MEETING

STATE OF CALIFORNIA

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BOARD OF ADMINISTRATION

OPEN SESSION

ROBERT F. CARLSON AUDITORIUM

LINCOLN PLAZA NORTH

400 P STREET

SACRAMENTO, CALIFORNIA

WEDNESDAY, DECEMBER 21, 2016

9:01 A.M.

JAMES F. PETERS, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

A P P E A R A N C E S

BOARD MEMBERS:

Mr. Rob Feckner, President

Mr. Henry Jones, Vice President

Mr. Michael Bilbrey

Mr. John Chiang, represented by Mr. Steve Juarez

Mr. Richard Costigan

Mr. Richard Gillihan

Ms. Dana Hollinger

Mr. J.J. Jelincic

Mr. Ron Lind

Ms. Priya Mathur

Mr. Bill Slaton

Ms. Theresa Taylor

Ms. Betty Yee, represented by Ms. Lynn Paquin

STAFF:

Ms. Marcie Frost, Chief Executive Officer

Ms. Cheryl Eason, Chief Financial Officer

Mr. Ted Eliopoulos, Chief Investment Officer

Mr. Matthew Jacobs, General Counsel

Mr. Douglas Hoffner, Deputy Executive Officer

Ms. Donna Lum, Deputy Executive Officer

Mr. Doug McKeever, Deputy Executive Officer

Mr. Brad Pacheco, Deputy Executive Officer

A P P E A R A N C E S   C O N T I N U E D

STAFF:

Mr. Scott Terando, Acting Chief Actuary

Ms. Mary Anne Ashley, Chief, Legislative Affairs Division

Ms. Kara Buchanan, Board Secretary

Ms. Preet Kaur, Senior Staff Attorney

Ms. Marguerite Seabourn, Assistant Chief Counsel

ALSO PRESENT:

Mr. Tim Behrens, California State Retirees

Mr. Bradley Herrema, Chino Basin Watermaster

Mr. Neal Johnson, Service Employees International Union, Local 1000

Mr. Chirag Shah, Shah and Associates

I N D E X

I N D E X   C O N T I N U E D

P R O C E E D I N G S

PRESIDENT FECKNER: If we could all please take our seats, we'd like to call the meeting to order.

Good morning, everyone. First order of business will be to call the roll.

BOARD SECRETARY BUCHANAN: Good morning.

PRESIDENT FECKNER: Good morning.

BOARD SECRETARY BUCHANAN: Rob Feckner?

PRESIDENT FECKNER: Good morning.

BOARD SECRETARY BUCHANAN: Henry Jones?

VICE PRESIDENT JONES: Good morning. Here.

BOARD SECRETARY BUCHANAN: Michael Bilbrey?

BOARD MEMBER BILBREY: Good morning.

BOARD SECRETARY BUCHANAN: Steve Juarez for John Chiang?

ACTING BOARD MEMBER JUAREZ: Here.

BOARD SECRETARY BUCHANAN: Richard Costigan?

BOARD MEMBER COSTIGAN: Here.

BOARD SECRETARY BUCHANAN: Richard Gillihan?

BOARD MEMBER GILLIHAN: Here.

BOARD SECRETARY BUCHANAN: Dana Hollinger?

BOARD MEMBER HOLLINGER: Here.

BOARD SECRETARY BUCHANAN: J.J. Jelincic?

BOARD MEMBER JELINCIC: Here.

BOARD SECRETARY BUCHANAN: Ron Lind?

BOARD MEMBER LIND: Here.

BOARD SECRETARY BUCHANAN: Priya Mathur?

BOARD MEMBER MATHUR: Good morning.

BOARD SECRETARY BUCHANAN: Good morning.

Bill Slaton?

BOARD MEMBER SLATON: Here.

BOARD SECRETARY BUCHANAN: Theresa Taylor?

BOARD MEMBER TAYLOR: Here.

BOARD SECRETARY BUCHANAN: Lynn Paquin for Betty Yee.

ACTING BOARD MEMBER PAQUIN: Here.

BOARD SECRETARY BUCHANAN: Thank you.

PRESIDENT FECKNER: Thank you.

Item 2 is the Pledge of Allegiance. I've asked Doug McKeever to please lead us in the pledge. If we can all please stand.

DEPUTY EXECUTIVE OFFICER McKEEVER: Hand over your heart and repeat after me.

(Thereupon the Pledge of Allegiance was recited in unison.)

PRESIDENT FECKNER: So good morning and Happy Holidays, everyone. Item 3 is the President's Report.

But before I give my report, we're going to start the meeting with a performance our CalPERS Choir and Chorus that's going to celebrate our season. So I'd like to ask my colleagues on the Board to please take a seat either in the audience or maybe stand along the wall, and allow the choir to come up and perform their annual holiday festivities for us, please.

Gotta get in the mood, folks.

(Thereupon Rob put on a Santa hat.)

(Laughter.)

(Thereupon the choir sang.)

(Applause.)

PRESIDENT FECKNER: Okay. Board members, you have to come back now.

(Laughter.)

PRESIDENT FECKNER: So let's give another round of applause to our wonderful choir, please.

(Applause.)

PRESIDENT FECKNER: That's annual tradition for chorus. And on behalf of the Board, we want to thank them for sharing their talent with us this morning with beautiful music and Holiday cheer, great guitar, and little bit of violin there. That was just lovely, so thank you.

Those of you that are interested, you can hear them again at 1:30 down the hall by the elevators -- or escalators. It will be very nice as well.

So at this time, I'd like to take a moment of personal privilege to recognize a special team member of the CalPERS team who has added tremendous value to our Health Benefits Program. I wanted to the spend a few minutes to honor and recognize Doug McKeever, who's served as our Deputy Executive Officer of our Benefit Program policy and planning for 15 months, and before that as our Chief of the Health Policy Research Division.

Doug will be leaving us at the end of this month to embark on a new chapter in his career at Covered California. Actually, today is his last day here.

So as many of you know, Doug has championed greater transparency in the health purchasing process and he helped to establish innovate programs to advance quality, cost effective health care for our members and their families. Chief among his accomplishments was the reference pricing initiative that saved CalPERS millions of dollars and garnered national attention in the health care marketplace.

Doug has been incredibly dedicated to the CalPERS team and has led a high performance organization with open and honest communication, and a strong commitment to see team success. He has demonstrated all the qualities of a true leader. He sees the big picture, communicates effectively and shows determination in all that he does.

Doug, will you please join me on stage.

So, we have a lovely resolution here for you Doug. But before we get to that, one of the things I'm going to miss most about Doug is his affinity for a little difference in the socks realm, kind of like me.

(Laughter.)

PRESIDENT FECKNER: I'll like to see you get a little festive sock action here.

But, Doug, we have a great resolution here for you. I'm not going to read all of it. It lists all of your accomplishments. There were many of them here at CalPERS. Signed by all the Board members. We certainly hope that you'll hang this in the place that brings pride to you. We certainly thank you for the many years and dedicated service that you've given to our members. The way you've led our staff and helped prepare them for what's coming in the future, helped change our health marketplace.

We certainly appreciate that, and hope that you do well in your next adventure because that could help us as well. We wish you well and good luck, and you can always find a place back here again.

So congratulations.

(Applause.)

DEPUTY EXECUTIVE OFFICER McKEEVER: Okay. Stop. I'm not an emotional guy, but you're making me such.

So I want to, first of all, thank Rob and the Board for the tremendous amount of support and assistance that you all have provided me over the last 6 and half years in my current role, and certainly beyond that when I was -- had been fortunate enough to be here for 18, almost 19, years at CalPERS. So it is definitely a home and a family and always will be.

I also want to thank the executive team for all their support over the last year and half. It's been a great ride. Difficult decision for me to make to go to Covered California. But at the same time, I leave this place with the fact that the Health Program is in a good place, that the team is stable, and that they're going to do great things in the future. So again, to the executive staff, thank you.

Also, to our new CEO Marcie Frost. A tremendous supporter in just three months. And I can't underestimate how much you're going to do and the value you're going to bring to this organization, in fact, the value you've already brought to the organization, and thank you for that.

To the stakeholders in the front row, thank you. It's been a pleasure to serve not only the stakeholders are here, but all of our stakeholders, the members, and the employers in the health care arena. The health plans, than you very much for the support you've given me, and all of the CalPERS staff, the team, who I've had the pleasure of working with for such a long time. Thank you very much from the bottom of my heart.

(Applause.)

PRESIDENT FECKNER: So thank you very much.

With that, it brings us to Agenda Item 4, Executive Reports. And with that, I turn it over to our CEO, Marcie Frost.

Marcie.

CHIEF EXECUTIVE OFFICER FROST: Thank you. Good morning, Mr. President and members of the Board. And I think I would also like to spend just a bit of time this morning talking about The McKeever, as I've heard he is often called around here.

So it's really not easy to say goodbye to a team member like Doug. He has this wonderful approach of working with people, along with a very strong commitment to the customer base here at CalPERS. He knows how to manage the work, and manage the relationships. And those are very tough shoes to fill, let alone socks to fill.

(Laughter.)

CHIEF EXECUTIVE OFFICER FROST: If you saw his sock choice yesterday, you might think those were a little courageous, but I think it really gets at the sense of humor that Doug has, and bringing humor into team dynamics is a really important part of leadership as well.

So, you know, just to reiterate some of the items that Rob had spoken about, he did lead the reference pricing initiative for CalPERS, and that did save millions of dollars, which means that we can provide more affordable health care options to members, and while also ensuring that we have a high quality of care.

He -- his open and honest communication, I think you saw a bit of that in his goodbye statement this morning, that having someone where he will communicate very openly with you, with the executive team, and with his own team about vision, about challenges, about opportunities, those are important characteristics, and ones that we will be looking for again as we look to refill the position.

So as stuff as it is to see him go, it is a wonderful opportunity for Doug. And one that we all have been trying to keep in mind as we'e saying our goodbyes. It was not easy. I know it wasn't an easy decision for Doug, but I do know that Covered California is getting an excellent new leader in their organization. And we wish him well and we'll try really hard not to hold it against Covered California.

(Laughter.)

CHIEF EXECUTIVE OFFICER FROST: In the meantime, just to give you an update on what we're doing internally within the organization to fill the role at least on an interim basis, our Chief Information Officer, if Liana will raise her hand. Liana Bailey-Crimmins will be taking on the role of Acting Deputy Executive Officer while we recruit for Doug's position.

And that position is open, and so if you know of candidates who you think can meet these characteristics that I just talked about, please send them our way. Send them to Tina Campbell. We are handling that recruitment internally.

