010 versions of the brochure "*When You Change Retirement Systems*" (Exh. 5) and the September 1990 version of the brochure "*Reciprocity for PERS Members*" (Exh. 7).

b. The oldest of the documents, the 1990 brochure, refers to the following benefits: "[I]f you qualify for reciprocity, the following rights, benefits, and obligations apply: [¶] 1. The final compensation used to compute your benefits will be the highest earnable under either system. You must retire from both systems on the same date. [¶] 2. You may leave your contributions on deposit with [CalPERS] regardless of minimum service requirements. [¶] 3. Your service under both systems will be combined to determine eligibility for benefits under both systems. [¶] 4. Your service in [CalPERS] is recognized when calculating disability benefits and the basic or special death benefit." (Exh. 8, at p. 7.)

With the proviso that qualification for reciprocity is subject to the law as it exists at the time of movement between systems, the brochure states: "When you leave PERS-covered employment, you are eligible for reciprocity if you: [¶] 1. Enter employment in which you become a member of a reciprocal system within six months, and [¶] 2. Leave your contributions and service credit on deposit with PERS. [¶] . . . [¶] If you withdraw your [CalPERS] contributions and then go to a reciprocal system, you may redeposit your contributions and restore your [CalPERS] service credit. However, you would be eligible for reciprocity only if your move was within the time specified by law at the time of your move." (Exh. 8, at p. 7.)

c. Pages 3, 5, 7, 9, 11, and 13 of the 1997 brochure were not fully copied and have not been relied upon. However, page 6 contains language not previously found in the 1990 document: "[I]mportant: Reciprocity *does not* apply when employment and membership continue in the first system and *concurrent employment* results in membership in another system since the member has not discontinued employment and has not changed from one system to another. If the member is concurrently employed, for the period of service accrued during concurrent employment, CalPERS salaries would be used. . . ." (Exh. 5, Sub. Exh. 3, at p. 6; emphasis in original.)

d. Similar language to that quoted in factual finding 13c is included in the May 2000 brochure. (Exh. 5, Sub. Exh. 2, at p. 3.) The May 2000 document explains that "[E]ven if you do not qualify for full reciprocity, CalPERS offers you redeposit rights, vesting, and University of California Retirement Plan Final Compensation. In addition, if your employer established a reciprocal agreement with CalPERS *after* you changed membership to, and you *would have been eligible* for reciprocity had an agreement been in effect at the time of your membership change, your retirement allowance will *still* be based on the highest final

compensation under either system (see page 4), as long as you retire on the same date under both systems.” (Exh. 5, Sub. Exh. 2, at p. 5; emphasis in original.)

The brochure also provides: “[R]edeposit Rights: If you withdrew your CalPERS contributions and interest and later joined a reciprocal retirement, you can re-establish CalPERS service credit and membership by making a redeposit.” (Exh. 5, Sub. Exh. 2, at p. 5; emphasis in original.)

e. The November 2010 brochure contains similar language as in the earlier brochures, albeit with additional language and greater emphasis. For instance, the new heading “Important Restrictions” refers to “Concurrent employment” and “Refund Restrictions.” With respect to the former, the publication states: “[R]eciprocity does not apply when your employment under the first retirement system overlaps your employment under the new system. For the benefits of reciprocity to apply, you must be separated under the first system prior to joining the new system. This may be true even if the overlapping time is due to running out leave credits or where reciprocity is established with the new system and, while still employed with that system, you return to any CalPERS-covered employment. You should check with your current system and new system about their rules before you change employment. If you are concurrently employed we will use your highest rate of pay under CalPERS when computing your retirement allowance.” (Exh. 5, Sub. Exh. 1, at p. 7; emphasis in original.) Redeposit rights and vesting are listed under a separate heading of “Benefits for Non-Qualifying Individuals.” (Exh. 5, Sub. Exh. 1, at p. 9.)

14. During his employment with the County, Respondent also worked for the City of Atascadero, a CalPERS contract employer, for over three years, between April 28, 1987 and June 1990. Respondent was appointed as City Treasurer, an elected position, to fill the unexpired term of the departed incumbent. Respondent did not seek service credit with CalPERS for the time he worked for the City of Atascadero.

15. On May 4, 2012, Respondent submitted a “Request for Service Credit Cost Information – Redeposit of Withdrawn Contributions” (Redeposit Request), seeking to redeposit contributions for his Cal Poly San Luis Obispo and Respondent City employment.

