



Randall Bradley  
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December 23, 2010

Board of Retirement  
Contra Costa County Employees' Retirement Assn.  
1355 Willow Way, Suite 221  
Concord, CA 94520

**MEETING DATE**

**JAN 12 2011**

**AGENDA ITEM**

*#10*

Re: CCCERA "Depooling" Issue

Dear Messrs. Telles, Gaynor, Hast, Cabral, Gioia, Holcombe, Buck, Remick, and Pollacek, Ms. Viramontes and Ms. Naramore:

Given the significant public policy issues described below, we, as Board members of the Moraga-Orinda Fire District, request that the CCCERA Board respond to our questions as an agenda item for the CCCERA January 11, 2011 Board meeting.

Our purpose is to seek clarification as to CCCERA's perceived authority for certain decisions. We are extremely concerned with respect to CCCERA's decision-making on recent matters of significant public policy and financial import. We believe that CCCERA must formalize its decision-making process so that it is transparent to the District as an employer member, as well as to the public.

As a public agency board we have a fiduciary duty to our taxpayers. CCCERA's decisions which affect the District's finances must provide for our participation prior to becoming final. This would allow our Board to give the proposed decision or policy change the full and careful consideration that is due.

In sum, there are three issues which have caused us grave concern: (1) CCCERA's failure to apply the compensation limitations approved by a 2003 court decision affecting all 1937-Act retirement plans; (2) CCCERA's "depooling" decision adopted in October 2009; and (3) CCCERA's decision to retroactively apply the depooling decision to 2002. These three issues are interrelated as CCCERA's unilateral decisions have created an unanticipated, yet avoidable, financial dilemma for our District. During this relevant time period of 2002 to date the District detrimentally relied on CCCERA's policies. Personnel were hired; terms and conditions of employment were negotiated; pension obligation bonds were successfully sought; and generally, the District's program and financial planning decisions relied upon CCCERA's representations.

We estimate that implementation of CCCERA's retroactive depooling decision will result in an unfunded liability of 4.9 million dollars for our District. Furthermore, CCCERA's failure to

implement the 2003 judicial limitations on elements of compensation has created a significant financial liability for the District. In re Retirement Cases (2003) 110 Cal.App.4th 426 [1 Cal.Rptr.3d 790] Since 2003 fifty-six (56) of the District's seventy-five (75) employees have been hired.

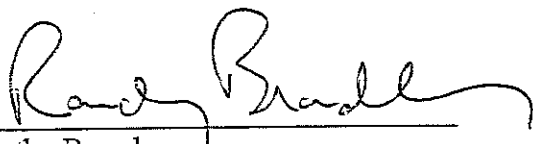
We believe it is incumbent that CCCERA communicate its authority for the above decisions, and adopt transparent and effective policies to prevent a recurrence of these problems. To that end, we would appreciate responses to the following questions:

1. October 13, 2009 "Depooling" Decision: What regulation, bylaw, statutory or other authority did CCCERA rely upon?
2. Why did CCCERA not obtain consent or other form of approval from its employer members?
3. What authority does CCCERA possess to unilaterally decide to effectuate the "depooling" decision retroactively to 2002?
4. As you are aware, elements of compensation under the County Employees' Retirement Law of 1937, Government Code Sec. 31450 et seq., were determined in 1997 by the Supreme Court's decision in Ventura County Deputy Sheriffs' Assn. v. Board of Retirement (1997) 16 Cal.4th 483 [66 Cal.Rptr.2d 304]. On what basis did CCCERA apply the Ventura decision to active employee members, without imposing the limitations subsequently approved four years later by the In re Retirement Cases decision? Why has CCCERA waited until 2011 to implement a second tier for Ventura benefits?

In our view, the above evinces a strong need for the CCCERA Board's adoption of regulations or bylaws which clearly delineate the decision-making procedures for future policy matters.

Recognizing that we, as an elected District Board, also have fiduciary and public policy obligations to the public similar to CCCERA, our goal is to improve the working relationship between employer members and you as the CCCERA Board.

We look forward to your response. If the Board has any questions or need further clarification, please contact me at 925-258-4599.