As far as Liana, I think she was a perfect choice to come in and do this at this time. She has demonstrated very strong leadership skills as well in her role as the Chief Information Officer in our IT program. So I know that she'll keep things running smoothly, and we really appreciate that she was willing to take on the challenge. And it's really a true testament to her abilities both as a manager of the work and a leader of people.

I'd also like to take a moment to thank Ron Hurle and the rest of the IT team as well. They'll be keeping our IT initiatives moving while Liana is taking on this role in the interim.

You also heard on Monday -- this feels like I'm doing a lot of goodbyes. You also heard on Monday that Laurie Weir from our Investment Office is retiring this month. And I'd like to take a quick moment to thank her for her service as well. And coming into this organization, there were certainly people who had very strong reputations outside of CalPERS, who I had already heard with, and Laurie Weir was one of them.

And so it is unfortunate that I won't have the opportunity to work with her more closely, but we certainly understand her decision about retirement. So on behalf of all of us at CalPERS and the executive team, we want to wish her all the best in her retirement.

And then if I could have one more. And Todd Tauzer who I think is behind me, if he could raise his hand real quickly. I think Todd -- you know, you saw him yesterday in the Finance and Admin committee as one of the members of the actuary team.

And Todd accepted an offer from Standard & Poor's. And so today is his last date, I believe as well. And I think -- you know, one of the reasons I wanted to point Todd out is he -- his communication style in explaining the work of the actuaries to the people who are most impacted by the work is stellar as well. So he is someone who we will also miss, but we understand the opportunity that he has as well. And I think for the organization and for the Board to understand is that there is a lot of talent in the organization that others are watching, and seeing, and recruiting.

So we'll continue to develop the talent within, so we have successors as some of our talented individuals get noticed by others. But I always wanted to take a moment to recognize Todd and thank him for his work.

So as we approach the end of the year, I wanted to thank you all, thank the Board for your leadership as we serve California's public employees. We do appreciate your willingness to listen diverse perspectives and to take on tough issues. And we appreciate your unwavering focus towards doing what's best for the members.

And this month, we've had some key issues come before you that have initiated many thoughtful discussions, and tough decisions. So at yesterday's Finance and Admin Committee, you heard about some of the challenges we face in achieving the current rate of return over the next 10 years, and we covered potential financial impacts to employers, and active members, and updated you on our progress in reaching out to stakeholders for input.

I'd also like to take an opportunity here to thank our stakeholders who came to the table, had those discussions with us. Those were not always, you know, the -- you know, they're tough discussions because we're giving information that really has impact on people's lives. And having it come before the Board yesterday expressing understanding of the decision that you all have to make and how difficult that is, we really appreciate their time and their attention, and their willingness to work and meet with us.

And although it is a very difficult decision for all, we do believe that this will continue to ensure the financial sustainability of the plan. Also, in Finance and Admin, you heard the first reading of the strategic plan. And thank you for your comments and feedback. And Mr. Hoffner will take those back to the team and will get those back to you in February for the second reading.

I want to thank you again for your continued input and involvement in developing out the 5-year strategic plan. This is the opportunity that we give to the team at CalPERS to understand the vision and where we're headed over the next five years, so that they can start connecting themselves to this work. So the is very important. And again, we appreciate the involvement and the interest and the input.

One more thank you. I would also like to thank Kim Malm. You heard a little bit about business continuity yesterday and we appreciate the extension of that contract. Kim took on this program, I think, less than a year ago. And since I've been here in my 2 and a half months, I've had at least 2 meetings with Kim Malm about business continuity. And I can assure you under her leadership, this again is a newer program she's taken on. She will respond with a sense of urgency that you all see her handling her other duties and responsibilities. And we'll give you continued updates as she has this very strong results orientation. So I wanted to thank Kim for that as well.

This month we also completed and posted the Comprehensive Annual Financial Report, also known as the CAFR, to the CalPERS website. And as you know accountability and openness are two of our core values. And this report supports these efforts by giving a snapshot of our pension and health finances, so that our members and our contracting employers and the public we serve can be informed.

Our CAFR gives a detailed summary of our investment activities and performance over the last 1 year period, ending on June 30th of 2016 as well.

So on health benefits, as we head into the new year, I'd like to send out one last final reminder about the new pharmacy benefits manager. So starting on January 1, OptumRx will replace CVS Caremark as our Pharmacy Benefits Manager. They will administer prescription drug benefits to our members for the next 5 years. Copayments for 2017 will remain the same as they were in 2016.

And also in January, we'll be expanding our current diabetes component of our disease management program to include diabetes prevention. And I did report this in my CEO report last month. And this will be available on our website, and they can contact their CalPERS health plan as well to get more information.

The Chief Actuary search. As you know, this is a critically important position for us, and for you. And so I'd like to give you a quick update on the search for our new Chief Actuary. We are in the final stages of our search, and we have one additional candidate who we'll be interviewing. It is still our goal to finalize the process in the next few weeks and get -- and extend an offer within that time frame.

On to some awards and recognition of some of our team members. I'd like to close by congratulating the CalPERS Financial Office for receiving the Distinguished Budget Presentation Award from the Governor's Finance Officers Association, which is the GFOA. This is the third year straight that they have won this award. And they are nationally recognized guidelines that the team has to comply with. And they were evaluated on how well it serves as, 1, a policy document, 2, a financial plan, and 3, in an operations guide, and as well as a strong communications device.

This award is an honor. And it recognizes the dedication of our Financial Office team members to continually improve the quality of our budgeting, and producing a report that can actually be understood by the people who really need to understand the business here at CalPERS.

So we are very proud of their efforts. And please join me. They are here. Some of them are here with us today. Please join me in congratulating the Financial Office team who are here with us today.

(Applause.)

CHIEF EXECUTIVE OFFICER FROST: And then in conclusion, Rob indicated that our choir -- our wonderful choir -- I think we should start all of our meetings with the acquire. We'll be singing a little bit later today. So our winter all-staff gathering begins directly after this morning's Board meeting in the atrium in Lincoln Plaza North, this building, and I hope you can all attend.

And for our office in West Sacramento, we will be gathering tomorrow. This is a great opportunity to celebrate the holidays with the team, and wish everyone well in the upcoming new year. And again, you can hear the choir perform once more.

And as I close, I would like to wish everyone here in the auditorium, and those watching the webcast, and all of our CalPERS team members, Happy Holidays and a very Happy New Year.

And thank you, Mr. President, that will conclude my remarks for this time. And I'm happy to take any questions the Board may have.

PRESIDENT FECKNER: Very good. Thank you.

Seeing none.

Agenda 4b is Chief Investment Officer's report. Mr. Eliopoulos.

CHIEF INVESTMENT OFFICER ELIOPOULOS: Good morning, Mr. President and members of the Board.

PRESIDENT FECKNER: Good morning.

CHIEF INVESTMENT OFFICER ELIOPOULOS: I have a brief update on the performance of the Public Employees' Retirement Fund as of October 31st 2016. The total fund performance for the fiscal year to that date is 2.3 percent.

Of course, we like to look at much longer periods for measuring our performance. And in that regard, the 3-year return is 4.9 percent; the 5-year return is 7.8 percent; the 10-year return, reflecting the damage caused by the global financial crisis, is 4.6 percent; and the 20-year return of the total fund is 6.9 percent.

The total fund assets are valued as of October 31st, 2016, at $300.8 billion.

Mr. President, that is my report.

PRESIDENT FECKNER: Very good. Thank you.

Seeing no requests.

Item 5 is a consent item.

What's the pleasure of the Board?

BOARD MEMBER MATHUR: Move approval.

BOARD MEMBER TAYLOR: Second.

PRESIDENT FECKNER: Moved by Mathur, seconded by Taylor.

Any discussion on the motion?

Seeing none.

All in favor say aye?

(Ayes.)

PRESIDENT FECKNER: Opposed, no?

Motion carries.

Item 6 is the consent calendar items.

Having seen nothing -- no requests to remove anything, I do want to say that depending on committee action recommendations and Board action today, it may change the agendas on some of the other Board items and committees. So let's just keep that in mind.

Brings us down to Agenda Item 7, Committee Reports:

7a: Investment Committee.

For that I call on the Chair, Mr. Jones.

Just a second, Mr. Jones.

There you go.

VICE PRESIDENT JONES: Thank you, Mr. President.

The investment Committee met on December the 19th, 2016. The Committee approved the following:

Agenda Item 5a: Transmission of the CalPERS Emerging Manager 5-year Plan Annual Report to the California Legislature.

Agenda Item 5b: To extend the tobacco investment restrictions to the externally managed portfolios of publicly traded assets for the Public Employees' Retirement Fund and the affiliate fund portfolios. The Board instructs staff to exercise prudent timing and methods of implementation of these restrictions.

The Committee received reports on the following topics:

An update on the activities and plans for the Responsible Contractor Policy Program, Manager Expectation Pilot, and proxy voting activities;

2. A report on the current initiatives and activities of the Investment Manager Engagement programs; and

3. A review of the current state of the

Investment Office Roadmap and Target Operating Model.

The committee heard public comment on the following:

CalPERS' tobacco restrictions, the Investment Manager Engagement Program Update, the Responsible Contractor Policy, and a labor dispute.

At this time I'd like to share some highlights of what to expect at the February Investment Committee meeting:

The CalPERS Trust review, Wilshire's annual review of CalPERS divestments, and an update on CalPERS' governance and sustainability activities.

The next meeting of the Investment Committee is scheduled for February 13, 2017, in Sacramento, California.

That completes my report, Mr. President.

PRESIDENT FECKNER: Thank you, Mr. Jones.

Item 7b: Pension and Health Benefits Committee.

For that I call on the Chair, Ms. Mathur.

BOARD MEMBER MATHUR: Thank you, Mr. President.

Well, we had a very short Pension and Health Benefits Committee meeting yesterday on December 20th, 2016.

The Committee received information reports on the Federal Health Care Policy and Retirement Policy, replacement benefit plan implementation of administrative fee, solicitation for the Long-Term Care Program, and the Population Health Management Initiative.

In February we can expect the Committee to review the Pension and Health Benefits Committee delegation and to also see an annual review of the legislative and policy engagement guidelines, and regulations on pensionable compensation.

The Committee will also hear information on the health benefit design proposals for 2018, public agency recruitment and retention, health open enrollment results, and long-term care solicitation.

The next meeting of the Pension and Health Benefits Committee is scheduled for February 14th, 2017, in Sacramento California.

That concludes my report, Mr. President.

PRESIDENT FECKNER: Thank you.

Brings us to item 7c: Finance and Administration Committee.

For that I call on the Chair, Mr. Costigan.

BOARD MEMBER COSTIGAN: Thank you, Mr. Feckner.