16. a. Respondent submitted his Service Retirement Election Application on October 12, 2002, setting his retirement date as December 29, 2012. He reported on the application that his retirement date from the County would be December 29, 2012.

b. Respondent also applied for retirement from the County, effective December 29, 2012.

17. On November 29, 2012, CalPERS informed Respondent that it would cost \$40,964.52 to redeposit the withdrawn contributions and reestablish CalPERS membership, that he could do so while a member of the SLOCPT, and that he had a total service credit of 3.311. The letter also stated: “Reciprocity is an agreement between CalPERS and certain other public retirement systems that allows an employee to move from one retirement system to the other

without losing retirement and related benefits. [¶] Unfortunately reciprocity will not apply should you elect to redeposit your withdrawn contributions. However, because you are a member of a reciprocal agency the provision of Vesting will apply. [¶] CalPERS would compute your retirement benefits based solely on service and salaries under CalPERS membership, and reciprocal provisions regarding your final compensation benefit will **NOT** apply. **YOU MUST FILE AN APPLICATION FOR RETIREMENT WITH EACH SYSTEM IN ORDER TO INITIATE RETIREMENT FROM EACH SYSTEM AND RETIRE CONCURRENTLY.** [¶] Your election to Redeposit is irrevocable once it is received by CalPERS. A refund of redeposited contributions may not be made as long as you are a member of your present retirement system or any other public retirement system.” (Exh. 4m, at p. 2; emphasis in original.) An election form was attached.

18. In a subsequent telephonic communication, Heather Hurff (Hurff), Staff Manager I, Alternative Retirement Program, Reciprocity, Second Tier, Verification of Deposit, and PERS/STRS Election Unit, explained that redeposited contributions would not result in an increased monthly allowance because CalPERS could not provide full reciprocity due to Respondent’s concurrent employment. Hurff informed Respondent that upon redeposit of his contributions he would be entitled to a CalPERS benefit based on either a benefit calculated with the payrates received while in CalPERS employment or on an annuity benefit calculated based on contributions he redeposited. Because the annuity benefit was higher, Hurff informed Respondent that if he proceeded with the redeposit he would receive approximately \$380 per month under that option.

19. a. On January 12, 2013, Respondent submitted an election form to purchase his CalPERS service credit and a first installment payment of \$342.08. He also requested a review of the decision not to consider as part of his final compensation calculation the compensation earned while working for the County.

b. In his submission, Respondent included copies of the letters set forth in factual finding number 12, and stated, in part: “[5] Enclosed are copies of two letters I received which assured me that reciprocal benefits would be available to me. I received the earlier letter in 1984 from the SLO County Personnel Director after the County had signed a reciprocity agreement with CalPERS. It specifically mentions the ‘...highest compensation earned in either system...’ The second letter was from CalPERS and received in 1987. It offered me the opportunity to repurchase service credit from the City of Morro bay. Neither of these letters said anything to lead me to believe that my SLO County final compensation would not apply to my Morro Bay service. [¶] . . . [¶]. (Exh. 4p, at p. 1.)

c. Respondent also included page 5 of the brochure set forth in factual finding number 13d, and highlighted the language quoted in factual finding number 13d with respect to “Redeposit Rights” and “CalPERS Benefits for Non-Qualifying Individuals.”

20. By letter dated February 20, 2013, Kellye Smith (Smith), Staff Services Manager II, Retirement Account Services, Customer Account Services Division, the senior manager over the unit that handles requests to establish reciprocity, replied to Respondent’s request. After

reviewing the language of section 20042 in effect in 1983 and the scope of coverage of the Reciprocity Agreement, Smith concluded: “[I]n your case, SLOCPT indicated that your employment and membership date was October 17, 1983[.] The City of Morro Bay reported that you continued in a full time capacity until November 18, 1983[.] Even though this was exhausting vacation leave credits you were still earning service credit with CalPERS[.] This service credit overlapped the service you were earning with SLOCPT, therefore causing concurrent service earned with the two systems[.] By continuing full time employment with City of Morro Bay after entering employment under SLOCPT, the benefit of using the reciprocal final compensation cannot apply because you did not terminate membership with one system before entering membership with the other. [¶] . . . [¶]. (Exh. 4q, at p. 2.)

