ATTACHMENT C

RESPONDENT(S) ARGUMENT

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In the Matter of the Santa Clara Valley Water District's Appeal of Tier Conversion Contract Amendment
CalPERS Case No. 2024-0867
OAH Case No. 2025080184
CalPERS Board of Administration Hearing Date: June 17, 2026

Respondent Santa Clara Valley Water District's Argument in Opposition to Adoption of Administrative Law Judge Proposed Decision;
Opposition to Determination of the Proposed Decision as Precedential,
And Request for Remand.

Board of Administration
California Public Employee
Retirement System
Lincoln Plaza North
400 Q Street
Sacramento, CA 95811

To the Honorable Members of the CalPERS Board of Administration:

I. Introduction.

Santa Clara Valley Water District ("District") objects to the adoption of the April 30, 2026, proposed decision by the Office of Administrative Hearings ("OAH"). Prior to the passage of the Public Employee's Pension Reform Act ("PEPRA," codified in Gov. Code, §§ 7522, *et seq.*[1]), the District adopted a second "classic"[2] retirement tier. (Gov. Code, §§ 7522, *et seq.*, effective January 1, 2013.) Specifically, employees hired on or after March 19, 2012, receive "Tier II" retirement benefits (2% @ 60 retirement formula, three-year final compensation); then-existing employees continue to receive Tier I benefits (2.5% @ 55 retirement formula, one-year final compensation). CalPERS places all "classic" lateral transfer employees from other agencies in Tier II. On January 1, 2013, PEPRA took effect and new employees (as defined by PEPRA section 7522.02) now receive PEPRA Tier retirement benefits (2% @ 62 retirement formula, three-year final compensation).

The District's creation of Tier II was a response to the same unfunded liability crisis that propelled PEPRA. However, because Tier II provides a far less favorable retirement formula than Tier I, Tier II employees tend to leave the agency before they retire, moving to agencies without a second classic tier. The undisputed record establishes that few if any of the agencies from whom the District recruits lateral employees have a second classic tier, and none have second tiers with such a drastic reduction from Tier I. (See Exh. Q, pp. B1546-B1548 [District's Response to Statement of Issues, 3:28-5:5].)

From 2021 through August of 2024, the District engaged with CalPERS staff regarding its proposal to eliminate its Tier II, and to incorporate all classic employees into the existing Tier I formula on a prospective basis. Despite support for the legality of this proposal under PEPRA and the Public Employees' Retirement Law ("PERL," codified at §§ 20000 *et seq.*), CalPERS staff discouraged the District from seeking such a contract amendment. In August of 2024, the District submitted a formal request for this amendment. CalPERS staff rejected the request relying solely on PEPRA section 7522.02, subdivision (c). The District timely appealed, and the matter came before the OAH for hearing in November 2025 and January 2026.

[1] All statutory references are to the Government Code unless otherwise specified.

[2] The term "classic" member or employee is not used anywhere in the PEPRA statutes but has become a term of general use by employers and CalPERS to define any member employee that is not defined as a "new member" under PEPRA. (See § 7522.04, subd. (f).)

On May 1, 2025, OAH issued a proposed decision in favor of CalPERS staff. Despite acknowledging ambiguity in PEPRA, the proposed decision glossed over every statutory provision that supported the District's position, *failing to even mention that PEPRA expressly contemplates "enhancement[s] to a public employee's retirement formula" on a prospective basis.* (§ 7522.44.)

No one doubts that PEPRA was intended to create a single new benefit formula for "new employees" and that formula is frozen by statute. However, the legislative history and the language of PERL and PEPRA are clear that it was *not* intended to freeze classic formulas, which continue to be controlled by individual agencies under PERL section 20474. Rather, PEPRA's focus with respect to classic formulas was to prevent *retroactive* increases to classic formulas. It should go without saying that, if the legislature went out of its way to expressly bar *retroactive* classic benefit formula increases, it remained possible to increase those formulas on a prospective-only basis. Indeed, at the time PEPRA passed, in published materials, CalPERS itself recognized this simple fact. (Evidence, Exh. 25, p. A246 [CalPERS Summary of PEPRA Changes, November 27, 2012].)

This is a matter of great significance for the future of the District and is fully supported by its unions. (Evidence, Exh. EE, Amicus Brief by District's Unions). The District respectfully requests that the Board reject the proposed decision and either remand the matter to OAH for consideration of the District's arguments, or set it for hearing before the Board on the full record. Alternatively, if the Board elects to adopt the proposed decision, the District requests the decision not be designated as precedential because it fails to even address express provisions in PERL and PEPRA that contradict it.