The Finance and Administration Committee met on December 20th, 2016.

The Committee recommends, and I move, the Board approve the following:

Agenda Item 5a, the 2016-17 mid-year budget, second reading, and approve the CalPERS fiscal year 2016-17 mid-year total budget of $1,786,873,000 and 2,880 positions.

PRESIDENT FECKNER: On motion by Committee.

Any discussion on the motion?

Seeing none.

All in favor say aye.

(Ayes.)

PRESIDENT FECKNER: Opposed, no.

Motion carries.

BOARD MEMBER COSTIGAN: Agenda Item 6a, the Backup Restoration Disaster Recovery Agreement and approve the extension of the Backup Restoration and Disaster Recovery Services Contract for an additional 12 months, through June 30th, 2018, at a cost of 2 million 2 hundred thousand.

PRESIDENT FECKNER: On motion by Committee.

Any discussion on the motion?

Seeing none.

All in favor a say aye?

(Aye.)

PRESIDENT FECKNER: Opposed, say no?

Motion carries.

BOARD MEMBER COSTIGAN: And just very quickly before I take up the next agenda item. I do want to thank the staff, Wylie, Todd, Cheryl, Ted, Brad, particularly Marcie for all the hard work that you guys all did on this next time. And also for the Board. I appreciate the conversation, the discussion, the debate that we've been having for the last few months. And the action that we're about to recommend is actually -- should not be taken lightly. This is very monumental for the organization; and without all of you, we wouldn't have been able to do it. And I just want to appreciate and -- and I just wanted to apologize that I may have gotten a little short towards the end of the meeting yesterday. But I just want to say thank you.

So with that, I would like to move Agenda Item 9 and approve the staff recommendation to lower the assumed rate of return over the next three years as follows:

For fiscal year 2017-18, to a rate of 7.375 percent; for fiscal year 2018-19, a rate of 7.25 percent; for fiscal year 2019-20, a rate of 7 percent; and approve that the change in the school employers' contributions be on the same timeline as the local public agencies, which would be effective beginning in 2018-19, and that the State's contribution rates would be impacted beginning in 2017-18.

Approve the funding risk mitigation policy to be brought back in February to the Board of Administration to reduce the required first excess investment return threshold by 2 percent and proposed timeline for the funding risk mitigation event. And that staff noted that upon approval of the change in the discount rate, the change in the discount rate for calculating member service credits and optional settlements will be effective immediately, and that there will be a commensurate change to the discount rate for the affiliate funds will be considered and proposed at the February Board meetings.

PRESIDENT FECKNER: On motion by committee.

Any discussion on the motion?

All right. Seeing none.

All in favor say aye?

(Ayes.)

PRESIDENT FECKNER: Opposed, no?

Abstentions?

BOARD MEMBER JELINCIC: Abstain.

PRESIDENT FECKNER: Please note Mr. Jelincic's abstaining.

Motion carries.

Thank you.

BOARD MEMBER COSTIGAN: Thank you.

The Committee received reports on the following topics: The first reading of the CalPERS 2017-22

Strategic Plan, and updated reports on the semiannual self-funded health plans and long-term care valuations.

The Chair directed staff to do the following:

In February bring back an informational item to the Finance and Administration Committee on potential contract implications to CalPERS related to the current Responsible Contractor Policy.

In February to also bring back to Finance and Admin additional information on the Long-term Care Valuation Report.

We heard public comments on the discount rate from the following - and I truly do appreciate you all showing up to be here: Eric Stern from the California Department of Finance, Jai Sookprasert with the California School Employees' Association, Dennis Meyers with the California School Boards Association, Dr. Ruben Ingram from the School Employees' Association of California, Ivan Carrillo with the Association of California School Administrators, Marcia Fritz from the California Foundation for Fiscal Responsibility, Faith Conley from the California State Association of Counties, Dane Hutchings from the League of California Cities, Dillon Gibbons from the California Special Districts Association, Phil Wright from the City of West Sacramento, Leyne Milstein from the City of Sacramento, Sara Lamnin from the

City of Hayward, and Al Darby from the Retired Public Employees' Association of California.

At this time I would like to share some highlights of what to expect at the February Finance and Administration Committee meeting.

There will be the 2017 CalPERS Board of Administration Member-at-Large election, the review of Finance and Administration Committee delegation, and the second reading of the CalPERS 2017-22 Strategic Plan and Actuarial Contribution Allocation Policy.

The next meeting of the Finance and Administration Committee is scheduled for February 14th, 2017, in Sacramento, California.

That's my report, Mr. President. Thank you, sir.

PRESIDENT FECKNER: Thank you.

Item 7d: Performance, Compensation and Talent Management Committee. No meeting, no report.

7e: Risk and Audit Committee. No meeting, no report.

7f: Board Governance Committee.

For that I call on the Chair, Mr. Slaton.

BOARD MEMBER SLATON: Thank you, Mr. President.

The Committee -- Board Governance Committee met on December 20th, 2016.

The Committee recommends, and I move, the Board approve the following:

Agenda Item 10, approval of final proposed regulation on public comment and public hearing. Approve for submission to the Office of Administrative Law, the proposed regulation establishing rules and procedures governing public comment at meetings of the Board and its committees.

PRESIDENT FECKNER: On motion by Committee.

Any discussion on the motion?

Seeing none.

All in favor say aye?

(Ayes.)

PRESIDENT FECKNER: Opposed, no?

BOARD MEMBER JELINCIC: No.

PRESIDENT FECKNER: Motion carries.

Please record Mr. Jelincic as voting no.

BOARD MEMBER SLATON: Agenda Item 7, frequency of board meetings and schedule for 2017. Approve the omission of October Board and Committee meetings from the Board's 2017 calendar.

PRESIDENT FECKNER: On motion by Committee.

Any discussion on the motion?

Mr. Jelincic.

BOARD MEMBER JELINCIC: This was something that was brought to my attention by the retirees after we voted on it. I think we should consider moving the Employer Forum to September. I realize that contracts are already in this place for next year, so -- but going forward, I think we ought to consider September. And part of that is that that gets into open enrollment period. And so we have Board members gone and we have staff tied up. And so I just think we ought to think about the impact on availability of getting things done. So I would encourage people to, going forward, consider September rather than October for the forum.

PRESIDENT FECKNER: Thank you.

Ms. Mathur.

BOARD MEMBER MATHUR: Actually, I'll hold my comments till after the Chair direction --

PRESIDENT FECKNER: Okay.

BOARD MEMBER MATHUR: -- for me. Thank you.

PRESIDENT FECKNER: All right. Seeing no other discussion on the motion.

All in favor say aye?

(Ayes.)

PRESIDENT FECKNER: Opposed, no?

Motion carries.

BOARD MEMBER SLATON: The Chair also directed staff to work with the Chair and the Vice Chair to draft language for the Board governance policy regarding Board participation on outside organizations and bring it back to a future Board governance meeting.

Committee heard public comment on Agenda Item 10 Neal Johnson from SEIU.

The next meeting of the Board Governance Committee is tentatively scheduled for February 14th, 2017, in Sacramento, California.

That completes my report.

PRESIDENT FECKNER: Thank you.

Mr. Mathur.

BOARD MEMBER MATHUR: Thank you.

I just wanted to noted that also the Chair directed staff to work on amending the form requesting to speak such that if individuals believe that they will need more time for public comment, that they can indicate so, and the Chair can make a determination.

Thank you.

PRESIDENT FECKNER: Very well. Thank you.

That brings us to Agenda Item 8, the proposed decision of administrative law judges.

I will note that Mr. Shah -- Chirag Shah from Shah & Associates, the Board's independent counsel for administrative decisions, is here with us.

Today good, Mr. Shah.

MR. SHAH: Good morning, Mr. President.

PRESIDENT FECKNER: And Mr. Jones please.

VICE PRESIDENT JONES: Yeah. Thank you, Mr. President. Yeah, this item 8 has four components to the -- four different motions, and I'll start with the first one.

I move to adopt the proposed decisions at Agenda items 8a through 8d, Agenda Item 8f, Agenda items 8i and 8j, and Agenda items 8l through 8u as the Board's own decision, with the minor modification argued by staff to Agenda items 8c, 8l, and 8p.

PRESIDENT FECKNER: On motion -- is there a second?

BOARD MEMBER LIND: Second.

PRESIDENT FECKNER: It's been moved by Jones, seconded by Lind that the Board take the recommendations on Item 8a through d, 8f 8i, 8j, and 8l through 8u, with some -- also with modifications.

So motion being before you, any discussion on the motion?

Seeing none.

All in favor say aye?

(Ayes.)

PRESIDENT FECKNER: Opposed, no?

Motion carries.

Mr. Jones.

VICE PRESIDENT JONES: I move to schedule Agenda Items 8e and 8h for full Board hearings.

BOARD MEMBER JELINCIC: Second.

PRESIDENT FECKNER: It's been moved by Jones, seconded by Jelincic that Item 8e and 8h be moved into full Board hearings.

Any discussion on the motion?

Seeing none.

All in favor say aye?

(Ayes.)

PRESIDENT FECKNER: Opposed, no?

Motion carries.

VICE PRESIDENT JONES: I move to remand Agenda Item 8g for the taking of additional evidence regarding the psychological conditions asserted by the member.

PRESIDENT FECKNER: Is there a second?

BOARD MEMBER MATHUR: Second.

PRESIDENT FECKNER: Been moved by Jones, seconded by Mathur that we take Item 8g and remand for additional evidence.

Any discussion on the motion?

Seeing none.

All in favor say aye?

(Ayes.)

PRESIDENT FECKNER: All opposed say no?

Motion carries.

VICE PRESIDENT JONES: One more.

PRESIDENT FECKNER: Yep.

VICE PRESIDENT JONES: I move to remand Agenda Item 8k for the taking of additional evidence regarding whether staff's determination elevates form over substance.

BOARD MEMBER HOLLINGER: Second.

PRESIDENT FECKNER: It's been moved by Jones, seconded by Hollinger that we take Item 8k for remand back to additional -- for additional evidence.

Any discussion on the motion?

Seeing none.

All in favor say aye?

(Ayes.)

PRESIDENT FECKNER: Oppose, say no?

Motion carries.

Brings us to Agenda Item 9.

Mr. Jones.

VICE PRESIDENT JONES: I move to deny the petitions at Agenda items 9a through 9d.

PRESIDENT FECKNER: Okay. Is there a second?

BOARD MEMBER COSTIGAN: I'll second it.

PRESIDENT FECKNER: Been moved by Jones, seconded by Costigan that 9a through 9d we deny the petitions.

Any discussion on the motion?