21. Respondent appealed CalPERS’ determination on March 14, 2013, and the Statement of issues was issued on May 16, 2014.

### LEGAL CONCLUSIONS

1. PERL provisions governing reciprocity are contained in sections 20350 through 20356. Section 20351 permits local jurisdictions with their own retirement systems to enter into reciprocity agreements with CalPERS. The statute contains the following limitation: “This section shall apply only to a member whose *termination and entry into employment* resulting in a change in membership from this system to the other system or from the other system to this system occurred after the acceptance by the board or after the effective date specified in the agreement. However, provisions relating to computation of final compensation shall apply to any other member if the provision would have applied had the *termination and entry into employment* occurred after the acceptance or determination by the board.” (Emphasis added.)
2. The plain language of the statute requires separation from one system before entry into the other system for reciprocity between the two to apply.
3. The Reciprocity Agreement is subject to the requirements of the PERL law, and in fact, expressly stated that CalPERS and the County “agree to extend each to the other reciprocal benefits *as provided by Sections 20042, 40043, 31840.2, 53222, and 45310.5* of the Government Code, which benefits are more particularly set forth in Exhibit A, attached hereto and incorporated herein.” (Factual Finding 8; emphasis added.)
4. CalPERS has consistently interpreted section 20351 to preclude full reciprocity in the computation of final compensation if there has been concurrent employment in two systems. The earliest available brochure to provide guidance to members about CalPERS implementation of reciprocity provisions, the one dated January 1997, referred to benefits being available, upon leaving PERS-covered employment and entering employment in a reciprocal system within six months. (Factual Finding 13b.) The most recent brochure, dated November 2010, more fully states that reciprocity does not apply when employment under the first retirement system overlaps with employment under the new system, and states that for the benefits of reciprocity to apply the member must be separated under the first system prior to

joining the new system and that concurrent employment occurs even if the overlapping time was due to running out leave credits. (Factual Finding 13e.)

5. While some staff at CalPERS in 1987 believed that full reciprocity could be accorded in some circumstances of minimal concurrent employment, this interpretation did not become agency policy or practice, as the brochures were not changed and there is no other evidence of formal policy change. In fact, the letters that were actually sent to Respondent, set forth in factual finding number 12, did not state that full reciprocity would be available.

6. Accordingly, as a matter of PERL law, Respondent may not avail himself of final compensation reciprocity because of his concurrent employment with Respondent City and the County, by reason of factual finding numbers 2 through 20 and legal conclusion numbers 1 through 5.<sup>2</sup>

7. Respondent nevertheless argues that he should not be subject to the limitations contained in section 20351 because there was no reciprocity agreement between the County and CalPERS at the time that he started County employment. Absent such agreement, there was no reason for him to know that the statute would apply to him. Nevertheless, the predecessor of section 20351 was in existence at the time he started employment with the County, the statute governed reciprocity agreements, and Respondent is charged with knowledge of the statute.

8. Respondent also argues that he is entitled to reciprocity pursuant to the equitable doctrine of promissory estoppel. "In California, under the doctrine of promissory estoppel, 'A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.' [Citations.] Promissory estoppel is 'a doctrine which employs equitable principles to satisfy the requirement that consideration must be given in exchange for the promise sought to be enforced.'" (*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal.4th 305, 310, cited in *Poway Royal Mobilehome Owners Ass'n v. City of Poway* (2007), 149 Cal.App.4th 1460, 1470-71 (*Poway*))

"The elements of promissory estoppel are: (1) a clear promise, (2) reliance, (3) substantial detriment, and (4) damages 'measured by the extent of the obligation assumed and not performed' [Citation.]" (*Poway, supra*, 149 Cal.App.4th 1460, 1471.) However, "It is well established that 'an estoppel will not be applied against the government if to do so would effectively nullify 'a strong rule of policy, adopted for the benefit of the public.' [Citations.]" (*Ibid.*) Where the rule of policy is clearly embodied in statutory or constitutional limitations, courts have not invoked the principles of equitable estoppel. (*Longshore v. County of Ventura*)

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<sup>2</sup> CalPERS permitted reciprocity in other respects, such as counting service in SLOCPT toward vesting in CalPERS, but such reciprocity was not questioned and the matter was not before the Administrative Law Judge.

