

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

David Lancaster (Respondent) was employed by the California State University Chico Research Foundation (Foundation) from January 20, 1998 through August 13, 2000. The Foundation is a 501(c)(3) non-profit corporation. During Respondent's employment by the Foundation, he was paid by it and was not compensated with funds directly controlled by the State. The Foundation is not a local public agency that contracts with CalPERS to provide retirement benefits to its employees. During his employment with the Foundation, Respondent was assigned to and performed work for the Respondent Department of Fish and Game (DFG). Respondent became a full-time employee of DFG on August 14, 2000.

In 2006, Respondent wrote to CalPERS, asking that it determine whether he qualified for CalPERS membership as a common law employee of DFG during the time he worked full time on DFG projects while employed by the Foundation. CalPERS staff reviewed the working relationship between Respondent and DFG during the period in question and erroneously determined that he was a common law employee of DFG during that time period. CalPERS notified Respondent of its determination by letter dated December 11, 2006. Subsequently, by letter dated April 3, 2007, CalPERS informed Respondent that while he met the common law definition of "employee," he did not meet the statutory definition of "employee" in Section 20028 of the Public Employees' Retirement Law (PERL). Respondent appealed and a hearing was held on August 14, 2012.

Section 20028(a) provides that "Employee" means:

"Any person in the employ of the state, a county superintendent of schools, or the university whose compensation, or at least that portion of his or her compensation that is provided by the state, a county superintendent of schools, or the university, is paid out of funds directly controlled by the state, a county superintendent of schools, or the university, excluding all other political subdivisions, municipal, public and quasi-public corporations. "Funds directly controlled by the state" include funds deposited in and disbursed from the State Treasury in payment of compensation, regardless of their source."

After considering all the evidence presented, the Administrative Law Judge (ALJ) found that DFG is statutorily authorized to enter into contracts with public and private entities whenever it finds that the contracts will assist it in its duty to preserve fish and wildlife. (Fish and Game Code section 1501.5 (a).) Additionally, DFG is mandated to augment its existing staff, whenever possible, by contracting for services for the administration of the Wildlife and Natural Areas Conservation Act. (Fish and Game Code section 2729 (a).) The ALJ found that, in 1998 through 2000, DFG entered into contracts with the Foundation in order to provide staff or personnel to work on DFG

projects. The ALJ also found that the funds used to pay Respondent's salary and benefits were not appropriated as part of DFG's annual budget during those years, and that DFG lacked the necessary approval from the Department of Finance to fund Respondent's position.

In his Proposed Decision, the ALJ concluded that Respondent was not an employee of the State (DFG) from January 20, 1998 through August 13, 2000. Respondent's compensation was not paid out of funds deposited in and disbursed from the State Treasury, as required by Section 20028(a). The ALJ also noted that Section 20160(b) requires CalPERS Board to correct its errors. Consequently, CalPERS was required to correct its previous erroneous determination that Respondent was a common law employee of DFG during the time he worked for the Foundation.

The ALJ concluded that Respondent was not eligible for membership in CalPERS for the period of January 20, 1998 through August 13, 2000, during which he was an employee of the Foundation.

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

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

February 21, 2013



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