For the Board:  
Randy Bradley  
Fire Chief



# Central Contra Costa Sanitary District

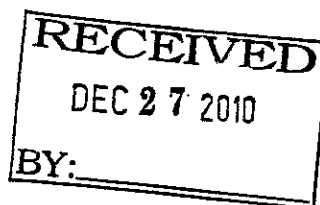
Protecting public health and the environment

5019 Imhoff Place, Martinez, CA 94553-4392

December 27, 2010

## HAND DELIVERED

Honorable Members of the Board  
Contra Costa County Employees' Retirement  
Association  
1355 Willow Way, Suite 221  
Concord, CA 94520



### BOARD OF DIRECTORS:

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[www.centalsan.org](http://www.centalsan.org)

Dear Members of the Board:

The Central Contra Costa Sanitary District ("CCCSD") Board of Directors thanks CCCERA for the information it has provided and for delaying action on its consideration of retroactive de-pooling to allow CCCSD to review CCCERA's proposed rate adjustments. CCCSD has spent substantial effort in evaluating the retroactive de-pooling decision of CCCERA and the implementation of those decisions through the proposed member rates, to be implemented July 1, 2011.

The cumulative impact of CCCERA's actions or inactions and the de-pooling methodology would increase CCCSD's unfunded liability (and hence burden our ratepayers) by \$20 million. This potential unfunded liability would result in a substantial increase in CCCSD's cost of operations beginning in July 2011. As part of our review to ensure CCCERA was correctly calculating our liability, CCCSD reviewed our practices of reporting final annual salary (FAS) to CCCERA (following CCCERA Policy "Determine Which Pay Items are "Compensation" for Retirement Purposes" ("Policy")). Based on this review we concur with CCCERA's analysis that the vast majority of the pay codes that make up the FAS are being correctly reported (memorandum from Harvey Leiderman to Marilyn Leedom dated September 16, 2010), and hence the retirement benefits comply with CCCERA's "Policy".

The CCCSD Board has significant concerns about decisions CCCERA made that led to the proposed de-pooling action, although we are willing to consider paying our fair share of the de-pooled retirement costs, as appropriately determined. CCCSD rejects the proposition that all of the current circumstances which have led to de-pooling could not have been avoided or ameliorated. We contend it is the CCCERA Board, not the employer, that has the constitutional and statutory duty to manage retirement funds and to determine whether and how much the fund is obligated to pay to individual retirees.

Central Contra Costa Sanitary District further contends that subsequent to the July 11, 2003 decision of *In re Retirement Cases* (2003) 110 Cal.App.4th 426, 457-460, CCCERA had both the opportunity to and obligation to modify its "Policy" as it ultimately did on March 10, 2010. It is worth noting that CCCERA's lack of action after 2003 led to much of CCCSD's and other employers' accrued de-pooling unfunded liability. We "contract" with you to administer the fund and your failure to either track or consider changes in the law at that time detrimentally impacted CCCSD and other employers. For example, approximately 90 of CCCSD's 250 employees have been hired since January 2004, and could have been covered by the second tier policy adopted

this year. We would like to know why the decision to set up a second tier was delayed for years and only occurred when "spiking" became a matter of public controversy.

Given the significant public policy change by CCCERA to move from a pooled system to a de-pooled system by employer and to do so retroactively, and the resultant unanticipated liability and costs to CCCSD and several other employers, we, as Board members of CCCSD, request that:

- (1) the CCCERA Board respond to our questions set forth on Attachment A as an agenda item for the CCCERA January 12, 2011 Board meeting, and
- (2) the CCCERA Board make this letter available for distribution at the meeting as part of the public record.

The purpose of our letter is to seek a statement and understanding from the CCCERA Board as to its perceived authority for certain decisions and the process used to make those decisions so we can perform our due diligence as a Board and to ensure this is a lawful change in public policy. We hope that your response to this request will satisfy our concerns and make CCCERA's decision-making process more transparent to CCCSD as an employer member, to other employer members, as well as to the public. It is critical that future decisions which affect CCCSD's financial and policy status allow for our timely input prior to becoming final.

Notwithstanding these comments and the questions set forth in the attachment, the professional manner in which you and your staff have dealt with our inquiries and concerns on this matter is appreciated.

We look forward to CCCERA's response to this letter and the questions presented in the attachment. If the Board has any questions or needs further clarification, please contact James M. Kelly, General Manager, at (925) 229-7386.