(1979) 25 Cal.3d 14, 28; *Chaidez v. Board of Administration* (2014) 223 Cal.App.4th 1425, 1431-32; *Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 869.)

Respondent argues that he relied on promises made by CalPERS in the two 1987 letters set forth in factual finding number 12. By informing him that he could retroactively redeposit his withdrawn contributions and that he would receive a benefit from each system, Respondent maintains, CalPERS promised him reciprocity. He reasonably relied on the promise, in that he commenced the process to redeposit his contributions prior to retirement and started making payments in January 2013. Respondent's reliance was foreseeable to CalPERS given Respondent's 1986 request for cost estimates and CalPERS's 1987 letters, which did not foreclose Respondent's option to wait until retirement to redeposit funds. Respondent argues that CalPERS's failure to honor the promise would result in substantial detriment or injury in that he will receive a significantly lower retirement allowance from CalPERS.

Respondent relies on *US Ecology, Inc. v. State of California* (2001) 92 Cal.App.4th 113 (*US Ecology*) in support of his argument that estoppel against the government is appropriate in this case. In *US Ecology* the court found promissory estoppel where: (1) the State Department of Health Services (Department), through a memorandum of understanding with the plaintiff, promised to use its best efforts to acquire property from the federal government for the plaintiff to use to develop a low-level radioactive waste disposal facility; (2) the Department should reasonably have expected its promise to induce action by plaintiff; (3) plaintiff did in fact detrimentally rely on the Department's promise by spending millions of dollars to develop the facility in anticipation of the federal-state land transfer; and (4) the Department violated its promise by abandoning its efforts to acquire the land in question. The court also found that estoppel was appropriate against the Department because the Department acted within its statutory authority in entering into the memorandum of understanding and in making the promise to use its best efforts to acquire the federal property.

Respondent's arguments are unpersuasive. CalPERS did not make any promises regarding the manner in which Respondent's final compensation would be calculated. The critical 1997 letters refer to Respondent's redeposit rights and to his receipt of a concurrent CalPERS benefit. As set forth in the August 7, 1987 letters, upon concurrent retirement from both systems Respondent "will receive a separate benefit from [CalPERS] based on the service credited in [CalPERS.]" (Exh. 4k.) Both promises were kept by CalPERS, as Respondent was able to redeposit his contributions and he will receive an annuity based on his CalPERS service. His response to the letters, waiting until retirement to pursue redeposit and a CalPERS benefit, did not result in substantial detriment or injury.<sup>3</sup> The increased cost of the redeposited

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<sup>3</sup> Respondent also argues that he relied on CalPERS's promises to his detriment by not seeking CalPERS service credit for employment at the City of Atascadero, set forth in factual finding number 14. However, no evidence was presented regarding the reason(s) for Respondent not seeking service credit for his employment with the City of Atascadero. Moreover, the employment was concurrent with employment with the County and any efforts to obtain final compensation reciprocity would be subject to the limitations contained in section 20351.

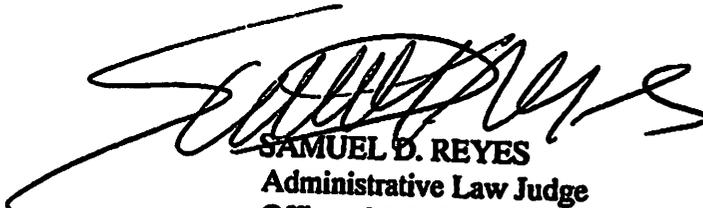
contributions is actuarially-based, and Respondent does not dispute the higher cost of redepositing contributions in 2013. Finally, granting the relief Respondent seeks would be contrary to a rule of policy embodied in section 20351. He seeks a benefit to which he is not entitled, namely, final compensation reciprocity despite his concurrent employment. *US Ecology* is distinguishable because the court in that case concluded that the Department had acted within its statutory authority in making the promise at issue, that a promise was actually made, that the plaintiff reasonably relied on the promise, and that the Department failed to keep its promise, all of which are absent in this case. Accordingly, Respondent may not avail himself of the equitable doctrine of promissory estoppel to obtain final compensation reciprocity.

9. Respondent is not entitled to final compensation reciprocity, by reason of factual finding numbers 1 through 20 and legal conclusion numbers 1 through 8.

**ORDER**

Respondent's appeal is denied.

DATED: 12/23/15

  
SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings