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September 26, 2013

VIA EMAIL & U.S. MAIL

Ms. Jackie Denney
Ms. Anne M. Holdren
Kern County Employees' Retirement Association
11125 River Run Boulevard
Bakersfield, California 93311
holdrena@co.kern.ca.us
jacksonj@co.kern.ca.us

Re: Notice under Government Code Section 31592.5

Dear Mses. Denney and Holdren:

Our firm serves as outside counsel to the Retired Employees of Kern County ("REOKC"). We are writing to address significant concerns with the notice provided by the Kern County Board of Retirement ("Board") regarding the special meeting on October 30, 2013. Although REOKC received the Board's letter, dated September 16, 2013, regarding the Board's intention to review potential changes to the current Interest Crediting Policy ("ICP"), the letter fails to provide "reasonable advance notice" in accordance with Government Code section 31592.5. Considering that the Board is proposing changes to a vested retirement benefit, the Board must provide notice consistent with its constitutional obligations and duties as well as the Government Code.

The October 30 meeting is another discussion on a significant topic that has occupied this Board's agenda at least three times in the past year. Notably, the Board was advised last year of its fiduciary obligations and constitutional priority of duties concerning its ability to change certain aspects of the Supplemental Retirement Benefit Reserve ("SRBR"). As the ICP is the funding mechanism of the SRBR, the Board has not managed its ongoing discussions with consideration of its priority duty to the retirees. For instance, at the end of October, the Board will "deliberate on potential revision options" discussed by the Finance Committee on May 23, 2013. However, at that meeting the Finance Committee reviewed proposed ICP changes, heard significant and thoughtful public comments, and temporarily adjourned the meeting to address matters in a closed Executive Session. Upon the Committee's return, it unanimously voted to refer the ICP matter back to staff to evaluate options, and to return to the *Finance Committee* for further evaluation. Considering the Finance Committee has not reviewed any options prepared by staff, it appears the Board will simply disregard this step. Thus, REOKC,

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and its members, are left tracking a moving target rather than reasonably anticipating action based on the public discussion of the retirement system's fiduciaries.

The issue is not cured by simply informing REOKC that the Board will meet in October to generally discuss changes to a vested benefit, and providing a limited five (5) day window to review presentation materials. This is far from the reasonable advance notice contemplated by the Government Code, as REOKC must have sufficient time to evaluate the materials related to the Board's deliberations. For example, just last year, the Board was advised by outside counsel that changes affecting a vested benefit must include comparable advantages to offset any disadvantages created by those changes. Even the actuary that prepared the current ICP proposal recommended the Board obtain a legal opinion on this issue in its letter dated March 6, 2013. However, after seven (7) months of review, deliberation, and further evaluation by staff, it does not appear that the Board ever received a legal opinion from outside counsel regarding its ability to approve the current proposed ICP changes despite its constitutional duties and fiduciary obligations. As for the proposed options discussed at the May Finance Committee meeting, REOKC is unaware of those options as that Committee has not reconvened to further deliberate the ICP proposal or consider any evaluation prepared by staff. Consequently, REOKC is uninformed on the status and development of this issue until it is able to review the presentation materials, which will be available some time Friday, October 25.

Section 31592.5, apart from any other statutory notice requirement, is clear instruction to the Board to provide REOKC with "reasonable advance notice" regarding proposed changes to the retirement benefits, and "reasonable opportunity to comment" prior to the Board taking action on such changes. Yet, the ongoing discussion and Board actions are inconsistent with the Government Code and contrary to the Board's constitutional obligations. At this time, REOKC is unable to adequately inform its members about the upcoming discussion, the proposed options that will be reviewed, or how those changes may affect their supplemental benefits. In providing "reasonable advance notice" and a "reasonable opportunity to comment" the Board should consider its fiduciary responsibility and the duty owed to the people it serves. This is not achieved by delivering a general description of the agenda and minimal opportunity to review materials addressing a complex matter.

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Accordingly, REOKC respectfully requests that reasonable advance notice is provided no less than 30 days prior to the Board's special meeting on October 30, 2013. Moreover, reasonable advance notice should provide the following:

1. A sufficient and adequate description of each agenda item that reasonably informs and notifies REOKC of the proposed ICP changes and potential revision options to be discussed and deliberated by the Board.
2. A statement regarding any action the Board plans to take regarding the proposed ICP changes and potential revision options.
3. Copies of any and all reports, evaluations, options, findings, memorandum, or otherwise that was prepared by staff as directed by the Finance Committee on May 23, 2013. Copies should be made available no less than 20 days before the October 30 Board meeting.
4. Copies of any and all reports, opinions, summaries, analyses, or other information that will be made available to the Board regarding its review of potential changes to the current ICP and its deliberation on the potential revision options as directed by the Finance Committee on May 23, 2013.
5. A copy of any legal analysis, letter, opinion, memorandum, or brief prepared by legal counsel to the Board regarding the potential ICP options and potential ICP changes.

The SRBR is a significant retirement benefit, and its funding mechanism is a vested right. Changing the ICP is not a simple task, and the Board should take the necessary steps to adequately notice REOKC of all discussions and proposed changes to retirement benefits.

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If you have any questions regarding this letter, please contact our office at your convenience.

Sincerely,

SWEENEY, GREENE & ROBERTS LLP



John M. Cox

JMC:ccp

cc: Kern County Employees' Retirement Association

Board of Retirement (*via U.S. Mail Only*)

Mr. Michael Turnipseed, Vice Chair

Mr. Norman Briggs

Mr. Dominic Brown

Mr. David Couch

Mr. Lance Horton

Mr. Rick Kratt

Mr. Konrad Moore

Mr. Gayland Smith

Mr. Russell Albro, *Alternate*

Mr. Phil Franey, *Alternate*

Mr. Jordan Kaufman, *Alternate*

Ms. Jennifer Zahry, Retirement General Counsel