II. PEPRA and PERL Allow Enhancement to "Classic" Retirement Formulas.

A. OAH Misstates the Scope of the Issues to be Decided.

The issue on appeal is: "Are contract amendments by contracting agencies which enhance the retirement formula or retirement benefits for 'classic' public employees, on a prospective basis, permitted by PERL[3] and CalPERS regulations?" (Evidence, Exh. Q, p. B1545, 2:25-27.) The District relies, in particular, on PERL section 20474, which continues to authorize agencies to contract for different classic formulas, and PERL section 7522.44 which recognizes that authority, but limits it to prospective changes.

The ALJ framed the question by looking only to CalPERS' statement of issues and ignoring the District's argument entirely. Instead, the ALJ looked only at whether PEPRA section 7522.02 and PERL section 20479 prohibit the requested modification. *Neither statute directly addresses the issue.* By limiting its analysis to only the provisions CalPERS staff cited, the ALJ failed to analyze express provisions of PERL and PEPRA that permit modification of classic tier formulas.

CalPERS' Amended Statement of Issues relies on Gov. Code section 7522.02 and 20479. (Evidence, Exh. 6, p. A19 [CalPERS Amended Statement of Issues, 8:3-9].), discussed at greater

[3] PERL is used here to refer to current provisions in PERL that predated PEPRA; PEPRA is used to refer to the legislative changes in PERL and other statutes made by the legislature, primarily in 2012.

length below.[4] Section 7522.02 does not concern changes in benefits at all, but rather, the placement of individuals in pension tiers when they transfer between agencies. Classic employees who transfer to the District *are* placed in Tier II – indeed, that's precisely the problem. But that is an entirely different question than whether an employer may opt to improve Tier II benefits under PERL section 20474 – which PEPRA did not alter. CalPERS' reliance on section 20479, the other basis of CalPERS' objection, is utterly illogical. The purpose of the section is to prevent employers from improving a classic tier benefit for a subgroup of employees, without increasing it for others. The District's sole purpose here is to *equalize* its classic tiers and its proposed contract amendment fosters the goal of section 20479.

B. PEPRA section 7522.44 and PERL sections 20474 and 21354.4 Specifically Authorize the District's Prospective Classic Retirement Formula Enhancement.

The most glaring failure in the proposed decision is the absence of any meaningful reference to the PEPRA and PERL statutes that authorize classic retirement formula enhancements. Foremost, PEPRA section 7522.44 provides in relevant part:

> "This section shall apply to all public employers and to all public employees:
>
> (a) Any **enhancement to a public employee's retirement formula or retirement benefit adopted on or after January 1, 2013, shall apply only to service performed on or after the operative date of the enhancement** and shall not be applied to any service performed prior to the operative date of the enhancement." (Emphasis added).

This provision was a central piece of PEPRA legislation addressing the unfunded liability crisis by prohibiting retroactive enhancements to retirement formulas, and comes directly from Governor Brown's 12 points that formed the basis of PEPRA.[5] Prohibiting retroactive increases was important to the authors of PEPRA because CalPERS had become critically underfunded, and one of the major reasons for that was the unfunded liabilities caused by the *retroactive* adoption of the 3% @ 50 safety formula. By prohibiting only *retroactive* retirement formula enhancements, the Legislature acknowledged that contracting agencies could continue to provide *prospective* enhancements to retirement formulas, as provided by PERL section 20474. The omission of any analysis of this key provision renders that the ALJ's decision an exercise in futility.

The District has consistently asserted these provisions as the central basis of its case. (See Evidence, Exh. 3, p. A8; Exh. CC, pp. B1674-1678; Exh. DD, pp. 1692-1694). At the hearings on this matter and in the parties' briefing, CalPERS staff and counsel offered no explanation as to why the plain language of section 7522.44, which allows enhancements to retirement formulas consistent with existing law, prevents the type of enhancement requested by the District. Indeed, the closest any CalPERS witness came to explaining this language was when Anthony Suine, a former high-ranking official of CalPERS, called as a main witness by CalPERS' counsel, implausibly testified that the term "enhancement" in section 7255.44 meant "the opportunity to

[5] Evidence, Exhibit C, p. B1162, ¶8 (Governor's Twelve Point Pension Reform Plan, October 27, 2011).

create a *lower* benefit formula for PEPRA employees." (Hearing Transcript, Vol. II, 62:8-63:13).

PEPRA did not repeal or restrict any of the PERL mechanisms permitting employers to enhance classic retirement formulas. These classic member retirement formulas continue to be available in PERL section 21353 et seq. (See, e.g., § 21354.4 [providing the District's Tier I formula (2.5% @ 55)]; § 21353 providing the District's Tier II formula (2% @ 60)].) Contracting agencies can make these elections under PERL section 20474, which allows contracting agencies to "increase[e] or improv[e]" their retirement benefits. When a contracting agency elects a more generous classic retirement formula, that formula will supersede the lower, statutory retirement formulas. (See, e.g., § 21354.4, subd. (c) ["This section shall supersede Sections 21353, 21354, and 21354.1 on or after the date this section becomes applicable to the contracting agency."].) *These provisions were left completely unaltered by the Legislature when it passed PEPRA and remain controlling law.* (See Evidence, Exh. CC, District's Closing Brief, pp. B1677-1678.)

C. PEPRA section 7522.02, subdivision (c) Does Not Govern Enhancements to Retirement Formula Benefits.

PEPRA section 7522.02, subdivision (c), relied upon by CalPERS, merely deals with placing classic employee members who have established reciprocity in an appropriate "classic" retirement tier after changing public employers. As the proposed decision notes: "It is clear from that evidence [the Legislative history of PEPRA] that the intent of section 7522.02, subdivision (c)(1), was to allow classic employees to move between employers and retirement systems without being forced into the PEPRA retirement plan. Thus, when a classic employee moves from one employer to another, they are subject to the plan in which they would have participated had they begun their employment with the second employer." (Proposed Decision, p. 10.) The proposed decision correctly identifies the intent of section 7522.02 to ensure that public employees who become members of a retirement system prior to PEPRA are not forced to lose those retirement formula benefits just because they change employers. But, the proposed decision then veers off into an attempt to read the provision as restricting enhancements to classic retirement formulas themselves, a topic the provision does not even mention. Simply put, nothing in section 7522.02 limits the authority of a local agency to change classic retirement formulas, as expressly authorized by section 20474.

Even CalPERS' own witness, Mr. Suine, admitted that section 7522.02 dealt only with certain situations involving placing individuals with reciprocity and had no application to the question of whether classic retirement formulas could be increased in general after the passage of PEPRA.

> "ADMINISTRATIVE LAW JUDGE: The question as you sit and read [section 7522.02] (c) (1) presently, is there any language within that section that you believe supports the position that a CalPERS member cannot enhance a classic tier?
>
> * * *
>
> A. [Suine]: Yeah. This is specific to the concurrent employment and not to the increasing of benefits, classic benefits."

> ADMINISTRATIVE LAW JUDGE: So there may be in your view other sources of authorities for that position, but you don't find authority within the specific language in (c) (1) that appears in that document?
>
> A. [Suine]: That would be correct." (Hearing Transcript, Vol II, January 29, 2026, 56:10-25).

The record below is completely devoid of any evidence or legal authority that supports the proposed decision's single-minded focus on section 7522.02(c)(1) as a basis for prohibiting enhancements to classic tier retirement formulas.

D. The Proposed Decision's Interpretation of PERL Section 20479 is Nonsensical.

The proposed decision argues that PERL section 20479 in effect prohibits the District from adopting any enhancement to a retirement formula for classic member miscellaneous employees that cannot be applied equally to "new" employees under PEPRA, who are limited to the lower, PEPRA retirement formulas. (Proposed Decision, pp. 11-17). The relevant portion of section 20479 prevents a local agency from entering into a contract with CalPERS that provides retirement benefits to some but not all members of different classifications of employees such as miscellaneous employees. The proposed decision asserts that finding section 20479 applies to "new" employees in the PEPRA tier harmonizes PEPRA and PERL provisions, while the District's position that PEPRA created an exception for the treatment of retirement benefits for "new" members would require finding a conflict in these laws which would require reconciliation. (Proposed Decision, pp. 14-15). The opposite is the case.

At the time section 20479 was adopted, PEPRA did not exist, and employers were entitled under section 20474, as a matter of right, to pick any pension formula authorized by the Legislature. Section 20479 was enacted as a check on that ability – to prevent *employers* from discriminating among their employees in the same pension classes. However, when *the legislature* enacted PEPRA, it created a new lower tier that employers cannot change under section 20474. It simply makes no sense to apply section 20479 to a Tier that was imposed by the Legislature, is not subject to change under section 20474, and requires the very discrimination section 20479 would otherwise prevent. A local contracting agency can and must treat "new" member employees differently than classic member employees.

There is no conflict between section 20479 and the rest of PERL as amended by PEPRA if the statute is read correctly to require non-discrimination among classic employees or between new employees of an agency who are in the same category ("miscellaneous," "safety," etc.) while recognizing the distinct treatment for new employee retirement formulas mandated by PEPRA sections 7522.15, 7522.20 (new non-safety members), and 7522.25 (new safety members). Recognizing this reality, **every** local agency contract that has been entered into by CalPERS since the adoption of PEPRA has been drafted so that there are different levels of benefits between new and classic employees in the same section 20479 category.

Finally, the assertion by CalPERS staff and counsel of section 20479 as a basis for denying the District's proposed amendment to its contract to enhance Tier II benefits for classic employees came as a very late afterthought in this proceeding. Despite over two years of contact between the District concerning the District's proposed contract amendment and nearly a year of the

appeals process, CalPERS staff and counsel never raised section 20479 as a rationale for denying the District's request. The original determination letter by CalPERS in 2024 did not mention this section. (Evidence, Exh. 2, pp. A5-A6). The statute was not raised as a defense to the District's appeal until three weeks before the first hearing at OAH in a "supplemental" response by staff, and an amended statement of issues by counsel. (Evidence, Exh. 5, pp. A10-A11 [CalPERS letter dated November 4, 2025]; Exh. 6, pp. A12-A20 [Amended Statement of Issues].) This late recognition is further evidence that even CalPERS staff did not base the denial of the District's request on it, and that the argument is simply a post-hoc rationale for what amounts to a political position by CalPERS staff.

III. This Case Is About the Law, Not Policymaking by CalPERS

Permitting an employer to increase pension benefits is understandably fraught, as the memories of 2008 are still fresh, and there is pending legislation related to pension benefits. However, the public policy need for the District to provide high quality water services is critical.

PEPRA did much to reduce pension risks going forward. It created the reduced tier for post-2013 employees. It eliminated many known pension abuses. And, it prohibited employers from increasing classic pension formulas *retroactively*. What PEPRA did not do is eliminate employers' ability to increase classic formulas *at all*. CalPERS must not be in the business of making law that the Legislature itself quite specifically decline to make. Put another way, given PEPRA's treatment of new employee plans – clearly freezing benefits – if the legislature had intended the same result for classic employee plans, wouldn't it have said so?

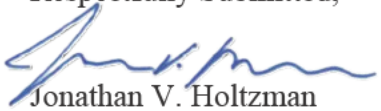
The problem we address here is very narrow in scope. Valley Water and its unions merely seek to equalize its classic pension tiers. This problem arises because Valley Water competes for senior talent with other agencies that have far higher pensions (generally 2.7 @ 55 vs. 2%@60 for Valley Water Tier II). This problem does not exist for PEPRA employees because those pensions are equal at every CalPERS agency. Therefore, it seems unlikely that many, if any, other agencies would seek a similar enhancement.

IV. The Proposed Decision is An Incomplete Analysis of the Legal Issues in the District's Appeal and Should be Rejected and Should Not be Precedential.

The proposed decision is incomplete and erroneous and should be rejected by the Board. Its failure to even address legal provisions that contradict it also renders it unqualified to be a precedential decision. This is a decision that may well be considered by the courts. CalPERS owes it to the public to address the actual issues in the case squarely so that the record is complete. The District requests that the Board either remand the decision to OAH for a complete consideration of the applicable law or set the matter for full hearing before the Board.

Date: May 27, 2026

Respectfully Submitted,



Jonathan V. Holtzman
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Santa Clara Valley Water District

PROOF OF SERVICE

I, the undersigned, am employed by RENNE PUBLIC LAW GROUP. My business address is 350 Sansome Street, Suite 300, San Francisco, California 94104. I am readily familiar with the business practices of this office. I am over the age of 18 and not a party to this action.

On May 27, 2026, I served the following document(s):

Respondent Santa Clara Valley Water District's Argument in Opposition to Adoption of Administrative Law Judge Proposed Decision; Opposition to Determination of the Proposed Decision as Precedential, And Request for Remand.

by the following method(s):

☒ **Electronic Mail.** Copies of the above document(s) in PDF format were transmitted to the e-mail addresses of the parties on the attached Service List.

SERVICE LIST

Maytak Chin [redacted] Mariah K. Fairley [redacted]	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 27, 2026 at San Francisco, California.

Bobette T. Bramer