Sincerely,



Michael R. McGill, P.E.  
President of the Board of Directors  
Central Contra Costa Sanitary District

cc: Ms. Marilyn Leedom, Executive Director

Attachment A: Questions to CCCERA Board of Directors regarding de-pooling

## **ATTACHMENT A**

### **I. October 13, 2009 "De-pooling" Decision**

1. Please identify the authority CCCERA relied upon to unilaterally implement its October 14, 2009 "de-pooling" decision. To prevent any confusion, our question seeks the following:
  - a. Did CCCERA rely on any California constitutional authority? If so, please specify.
  - b. Did CCCERA rely on any California statutory authority? If so, please specify.
  - c. Did CCCERA rely on its own regulations, bylaws or other authority? If so, please specify.
  - d. Is there any authority CCCERA relied upon other than the above?
  - e. Does CCCERA believe that its Board has unfettered authority to make policy decisions, without seeking input and/or approval from its employer members? If so, what authority does the Board rely upon for this conclusion?
2. Is it CCCERA's position that its "de-pooling" decision did not require consent or other form of approval from its employer members? If so, what is the authority for that conclusion?
3. When did the CCCERA Board commence its discussion of adopting a "de-pooling" policy? Please provide a list of dates when this issue was discussed by the Board, including publicly noticed open and closed session meetings.

### **II. Retroactive Effect of "De-pooling" Decision**

1. Please identify the authority CCCERA relied upon to unilaterally decide to effectuate the "de-pooling" decision retroactively to 2002.
  - a. Did CCCERA rely on any California constitutional authority? If so, please specify.
  - b. Did CCCERA rely on any California statutory authority? If so, please specify.
  - c. Did CCCERA rely on its own regulations, bylaws or other authority? If so, please specify.
  - d. Is there any authority CCCERA relied upon other than the above?
  - e. Do you assert that the CCCERA Board has unfettered authority to make policy decisions, without seeking input and/or approval from its employer members? If so, what authority does the Board rely upon for this conclusion?
2. Under the County Employees Retirement Law, Government Code Sec. 31453.6 provides statutory authority to, on a one-time basis, amortize unfunded accrued actuarial obligations for 30 years, for the purpose of determining employer contribution rates. In making its decision to apply "de-pooling" retroactively to 2002, did the Board consider exercising its authority under Government Code

Sec. 31453.6? If so, did the Board decide that this section was irrelevant or not necessary?

To the extent that the Board responds that no request was forthcoming from the Board of Supervisors, please advise whether, as part of the Board's "de-pooling" decision-making, any discussions have taken place with respect to the Board's powers afforded by the above statute.

### **III. Implementation of "In re Retirement Cases" Limitations on Reportable Compensation**

1. Please identify and list any and all documents, including but not limited to settlement agreements, policy directives, etc. by which CCCERA decided to implement the compensation benefits as identified in the Supreme Court's decision *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4<sup>th</sup> 483, 66 Cal.Rptr.2d 304.
2. Please identify and list any and all non-attorney client privileged documents which the Board considered with respect to whether the Board should adopt, or refrain from adopting, the compensation limitations approved by the Court of Appeal in *In re Retirement Cases* (2003) 110 Cal.App.4<sup>th</sup> 426, 1 Cal.Rptr.3d 790.
3. Please identify and list any Board decision to refrain from adopting the compensation limitations set forth the *In re Retirement Cases* decision.

If none is identified and listed, what was the Board's decision-making procedure, if any, for evaluating the legal impact of the above 2003 Court of Appeal decision? Is it accurate to conclude that the CCCERA Board has voluntarily applied the *Ventura* decision to all then and currently active employee members since that 1997 decision, without imposing the limitations approved by the *In re Retirement Cases* Court?

4. We understand that the Board received a legal opinion on or about October 21, 2009 related to CCCERA's treatment of final compensation and retirement benefits.

Please describe the decision-making process resulting in the Board's policy to implement the Court of Appeal limits on compensation, effective in 2011.

### **IV. Future Decision-making Process**

Please identify the decision-making protocols under which CCCERA currently operates.

Further, we assume that the CCCERA Board will have future policy decisions to consider; these decisions, similar to the those above, may potentially involve significant financial impact on members, including, but not limited to, contribution rates and addressing unfunded liabilities.