Seeing none.

All in favor say aye?

(Ayes.)

PRESIDENT FECKNER: Opposed, say no?

Motion carries.

Item 10 we were going to wait. We're going to take the Item 11 first. And then we'll go back to the Item 10 for the full Board hearing.

So, Ms. Ashley, will you please do the -- you can stay there, Mr. Shah. It won't be long -- the State and Federal Legislative Update.

Ms. Ashley, please.

LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Good morning and happy holidays --

PRESIDENT FECKNER: Good morning.

LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: -- Mr. President and members of the board Mary Anne Ashley, CalPERS team member. I will be presenting Agenda Item 11, which is an informational item. The legislative summary is included in your Board materials for your reference.

The new legislative session began on December 5th, and an just under 100 bills have been introduced thus far. The Legislative Affairs team has identified those bills which do or potentially will have an impact to CalPERS, and those are noted on the ledge summary. And I would like to highlight just a couple of those.

AB 20, which was introduced by a new member to the legislature, Assembly Member Kalra, proposes to prohibit CalPERS and CalSTRS from renewing or making any new investments in any company constructing or funding the construction of the Dakota access pipeline on and after January 1st. 2018. Additionally it would require CalPERS and CalSTRS to liquidate any existing investments in such companies on and after July 1st, 2018.

We're currently analyzing this measure and the impacts that it would have to CalPERS. And we anticipate bringing the analysis to the Investment Committee in February.

SB 17 by Senator Hernandez expresses intent to enact legislation to increase the transparency of prescription drug costs. Last year Senator Hernandez authored SB 1010, which the Board adopted, which also aimed at improving the transparency regarding prescription drug costs. This senator ultimately pulled the Bill from moving forward, as he thought the amendments had watered down and were no longer achieving his intent.

And then finally SB 32 by Senator Moorlach, it's currently in a spot bill format. It expresses the intent to enact legislation that will resume public employee pension reform begun by the Public Employee Pension Reform Act, or PEPRA. While there's no substantive language in the bill yet, Senator Moorlach has drafted a fact sheet which notes the types of reform that he is suggesting. And he is referring to the bill as the Public Employees Pension Reform Act of 2017, or PEPRA 2.

So we will continue to monitor this measure as it progresses and as substantive language gets amended into the bill, and bring the Board updates as appropriate.

And that concludes my presentation. And I would be happy to take any questions.

Thank you.

PRESIDENT FECKNER: Very good. Thank you. Seeing none.

Brings us back to Agenda Item 10. The full --

Oh, you're right. Sorry.

One public comment on this item.

Mr. McLaughlin.

Mr. McLaughlin, are you here?

I guess it was subconsciously why I missed it.

(Laughter.)

PRESIDENT FECKNER: All right. Now we're back on Item 10, the full Board hearing. So good morning.

We now turn to Agenda Item 10 and open the record for the full Board hearing in the appeal of Desi Alvarez, CalPERS Case Number 2013-1113.

Let us first take roll please.

BOARD SECRETARY BUCHANAN: Rob Feckner?

PRESIDENT FECKNER: Good morning.

BOARD SECRETARY BUCHANAN: Henry Jones?

VICE PRESIDENT JONES: Here.

BOARD SECRETARY BUCHANAN: Michael Bilbrey?

BOARD MEMBER BILBREY: Morning.

BOARD SECRETARY BUCHANAN: Steve Juarez for John Chiang?

ACTING BOARD MEMBER JUAREZ: Here.

BOARD SECRETARY BUCHANAN: Richard Costigan?

BOARD MEMBER COSTIGAN: Here.

BOARD SECRETARY BUCHANAN: Richard Gillihan?

BOARD MEMBER GILLIHAN: Here.

BOARD SECRETARY BUCHANAN: Dana Hollinger?

BOARD MEMBER HOLLINGER: Here.

BOARD SECRETARY BUCHANAN: J.J. Jelincic?

PRESIDENT FECKNER: Excused.

BOARD SECRETARY BUCHANAN: Ron Lind?

BOARD MEMBER LIND: Here.

BOARD SECRETARY BUCHANAN: Priya Mathur?

BOARD MEMBER MATHUR: Here.

BOARD SECRETARY BUCHANAN: Bill Slaton?

BOARD MEMBER SLATON: Here.

BOARD SECRETARY BUCHANAN: Theresa Taylor?

BOARD MEMBER TAYLOR: Here.

BOARD SECRETARY BUCHANAN: And Lynn Paquin for Betty Yee?

ACTING BOARD MEMBER PAQUIN: Here.

PRESIDENT FECKNER: Thank you.

The proposed decision in this case was originally considered by the Board of the November 2016 Board meeting. At that meeting the Board rejected the proposed decision and scheduled this matter for a full board hearing.

I note for the record that all parties have received notice of this full Board hearing, along with copies of the statement of policy and procedures for full board hearings before the Board.

In addition, all parties have been informed in writing that oral argument will be limited to 10 minutes for each position, and rebuttal will be limited to 3 minutes for each position.

Would counsel please take a moment to introduce themselves, starting with staff counsel and then Mr. Alvarez' counsel.

SENIOR STAFF ATTORNEY KAUR: Preet Kaur for CalPERS.

ASSISTANT CHIEF COUNSEL SEABOURN: Marguerite

Seabourn for CalPERS.

MR. HERREMA: Good morning, Mr. President, members of the Board. Brad Herrema, Brownstein Hyatt Farber Schreck, on behalf of the employer, Chino Basin Watermaster.

PRESIDENT FECKNER: Very Good. Thank you.

Let the record reflect that Mr. Desi Alvarez, the member in this appeal, has ceded his allotted time for oral argument today to the Chino Basin Watermaster, the employer involved in this case and who I refer to as the Watermaster in this hearing.

Let the record also reflect Chirag Shah for Los Angeles-based law firm of Shah & Associates, the Board's independent counsel on full-board hearings and proposed decisions from the Office of Administrative Hearings, is here now and will be in attendance throughout the hearing.

Mr. Shah will be advising members of the Board on procedural as well as substantive issues that arise in this proceeding to which Board members have any questions.

Mr. Shah will also provide a brief summary of the case before we begin our oral arguments.

As stated previously, each position will have 10 minutes for oral argument. When we have two parties sharing the same position, the time allocated to one party is split among the parties on a pro rata basis, unless those parties agree amongst themselves to allocate their time differently.

Because Mr. Alvarez has given his allotted time to the Watermaster, only the watermaster's counsel, Mr. Herrema, will be presenting oral argument today.

Ms. Kaur will first have 10 minutes to present staff's argument. After that, Mr. Herrema will have 10 minutes to present argument on behalf of the Watermaster.

Neither side is compelled to use the full 10 minutes. However, if a party concludes arguing less than the time allotted, it will not be permitted carryover any remaining time to any portion of this proceeding.

After both sides have presented oral arguments, each side will be given 3 minutes for rebuttal arguments in the same order as they were in their original presentation. First Ms. Kaur, then Mr. Herrema. Here too the parties may, but do not have to, use the entire time allocated to the rebuttal.

But if a party decides to use less time, there will not be another opportunity for using that remaining time.

There is a timer in the room both in front of me, on the dais in front of you, and here for you to see as well. It will be set for 10 minutes for your initial argument and 3 minutes for rebuttal. The time will begin when you start to speak.

Please pay close attention to the timer as you make your presentations in order to avoid going over your allotted time. When the timer light turns red, your time will have expired.

After all sides' arguments and rebuttals are concluded, the Board may ask questions of any of the parties to this proceedings as well as our independent counsel. The alternatives available to the Board are set forth in Agenda Item 10.

Any questions so far? Do all parties understand the procedure?

MR. HERREMA: Yes.

SENIOR STAFF ATTORNEY KAUR: Yes, Mr. President.

PRESIDENT FECKNER: Thank you.

Now, then, Mr. Shah, please provide a brief summary of the case.

MR. SHAH: Thank you, Mr. President. Good morning to you. Happy Holidays to you; everyone in the Board room as well.

As you said, my name is Chirag Shah. I'm the Board's independent counsel on full board hearings.

Before I provide my brief summary this morning, as a courtesy to the member and the Watermaster, per their request, I want to address a couple of housekeeping matters.

First I'd like to note that the member the Watermaster share the same position in this appeal. And both parties argue that the proposed decision should be adopted in part and declined in part.

Second, the cover page to Agenda Item 10a initially stated pursuant CalPERS standard procedures that the member and the Watermaster here, the position was that the Board should decline to adopt the PD. This has been corrected by way of a new cover sheet distributed to Board members which clarifies that the member and the Watermaster actually both orders the Board that the proposed decision should be adopted in part and declined in part, as we'll hear soon from Mr. Herrema.

Now, with that, I'll begin a brief summary of the case.

The appeal that the Board will hear this morning involved the final compensation determination under section 20636 of the Public Employees' Retirement Law.

Mr. Desi Alvarez, the member in this appeal, is a former CEO of the Watermaster and has had a long and distinguished career in public service. Mr. Alvarez was hired by the Watermaster as its CEO for an initial two-year term commencing on May 3rd, 2011, by way of an employment agreement which is attached at Exhibit 11 of

Attachment F.

Approximately six months after he commenced the CEO position with the Watermaster, Mr. Alvarez was relieved of his duties as CEO but continued to receive his normal pay as provided in his employment agreement until May 4, 2012, which amounted to $19,000 per month and totaled $228,000 for the 12-month final compensation time period.

Later on when Mr. Alvarez went to retire, staff determined through a routine review that member's pay with the Watermaster cannot be taken into account for purposes of his final compensation calculation because it was, according to staff, not paid pursuant to a publicly available pay schedule as required by section 20636 and its implementing regulations. Therefore, as provided in PERL regulation, staff applied the member's salary with his previous employer, the City of Downey, in calculating Mr. Alvarez' retirement allowance. This results in a difference of $1,467 per month in Mr. Alvarez' retirement allowance.

In addition, in a subsequent supplemental determination, staff found that member ceased being an employee of the Watermaster effective on November 9, 2011, and that the pay member received from November 9, 2011, through May 4, 2012, which is basically the first year of employment, constitutes final settlement pay.

Member timely challenged all three of these determinations, arguing that member's pay was pursuant to a publicly available pay schedule, member was an employee from November 9, 2011, to May 4, 2012, and that the pay at issue does no constitute final settlement pay.

In the proposed decision before the Board today, the administrative law judge agrees with staff that member's paid was not paid pursuant to a publicly available pay schedule and also agrees with the member and the Watermaster that the member was an employee and did not receive final settlement pay.

Needless to say, these are the three issues before the Board today. And so I will let each party educate the Board on the details and the merits of their positions.

Mr. President, members of the Board, that concludes my brief summary of the case.

Thank you.

PRESIDENT FECKNER: Thank you, Mr. Shah.

Let us now turn to preliminary evidentiary issues. As all parties are aware, we are not here to relitigate factual issues or resubmit evidence into the administrative record. However, in rare circumstances the interest of achieving a just result may require consideration of newly discovered relevant documentary evidence which could not with reasonable diligence have been discovered and produced at the hearing before the administrative law judge and which therefore is not part of the administrative record.

The Board's procedures make it clear that under no circumstance may the Board accept new testimonial evidence, witness testimony, or any kind of examination or cross-examination of anyone, including Board members, in today's proceeding.

Under the Board's procedure, requests to introduce newly discovered documentary evidence must be submitted in writing to the Board secretary no later than a due date for a written argument, which in this case was December 9, 2016.

In order to avoid interruptions during each party's respective time today, please let us know now if either party has any relevant new discovered evidence which could not have been discovered and produced at the hearing that it seeks to be admitted in the administrative record today as to which a timely written request was submitted to the Board.

SENIOR STAFF ATTORNEY KAUR: CalPERS -- no, Mr. President, CalPERS does not have any such new evidence.

PRESIDENT FECKNER: Thank you.

MR. HERREMA: The Watermaster does not have any evidence either, Mr. President.

PRESIDENT FECKNER: Thank you very much.

Seeing that there are no requests to submit newly discovered evidence, let as begin oral arguments.

Ms. Kaur, please represent staff's argument.

Please start the clock for 10 minutes when Ms. Kaur begins to speak.

SENIOR STAFF ATTORNEY KAUR: Good morning, Mr. President and members of the Board. Thank you, Mr. Shah.

There are two issues for this Board to consider today. First, is whether Mr. Alvarez is entitled to receive six months of service credit after he was terminated by the Watermaster.

The second issue concerns the final compensation. Staff believes the ALJ, the administrative law judge, reached the correct conclusion regarding the final compensation. For that reason, I will focus on the service credit issue, because the ALJ's holding concerning the service credit is contrary to the PERL and this Board's prior decision in the Wilson matter.

The severance compensation which was paid to Mr. Alvarez from November 9, 2011, through May 4th, 2012, pursuant to a separation agreement is not reportable for three different reasons:

One, Mr. Alvarez was no longer an employee of the Watermaster after November 9, 2011. Compensation may only be reported on behalf of employees.

The second reason is that the severance compensation is not compensation earnable. Only compensation earnable is reportable.

The third reason is the severance compensation is final settlement pay, and final settlement pay is not reportable.

Each reason is based on a separate criteria set by the PERL. Each criteria must be satisfied. If the Board agrees with staff on any of these failed requirements, the ALJ's decision must be overturned. To fail in one is to fail in all.

Let's first discuss the facts and then look at each criteria in more detail.

The facts here are as follows: Mr. Alvarez and the Watermaster entered into an employment agreement effective May 3rd, 2011. The employment agreement required Mr. Alvarez be paid $19,000 a month for his first year of employment even if he's terminated.

After six months of employment the Watermaster wanted to get rid of Mr. Alvarez. They did so by entering into a separation agreement. Watermaster paid money and benefits for a set period of time which they called the transition period. In return, Mr. Alvarez was relieved of his day-to-day duties and promised not to show up to work.

He was assigned a single duty, answering questions posed by the Watermaster board, to give an illusion that he's still an employee. This was the exact fact pattern in the Wilson matter.

Mr. Wilson was the executive director. His employer wanted to get rid of him. So they entered into an employment agreement whereby Mr. Wilson's employer paid him money and benefits during the transition period. In return, Mr. Wilson was relieved of all of his duties and he agreed not to show up to work.

Mr. Wilson was also assigned duties. He was required to provide advice, services, and guidance during the transition period, a pretty good deal for Mr. Wilson. The ALJ said Mr. Wilson was entitled to service credit during the transition period, but this Board disagreed. After a full board hearing, this Board issued a decision in February 2009 stating Mr. Wilson is not an employee because the employer had no right to control the manner and means of the services provided by Mr. Wilson.

The Board also held that the compensation paid to Mr. Wilson was not compensation earnable because he was paid -- he was not paid to render services.

And the Board also held that the compensation was final settlement pay.

The severance compensation paid here to Mr. Alvarez is also not reportable for the same reasons. First, Mr. Alvarez was not an employee after November 9, 2011. Government Code section 20125 states CalPERS is the sole judge of determining who is an employee and who remains -- and receives benefits under the system.

So the deal struck between the employer and the employee is not binding to CalPERS. CalPERS uses the common law employment test set by Cargill -- the Cargill case to determine who is an employee.

The primary factor for establishing employment under the common law test is the right-to-control factor. Under this factor, an individual is considered an employee if the employer has the right to exercise control and direction over the manner and means of accomplishing the result desired. The exercise of control must be substantial and extensive.

The primary factor is lacking here. The Watermaster did not retain any right to exercise control over Mr. Alvarez after he ceased being the employee on November 9th, 2011. Mr. Alvarez was free to seek other employment. He was relieved of all of his day-to-day duties. Mr. Alvarez was to answer questions posed by the

Watermaster. But just like in the Wilson matter, the Watermaster retained no right to control over the manner or means by which the information was provided. There was no right to control and no control was actually exercised.

In addition to the primary factor, the courts also look at secondary factors. The secondary factors point towards the same conclusion here. Mr. Alvarez no longer supervised employees, he didn't show up for Board meetings, he didn't go into work at the watermaster's office. The Watermaster did not provide him any tools or supplies and didn't provide him office space. And most importantly, the parties believed they were entering into a separation agreement, not an employment agreement.

When you examine the separation agreement in light of the circumstances surrounding that agreement, it becomes apparent that the separation agreement was entered into to separate Mr. Alvarez from employment, not to retain him as an employee.

All the characteristics of an employee are lacking here after November 9th, 2011. Per the separation agreement, Mr. Alvarez couldn't bind the Watermaster. He couldn't speak on their behalf, act on their behalf, or enter into agreements. Just like Mr. Wilson, Mr. Alvarez was no longer an employee after he was relieved of all of his day-to-day duties and his employer relinquished control -- the right to exercise control.

But even if he's considered an employee, the severance compensation is not reportable because it is not compensation earnable. Compensation earnable is defined by the PERL as pay rate or special compensation. Pay rate is the normal monthly rate of pay or base pay of the member paid in cash for services rendered on a full-time basis during normal working hours.

The severance compensation was not paid to Mr. Alvarez for rendering services during normal working hours. Rather, it was paid to him to prevent him from rendering services. After November 9th, 2011, he was no longer performing services during normal working hours. The Watermaster paid the money to sever him from employment and replace him with another CEO. By their own terms, it was severance pay.

This brings us to the third reason why the severance compensation is not reportable. Final settlement pay is pay that is granted to a member in connection with or anticipation of separation from employment. The PERL states that final settlement pay is not reportable. Regulation 570 specifically states that severance pay is final settlement pay.

The severance compensation paid to Mr. Alvarez was paid in connection and anticipation of his separation from employment and must be excluded.

Aside from the service credit issue, the ALJ made the correct determination regarding the final compensation. The ALJ correctly held that the pay rate reported by the Watermaster was not pursuant to a publicly available pay schedule, because the pay rate was not approved or adopted by the Watermaster board in open meeting -- in accordance with the open meeting laws. And it was not made readily available to the members of the public.

The ALJ's determination regarding the final compensation is in line with 20 -- Government Code section 20636, the precedential decision of Adams, and the Tanner case.

We request the Board uphold the ALJ's decision with respect to the final compensation and reverse the decision regarding the six months of service credit because the service credit is based on severance pay that the paid to terminate Mr. Alvarez' employment.

Thank you.

PRESIDENT FECKNER: Thank you.

Ms. Kaur, please start the clock for 10 minutes for Mr. Herrema to present the watermaster's position.

MR. HERREMA: Good morning, Mr. President and members of the Board. Thank you for the opportunity to appear this morning. Again, Brad Herrema on behalf of Chino Basin Watermaster, the employer.

I believe Mr. Shah accurately stated our position, similar to the manner in which Ms. Kaur handled her argument, because we agree with the ALJ's decision on the finding of service credit and employment throughout the one year term. We -- I will focus my argument on the -- what we believe is an incorrect determination in the proposed decision as to a publicly available pay schedule.

We believe that there is uncontroverted evidence in the record showing that Mr. Alvarez's Watermaster salary was pursuant to a publicly available pay schedule. The applicable standard for publicly available pay schedule as expressed in this Board's precedential decision in Adams is that a pay schedule be readily available to an interested person without unreasonable difficulty.

And that's the standard that we believe the evidence demonstrates in this matter. And as I'll explain, that is the case here.

I'd like to start by mentioning what this case isn't about in terms of some of the prior precedential decisions and other decisions related to publicly available pay schedules. In this case, there is a pay schedule. It is Exhibit S in the record. It was in place at the time that Mr. Alvarez began his employment. It shows his salary, $228,000 per year, $19,000 per month. It was in place. It is a schedule. And it was made available, as I'll explain further in my argument.

What this case isn't about is the facts that were present in the Adams case. In that case, the employee, the member, claimed that a contract was a pay schedule and that contract was not made available until after a Public Records Act request. That is not what happened here.

Similarly in the Tanner case, there was no schedule. Again, a contract was proffered as a pay schedule, as well as a cost analysis of the particular salary at issue for Mr. Tanner. That's not the case here either. We have a schedule that shows the salary, the salary steps for this particular position, which was provided when requested and publicly available.

Similarly the Prentice case, which has also been cited, that is not the case here either. We don't have a raise that was not on a pay schedule that was proffered as the final compensation.

The facts that were undisputed and that are in the record are that Watermaster did pay Mr. Alvarez the same amount, $228,000 per year, $19,000 per month. And That was shown on the pay schedule and that was reported to CalPERS.

This pay schedule was in place when Mr. Alvarez began his employment with the Watermaster. There's no dispute over the key evidence that shows that the salary schedule was publicly available. Watermaster had and still has general policies in place to ensure that there is public access to its documents.

It has a resolution that's known as Resolution number 1 -- 0103, Procedures, Guidelines, and Fees Schedule for Release of Information and Documents. This resolution details how watermaster's staff should respond to documents or information requests.

There is a resolution -- I'm sorry -- a Request for Information form that is part of this resolution posted on watermaster's website. This ensures that anyone who seeks information will be able to find that form and submit that to the Watermaster staff.

The proposed decision recognizes that these policies and forms were in place at the time applicable in the case. And coupled with occasions on which watermaster's executive salaries were actually provided to interested persons demonstrate that there was a publicly available pay schedule that meets the Adams standard.

There are two separate instances that demonstrate when executive salary information was provided. The first was following actually the Adams matter, the City of Bell. A reporter called the Watermaster and requested information regarding executive compensation, and was provided with the employment agreement of the watermaster's prior CEO. There's no evidence in the record that he asked for anything else. There's no evidence in the record that this reporter did not get everything that he asked for.

Additionally, during the time that Mr. Alvarez was employed with Watermaster, one of the Watermaster parties -- and when I say Watermaster parties, I mean one of the parties to the judgment that the Watermaster oversees -- one of these parties requested this exact document and was provided that document.

This was done via an e-mail request. It was fulfilled in a short amount of time. There is no evidence in the record that the -- all of the things that were requested were not provided. There's no evidence in the record that there was anything else that the requester would have like to have seen and didn't receive.

The proposed decision does I think misinterpret or perhaps mischaracterize these policies that were in place. It states that the Policy 0103 -- Resolution 0103 and this request form somehow acted as a barrier to the availability of public information.

The section -- Government Code section 20636 did not require that a document simply be sitting out and available for anyone who walked in. It didn't require that they be posted on the website. That came later in 570.5, which we don't believe is applicable because it was not and should not be retroactively applied in this case.

Nonetheless, the policies that the Watermaster had in place were not barriers to the availability of documents. They were the manner in which; and ensured that if a party or any interested person followed the procedure, they'd be given access to the document. They would be made available to them.

But if you look at those two examples I cited both in regard to the reporter and to one of the Watermaster parties, neither one followed the procedure, neither one filled out the form, and nonetheless they both received the documents that they were looking for.

The proposed decision also refers to one portion of the policy that discusses a signed release being necessary. And I believe the proposed decision misconstrues that signed release requirement. And a signed release would only be required when there were documents requested that Watermaster would have to have a signed release for in order to provide, not every document. And again those two examples where the salary information was provided to the reporter and to the party, neither one provided a signed release.

As to the requirements for a publicly available pay schedule, as I've explained so far, I believe they are met. We have the salary on a pay schedule. That pay schedule was made available when publicly requested. And there were other policies in place to ensure that it was readily available to an interested person without unreasonable difficulty.

As I mentioned, I don't believe 570.5 can be applied in this case because it cannot be given retroactive application. Although 570.5 -- which came into effect part way through Mr. Alvarez's term with the Watermaster. But after he was employed and after the salary schedule had been put together, it characterizes itself as being clarifying in part but also on its face and the notice of proposed regulatory action states that it is both clarifying and makes specific requirements for a publicly available pay schedule.

Whether someone might characterize it as clarifying in part, the fact that it goes beyond clarification and substantially changes the legal consequences of past actions and would upset the expectations that folks like the Watermaster would have based on prior law, means it cannot be considered clarifying.

In regard to the determination that Mr. Alvarez was an employee during the entire year of his agreement, we believe the ALJ's decision is correct on that, the proposed decision, and the Board should adopt that. Mr. Alvarez did have duties following the November time frame. They included assisting and providing information to the Watermaster as requested with respect to pending projects, and the transition of his duties to the next CEO.

Although those duties were drastically reduced from his prior duties, those limitations were placed on him by Watermaster, as were other limitations, which show that the right to control as the ALJ points out existed. Now, the right to control is what's important here, not whether that was exercised.

We did have instances in which that right to control was exercised. We have the restrictions on the way that Mr. Alvarez would operate. And there's no evidence that this was outside the normal business hours or any other direction.

So I will reserve the rest of my argument for my rebuttal.

Thank you.

PRESIDENT FECKNER: Thank you.

Ms. Kaur, would you like to offer rebuttal?

SENIOR STAFF ATTORNEY KAUR: Yes, Mr. President.

PRESIDENT FECKNER: Please start this clock for 3 minutes for staff's rebuttal.

SENIOR STAFF ATTORNEY KAUR: The law's very clear on what constitutes final compensation. 20636 states the members pay rate must be pursuant to a publicly available pay schedule. It's a 3-prong test, and Mr. Herrema just skipped over the first prong. So let's discuss that first.

The Board -- this Board in Adams said publicly means an open -- in public or open manner or place in the name of the community, by public action or consent. This interpretation is in line with the legislative history of 20636.

The legislative history states pay rates must be publicly noticed by the governing body.

This interpretation in Adams is also in line with Regulation 570.5, which clarifies section 20636, and requires the pay rate must be duly adopted or approved by the governing body in accordance with public meeting laws.

Here the first prong is not met, because the Watermaster did not have a 2011-2012 pay schedule that was approved or adopted by the Watermaster board.

The Watermaster presented two different documents relating to the salary paid in 2011-2012. One was the CalPERS Exhibit 16 and the other is the watermaster's Exhibit S. Exhibit 16 is titled the 2011-2012 salary matrix; exhibit S is titled 2011-2012 pay schedule.

Both of these documents were not approved or adopted by the Watermaster board until May 23rd, 2013, long after Mr. Alvarez left his employment.

For these reasons, the documents fail to meet the "publicly" piece of this statute. And they also meet -- fail to meet the "available" piece of this statute.

This Board in Adams said "available" means readily available, immediately accessible by the public, without reasonable -- unreasonable difficulty. The salary matrices the Watermaster has presented were not readily available to the public. They were not posted on the watermaster's website or their office. As the proposed decision states, the public had to follow a burdensome procedure to obtain the salary information. Even the example provided by the Watermaster where they released salary information to Ms. Tracy demonstrates that the information was not readily available.

It took them eight days to provide the -- what they titled the pay schedule.

As the proposed decision notes, the public had to make a formal request, and only then was the -- was -- did the Watermaster release information. There was tight control over the information provide -- released. For these reasons the pay rate reported on behalf of Mr. Alvarez is not pursuant to a publicly available pay schedule.

PRESIDENT FECKNER: Thank you.

Mr. Herrema, would you like to offer rebuttal? I assume so. So please start the clock for 3 minutes for Mr. Herrema.

MR. HERREMA: Thank you, Mr. President.

In regard to the characterization of Adams as somehow being determinative on the definitions of "publicly" and the definition of "available," as I mentioned when I started, the Adams case did not deal with public availability. It dealt with a pay schedule and whether a contract was a pay schedule, a contract in that case that wasn't even approved by the employer's board. That's not the case here. And that's not what Adams decided. So while Adams contained the number of definitions that you could find in dictionary regarding publicly and available, it's simply not dispositive. I think the better -- the better standard here is the readily available to an interested person without unreasonable difficulty, which I believe I explained during my main argument.

And as I mentioned, the requirements of public approval in an open session or posting on a website, these came about in 570.5. They're not -- they're not contained in 20636. There's not case law that shows that. The case law that's referred to here is in regard to other issues like what constitutes a pay schedule, not public availability or the process through which a pay schedule had to be promulgated.

So we don't believe that these issues that have been raised regarding public approval prior to 570.5's applicability and effectiveness, we don't believe that that is a correct interpretation.

And the legislative history that's been referred to is also not dispositive. These are not actual statements that were made by the legislature itself. You have a CalPERS report explaining what it perceived the bill to do, and then you have a post-bill explanation, none of which was actually before the legislature when it made its determination to pass 20636.

Going back to the issue of the employment, we believe that the ALJ's determination was correct, that Mr. Alvarez was employed during the entire year that he was paid salary by Watermaster, both the primary indicia of common law employment under the Tyberg test, which is the right to control are shown as the ALJ very well demonstrates; the secondary indicia are there as well. Mr. Alvarez continued to be paid a regular salary. He was not paid by the job. He was able to adjust his benefits. The parties in their agreement indicated that they were continuing an employee-employer relationship, and not that anything else was happening. And for this reason, the claims as to final settlement paid and that this compensation during that period could not be compensation earnable are simply not persuasive.

Thank you very much.

PRESIDENT FECKNER: Thank you.

Thank you both for your presentations.

Now is the time for the Board members, if they have any, to ask questions.

Mr. Costigan.

BOARD MEMBER COSTIGAN: Thank you, Mr. Feckner. I just have a few of the watermaster's counsel.

I just want to go over some of the facts. What was his last day of employment?

MR. HERREMA: I believe it was May 4th, 2012.

BOARD MEMBER COSTIGAN: It was actually May 3rd, 2012, pursuant to the settlement agreement; is that correct?

MR. HERREMA: Well I think the finding in your -- in the ALJ's decision is May 4th, 2012. It may be

May 3rd, 2012.

BOARD MEMBER COSTIGAN: But under the terms of the settlement agreement, his last day as CEO was November 9th, 2011. And as is spelled out among the duties, it looks like -- well, it's clear that the duties he was asked to perform after November 9th were not that of the CEO. That's Exhibit 12. I mean, is that correct?

MR. HERREMA: Is what -- I'm sorry. What was the question?

BOARD MEMBER COSTIGAN: That after November 3rd the duties that he performed were not that of the CEO?

MR. HERREMA: He performed duties that had been modified pursuant to the modification of the party's employment agreement and the confidential separation agreement.

BOARD MEMBER COSTIGAN: Actually it says, "During this transition period and thereafter executives shall have no actual or implied authority to act on behalf of the Watermaster or enter into any agreements on behalf of the Watermaster." Am I reading from the right document? "And he shall not hold himself out as having an authority to act on behalf of the water master."

MR. HERREMA: I believe that's what it says.

BOARD MEMBER COSTIGAN: "The executive acknowledges and understand that he does not have the authority to speak on behalf or to bind the Watermaster in any manner during the transition period or thereafter. Executive's sole duty during the transition period shall be to assist and provide information to the Watermaster as respect pending projects in the transition of his duties." That's correct?

MR. HERREMA: That is what it says, yes. And then if you look at paragraph 1, it says, "Executive's employment in the capacity of Chief Executive Officer ceased in his employment agreement is modified." So the way that he was employed was modified through this agreement.

BOARD MEMBER COSTIGAN: So would you just explain to me or tell me in paragraph C what compensates severance compensation?

MR. HERREMA: I'm sorry. What --

BOARD MEMBER COSTIGAN: On page 2 of 8, where it's referred to, shall be referred to as the severance compensation. What does severance compensation cover?

MR. HERREMA: Is the compensation that he continued to be paid on a -- I think the biweekly pay schedule basis that all Watermaster employees were paid.

BOARD MEMBER COSTIGAN: So the Watermaster continued to be paid -- the severance compensation was not settlement for the termination or for being placed on administratively leave in November?

What I'm getting at is -- here's the struggle. Did the Watermaster just continue to pay for six months the equivalent of settlement in order to capture the PERS payment or did he in fact continue to provide services entitling him to compensation at the level -- at the higher level of the CEO pay for which he was no longer CEO?

MR. HERREMA: He did continue to provide duties that included the transition of the CEO role to the next CEO.

BOARD MEMBER COSTIGAN: All right. Thank you.

Thank you, Mr. Feckner.

PRESIDENT FECKNER: Thank you.

Ms. Hollinger.

BOARD MEMBER HOLLINGER: I'm struggling with the same paragraph, because it clearly seems that that was his severance compensation. And it also says on -- that that was -- that was -- that when he signed that pursuant to the terms, that that constitutes the entire amount of consideration due him - an executive is not entitled to any further or other amounts. And also that he would not -- he would not seek any further compensation. So what I struggle with is it's clear that from this agreement that after November 9th that was just considered severance compensation.

MR. HERREMA: Well, that was the term that the parties used. But there were -- there continued to be duties and, as the ALJ found, he continued to be an employee of Watermaster in performing those duties.

BOARD MEMBER HOLLINGER: Okay. But --

MR. HERREMA: And so the consideration was then the continued salary until the end of the term of the employment agreement.

BOARD MEMBER HOLLINGER: But it seemed part of a severance package.

But thank you.

PRESIDENT FECKNER: Thank you.

Ms. Mathur.

BOARD MEMBER MATHUR: Thank you.

Still on Exhibit 12, after "Now, therefore," "Number 1: Termination of active employment." How do you -- I mean it seems pretty clear from this paragraph and from even the title of this paragraph that they were terminating active employment on November 9th. That he does not serve as CEO post November 9th of 2011. I guess that's somewhat of a statement, but it's also a question. How do you reconcile that with your assertion that he was remaining as CEO through the end of May -- through May 3rd, 2012?

MR. HERREMA: Well, I think the document speaks for itself. It says his employment in the capacity of CEO ceased but the employment agreement was modified effective as of that day. And there are duties that are given to Mr. Alvarez during the transition period. So I don't believe that he did not continue to be employed by the Watermaster. His duties, as they're shown in Exhibit 11, were modified pursuant to this agreement as they're explained in the agreement.

BOARD MEMBER MATHUR: And is there -- I mean, this is a question for both of you. Is there a -- is there even a function that is inactive employment? I mean, if you're terminating active employment, what is inactive employment?

SENIOR STAFF ATTORNEY KAUR: I mean, when you look at this separation agreement, it just seems that they're relieving -- it states they're relieving him of his day-to-day duties. He doesn't have any duties anymore. And they just assigned him one single assignment just to give an illusion -- an appearance of employment. And that's pretty much what they're doing.

MR. HERREMA: Yeah, I'm going to object --

BOARD MEMBER MATHUR: He's not obligated to show up for work. In fact, he's obligated to not show up for work.

MR. HERREMA: Yet --

SENIOR STAFF ATTORNEY KAUR: Sorry.

And the board master -- the Watermaster -- the watermaster's board chair testified that Mr. Alvarez was no longer the CEO after November 9th, 2011.

MR. HERREMA: In terms of what his duties were, I don't think it's accurate to say he had no duties. There's a paragraph here that talks about what his duties were. It's not accurate and there's no evidence in the record anywhere saying that anything here was done to create any type of illusion or done for any ulterior motive. So I think it's improper to have that raised here.

What happened was the CEO duties that he had were -- were -- he ceased to perform those and his duties were modified pursuant to this agreement. He remained an employee for the entire year during which he was employed and compensated by Watermaster, as the ALJ found.

BOARD MEMBER MATHUR: So let me turn to the salary matrix that you have as Exhibit S. Where was that matrix housed prior to -- or for the duration of from May 3rd of 2011 through May 3rd of 2012?

MR. HERREMA: I was not working with Watermaster during the entirety of that period. My understanding is it was maintained in watermaster's records.

SENIOR STAFF ATTORNEY KAUR: If I may speak to that.

There was testimony from Mr. Joswiak, the CEO of the Watermaster. I did ask him in terms of how he obtained this document entitled "The Pay Schedule." The testimony that was elicited was basically there was a request for salary -- for salary information on the C -- regarding the CEO, and the request was made to his assistant. And his assistant notified him, and he had an Excel version he printed. The printed the -- provided the Excel version.

That -- I think that's as much as the testimony -- that's as close as the testimony gets to where it was housed.

BOARD MEMBER MATHUR: I mean, there is no date on this document. There is no seal of the Chino Basin Watermaster. It's -- it could have been anywhere. It could have been created on the spot to respond to the public -- to the Request for Information.

SENIOR STAFF ATTORNEY KAUR: And if -- I'm sorry.

MR. HERREMA: Go ahead.

SENIOR STAFF ATTORNEY KAUR: And if I may also add, this document titled "The Pay Schedule" was not provided to CalPERS until the day of the hearing.

MR. HERREMA: I'll first start by responding to that last point. That's actually not accurate. It was provided to CalPERS prior to the date of the hearing. And I'll expand on that a little bit.

CalPERS made its initial determination. It made its -- its subsequent determination based on a pay schedule for a different time period, which was later admitted by CalPERS staff during the hearing was not applicable.

So the fact that this document was provided before the hearing, it's not accurate that it was provided only at the hearing --

BOARD MEMBER MATHUR: When was it provided?

MR. HERREMA: Sometime before that. I can't say. That we had multiple rounds of discovery. There were document exchanges. There were exhibit exchanges. It's not accurate that it was provided the date of the hearing.

In regard to your questions about there not being a date on it or a seal of the Watermaster, it does indicate the time period it was applicable for, which is 2011, 2012. It indicates that there -- on the top left corner there, there would not be a cost-of-living adjustment for that year. And it was provided to Ms. Tracy Tracy during the fall of 2011. I can't remember the exact date off the top of my head.

BOARD MEMBER MATHUR: But the only --

MR. HERREMA: Oh, and one more thing, if I may.
Another exhibit that is in the record is that Watermaster additionally maintained pay schedules that went from 2004-2005 fiscal year all the way up to this pay schedule, and it still maintains them, as it must. And the testimony during the hearing was that these were generated each year, these pay schedules. So there's no evidence that this was simply produced at the time that a request was made.

BOARD MEMBER MATHUR: Generated each year. When each year?

MR. HERREMA: They were generated as part of the budgeting process.

BOARD MEMBER MATHUR: And since the separation agreement clearly says that Mr. Alvarez is not serving as CEO after November 9th of 2011, how is it that you argue that he is -- that he's eligible for this general manager/CEO salary that is listed on this salary schedule in Exhibit S for the full year?

MR. HERREMA: Well, I think what the document says is that he was -- his duties were modified -- his active CEO role was modified and his duties were modified to transition the CEO responsibility.

BOARD MEMBER MATHUR: What it says - and I will read it - is that "Executive's employment in the capacity of chief executive officer of the Watermaster with all the powers and duties associated therewith ceased on November 9th of 2011." Ceased. That's ended. That is not modified. That is ended.

Okay. Thank you. That exhausts my questions.

PRESIDENT FECKNER: Thank you.

Mr. Juarez.

ACTING BOARD MEMBER JUAREZ: I have a couple questions about his time.

Did he record monthly timesheets as the CEO?

MR. HERREMA: I don't know the answer. I don't know that there's in the record as to that.

ACTING BOARD MEMBER JUAREZ: So if he missed a week for whatever, presumably the Watermaster would not be aware of -- that he was gone and they would continue to pay him regardless?

MR. HERREMA: I can't speculate on that.

ACTING BOARD MEMBER JUAREZ: That's very strange.

Do you know on what basis they picked -- in the confidential separation agreement they picked the May 3rd, 2012, date to terminate his employment?

MR. HERREMA: I don't know. I wasn't working with Watermaster at that time.

ACTING BOARD MEMBER JUAREZ: But it's curious that it was a year after the time he started. So in

December or January, whenever the confidential separation agreement was put in place, they clearly picked the date that would give him the year of service, because -- I mean, can we at least stipulate to that, that it was one year after the time he started?

MR. HERREMA: Yes, May 3rd, 2012, would be one year after the time he started.

ACTING BOARD MEMBER JUAREZ: And I'll just, for my -- on my own just speculate that it's interesting that one year after the time he started is the time at which they would terminate his agreement as though there was some logic to that date otherwise, which is hard to understand.

So thank you.

PRESIDENT FECKNER: Thank you.

Mr. Slaton.

BOARD MEMBER SLATON: Yes. Thank you.

I want to have counsel come back to the -- in this separation agreement we have a paragraph 6, Confidentiality. I want to understand what was the job title? Because he ceased to be the CEO. So he became what? What job title and where would I find that in the standard documentation for Watermaster for that job category with that level of compensation? What was the job title after May 9th?

MR. HERREMA: His duties consisted of responding to questions --

BOARD MEMBER SLATON: I didn't ask for his duties. What was the job title?

MR. HERREMA: I don't know.

BOARD MEMBER SLATON: Okay. It doesn't seem to indicate there's any job title from what I -- documentation that I can see.

Counsel.

SENIOR STAFF ATTORNEY KAUR: I think that's correct. When you look at Exhibit 13 - it's CalPERS Exhibit 13 - there is an organization chart for the Watermaster, which the Watermaster provided during discovery. When you look at the year 2011 staff organization chart, it lists Mr. Desi Alvarez as the chief executive officer. Then you turn the page and you look at the year 2012 staff organization chart for the water master, and Mr. Alvarez is nowhere to be found on there.

BOARD MEMBER SLATON: Yeah. So the combination -- I guess what I have difficulty with is there's no job title; and we have in the separation agreement a confidentiality statement that both parties agreed not to discuss anything about this agreement, which would include job duties. So I guess I want to understand how this could possibly be PERSable given that there's no job title and there's a confidentiality regarding any aspect of the period starting May 9th.

MR. HERREMA: I believe the confidentiality doesn't run quite that way. I don't believe it prohibits Watermaster from discussing the contents of the agreement.

BOARD MEMBER SLATON: Really?

Okay. I guess we can differ on reading of the paragraph.

Thank you.

PRESIDENT FECKNER: Thank you.

Mr. Jones.

VICE PRESIDENT JONES: Yeah, thank you, Mr. President.

Yeah, Ms. Kaur, you made reference to the two organization charts, 2011 and 2012. And I'm looking at those. Do you have dates for the release -- for those documents? The date of those documents?

SENIOR STAFF ATTORNEY KAUR: Are you referring to a date when they were created?

VICE PRESIDENT JONES: Yes.

SENIOR STAFF ATTORNEY KAUR: No, we -- I don't see any -- well, at the bottom there's a 2010.

VICE PRESIDENT JONES: On which one?

SENIOR STAFF ATTORNEY KAUR: On the first one. If you look at Exhibit 13, on the first page, which is a

2010 organization chart, on the very bottom there's just a date of 2010. But I don't know what that signifies. I don't --

VICE PRESIDENT JONES: Okay. Yeah, that's -- okay.

SENIOR STAFF ATTORNEY KAUR: And the other --

VICE PRESIDENT JONES: Ten though.

SENIOR STAFF ATTORNEY KAUR: And 2011 has no date. It has no date as to when it was cre --

VICE PRESIDENT JONES: And '12 has no date either?

SENIOR STAFF ATTORNEY KAUR: Correct.

VICE PRESIDENT JONES: Okay.

SENIOR STAFF ATTORNEY KAUR: But the Watermaster staff testified that this organization chart has all the positions that existed at the Watermaster -- has all the positions listed on there.

VICE PRESIDENT JONES: Okay. Thank you.

MR. HERREMA: If I may, Mr. Jones.

I believe the title on the bottom of the first page of Exhibit 13 is actually a reference to the document title itself. It's got a folder and then a document title. I don't believe it's a date of creation.

PRESIDENT FECKNER: Thank you.

Mr. Lind.

BOARD MEMBER LIND: Quick question.

There's an allegation that he had modified duties after he stopped being the CEO. Was there any testimony or evidence that he actually performed duties?

MR. HERREMA: Yes, there was. There was testimony by the president of the Watermaster board, Mr. Kuhn, that he had conversations with Mr. Alvarez regarding pending matters, including purchase of tens of millions of dollars worth of water that was available to replenish the groundwater basin that the Watermaster oversees.

BOARD MEMBER LIND: Thank you.

PRESIDENT FECKNER: Thank you.

Ms. Taylor.

BOARD MEMBER TAYLOR: My quick question is: Does anybody know -- the salary schedule, which seems to be in question in terms of how it was made and when it was made, does any -- did any of the staff -- I'm asking you, Ms. Kaur, I'm sorry -- testify as to the date that this was made? Did anybody testify --

SENIOR STAFF ATTORNEY KAUR: I --

BOARD MEMBER TAYLOR: -- of its creation?

SENIOR STAFF ATTORNEY KAUR: And I'm assuming you're referring to the Watermaster staff?

BOARD MEMBER TAYLOR: Yes.

SENIOR STAFF ATTORNEY KAUR: I asked that question to the Watermaster staff, I believe it was Mr. Joswiak, the CFO. And he said that it does not have an effective date on it, it does not have a date of revision. He testified that it's the chart for the year 2011-12, so that's when it would have been made.

BOARD MEMBER TAYLOR: Right. But I'm asking to verify its authenticity, I guess, did any of the staff, his assistant -- the CFO's assistant say, "Oh, yeah, I made that"?

SENIOR STAFF ATTORNEY KAUR: I believe -- he testified -- when I asked him how he provided the pay schedule to Ms. Tracy, who had made the request, he testified that it was on -- it was an Excel version, and he printed that, and that was -- the Excel version was provided.

BOARD MEMBER TAYLOR: Do you know -- do you have any idea who created the document and --

MR. HERREMA: I believe Mr. Joswiak testified that it was created by him as part of the budgeting process for the 11-12 fiscal year.

BOARD MEMBER TAYLOR: And that this type of document is created for every budgeting?

MR. HERREMA: Well, there is evidence in the record -- and I referred to the number before. If you'll give me just a moment, I'll try to find it again. But there are schedules that were introduced into evidence. It's Exhibit 15, going back to the 2004-2005 fiscal year.

BOARD MEMBER TAYLOR: I see. And none of them have dates on them.

Oh, no. That one actually does. It has an Excel date on it -- creation date.

So somebody gets in there and creates an Excel sheet every year is what it looks -- what it appears.

MR. HERREMA: That is what the testimony was.

BOARD MEMBER TAYLOR: Okay. Thank you.

SENIOR STAFF ATTORNEY KAUR: If --

BOARD MEMBER TAYLOR: Yes.

SENIOR STAFF ATTORNEY KAUR: If I could just note, Exhibit 15 has a salary matrix -- actually it's Exhibit 16, it has a salary matrix of the year 2010-2011. So that's one document which lists the salary. But Exhibit S is a pay -- it's titled a Pay Schedule. It's different from this --

BOARD MEMBER TAYLOR: Salary.

SENIOR STAFF ATTORNEY KAUR: Correct.

And also if you look closely at the figures, the figures are different as well. So the CEO's highest pay on the salary matrix for 2011-2012 is 228,000, whereas the CEO -- well, it's titled the CEO and the General Manager, the highest pay is I think approximately 251,000. So it's -- they're not identical documents.

MR. HERREMA: It's unclear to me which document Ms. Kaur is referencing, and I would just like it to be clear for the record. If we're talking to -- about Exhibit 16, there is not a 2010-11 salary matrix at all. There's 11-12 and 12-13. And there was testimony in the record about when these were adopted, which was after the year -- after significant conversation with CalPERS staff regarding this exact matter and a recommendation by CalPERS staff to have it adopted.

The one that was existing in real-time during the year that Mr. Alvarez was employed was Exhibit S, and there is testimony and evidence in the record that was provided to requesting parties when they asked for it.

PRESIDENT FECKNER: All right. Seeing no other requests to speak.

We are going to recess this hearing. The Board's going to go into chambers with its independent counsel. And we'll be back out shortly.

(Off record: 10:49 a.m.)

(Thereupon the meeting recessed into closed session.)

(On record: 11:01 a.m.)

PRESIDENT FECKNER: Okay. We're reconvening the hearing.

With that, I'm going to call on Mr. Jones.

VICE PRESIDENT JONES: Yeah, thank you, Mr. President.

I move to revise the proposed decision as argued by staff and deny this appeal on grounds that 1) member's pay with the Watermaster was not available pursuant to his publicly available pay schedule, 2) effective November 9, 2011, memo was no longer an employee of the Watermaster, and 3) the severance compensation that member received after November 9, 2011, constituted final settlement pay.

BOARD MEMBER MATHUR: Second.

PRESIDENT FECKNER: Moved by Jones, seconded by Mathur.

Any discussion on the motion?

Seeing none.

All in favor say aye?

(Ayes.)

PRESIDENT FECKNER: Oppose, no?

Motion carries.

This meeting is -- this hearing is adjourned. We're moving on to Agenda Item Number 12, Summary of Board Direction.

Ms. Frost, did you have any direction this morning?

CHIEF EXECUTIVE OFFICER FROST: Mr. President, I did not record any direction from the Board.

PRESIDENT FECKNER: Very well. Thank you.

Agenda Item -- just a second.

Mr. Costigan. I'm sorry.

BOARD MEMBER COSTIGAN: I just want to make sure there was at least one direction in my report to put something on the February -- make sure we note that there was Board direction to put an item on the February full Board --

CHIEF EXECUTIVE OFFICER FROST: Right. That came out of the Committee report as well as the direction that came out of Governance related to the public comment form, that those were out of committee.

PRESIDENT FECKNER: Okay. Item 13, Public Comment.

I have two requests from the public to speak. I have Mr. Behrens and Mr. Neal Johnson.

Would you both please come forward.

State your name and affiliation for the record.

MR. BEHRENS: Thank you, President Feckner and the Board members. I'm Tim Behrens, the president of the California State Retirees. So I'm here today to speak in support of the motion you made to lower the discount rate on your fund -- our fund. And I believe that that action's going to lead to the long-term sustainability of that fund and help us retirees -- us retiree stakeholders to continue to receive our check that we were promised. And we appreciate that.

Regarding Doug, we're going to miss him too. We agree with all the accolades that you all have given him so far. We'll especially miss our early morning breakfast debates inside the cafeteria. He was kind enough to come at 7 in the morning and listen to our concerns. And we will do our best to educate his replacement.

(Laughter.)

PRESIDENT FECKNER: We have no doubt.

(Laughter.)

MR. BEHRENS: Finally, I'd like to wish you all a Merry Christmas and a Happy New Year, and a special wish for the CalPERS Investment Committee. We hope they have a prosperous new year.

(Laughter.)

PRESIDENT FECKNER: Thank you all.

PRESIDENT FECKNER: Very good. Thank you.

Mr. Johnson.

MR. JOHNSON: Neil Johnson, SEIU Local 1000. This is both a comment on behalf of the local but also myself.

I have known Mr. McKeever for many years, including his first stay here. And then really lost contact with him when he went to Corrections. Although a very good friend of mine who's a special education teacher and in the juvenile test division says very nice things about Doug's term there. And then we saw his return.

I found him to be very approachable, very knowledgeable. He has really led this program for the last six, seven years, and set a high bar that the next -- or his successor will have a tough time reaching or, let alone, exceeding, but let's hope that happens. Clearly, this is a benefit to the exchange and Mr. Lee, and maybe our employees at the Health Benefit Exchange, which complain constantly about the current management. And I think Doug will resolve some of those problems down the line.

But I thank -- really do thank Doug for his service, both to this organization and to the later, greater California in the Covered California.

As Mr. Lind pointed out yesterday in the discussion over the discount rate, we in the public sector tend to forget that we have benefits that others don't have. And, you know, the exchange -- exchanges were created to really provide benefits to employees, our workers, to citizens of the State who could not otherwise engage in the health care marketplace. And that is a great challenge, particularly in light of current political things. But I'm sure Doug will do an excellent job and the exchange will reach new heights.

And, Doug, thank you very much for your service.

PRESIDENT FECKNER: Very good. Thank you both for your comments.

Seeing no other requests.

I do want to say those of you that enjoyed the choir today, again they will be performing here later today. But also, the Board's annual trip to the River Cats game this year, they will be performing the Star Spangled Banner on the before the game. So great job by our choir.

And with that, I just want to take a moment to wish everyone happy holidays. Whatever your persuasion is, we certainly hope that you make the best of it. Enjoy your time with friends and family and also take some time to make some new friends. Again, tough time of year for a lot of folks around the holidays, so reach out and make someone else's day a little better.

So with that, the open session is adjourned. We will go into closed session at 11:15.

(Thereupon the California Public Employees' Retirement System, Board of Administration open session meeting adjourned at 11:07 a.m.)

C E R T I F I C A T E O F R E P O R T E R

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California Public Employees' Retirement System, Board of Administration open session meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California.

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of December, 2016.

JAMES F. PETERS, CSR
Certified Shorthand Reporter
License No. 10063