

August 24, 2009

J. Matthew Carroll  
Assistant County Executive Officer

Paul Derse  
Chief Financial Officer

John K. Nicoll  
Human Resources Director

Honorable Kevin J. McGee  
Presiding Judge of the Superior Court  
Superior Court of California, Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

Subject: **Board of Supervisors' Responses to 2008-09 Grand Jury Reports**

Dear Judge McGee:

In accordance with State requirements, the responses from the Ventura County Board of Supervisors to four 2008-09 Grand Jury reports, "Detention Facilities: Condition and Management", "Ventura County Pensions: An Uncontrollable Cost", "Mentally Ill Housed in Ventura County Jails" and "Land Use Permitting Process: Get to Excellence Plan" are hereby submitted. The Board approved the responses, which pertain to county government under its authority, on August 11, 2009 as *modified*.

The first of two modifications was that the following statement be added to this transmittal letter, "The Board's approval of the response to the Pension Report does not imply a change to established policy or commit or limit future actions by the Board in these areas."

The second modification was regarding its response to the "Mentally Ill in Ventura County Jails" report to the effect that the County is working to implement measures to keep the mentally ill out of jail and to establish alternative housing for mentally ill inmates. The Board's response to Recommendation 2 of the subject report has been revised to reflect this modification


The response to the remaining report under the Board's authority, "Is Your Favorite Restaurant Clean?" is being finalized and will be submitted for Board approval in September, after which it will be forwarded to you.

A copy of the response to the report "Inmate Grievance Procedure", previously submitted directly to the Grand Jury by the Sheriff, is included here for informational purposes only, as the approval of the Board is not required for responses from elected officials.

The County Clerk and Recorder has advised this office that although his response to the report, "Did Your Vote Count?" does not require Board approval, he plans to place it on the Board's agenda in September, at which time the County Clerk and Recorder will provide a copy to the Court.

Should you have any questions, please call Matt Carroll at 654-2864 or Kathleen Van Norman at 654-2566.

Respectfully submitted,

  
MARTY ROBINSON  
County Executive Officer

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SEP 1 2009

VENTURA COUNTY  
GRAND JURY

Enclosures – BoS Response to four 2008-09 Grand Jury Reports

cc: County Clerk, James Becker  
Superior Court Jury Services (3 copies as listed for distribution)

- For Jury Services, Richard Goldner, Court Program Supervisor
- For transmittal to State Archives
- For transmittal to Grand Jury

Hall of Administration L # 1940  
800 South Victoria Avenue, Ventura, CA 93009 • (805) 654-3656 • FAX (805) 654-5106



BOARD MINUTES  
BOARD OF SUPERVISORS, COUNTY OF VENTURA, STATE OF  
CALIFORNIA

SUPERVISORS STEVE BENNETT, LINDA PARKS,  
KATHY I. LONG, PETER C. FOY AND JOHN C. ZARAGOZA  
August 11, 2009 8:30 a.m.

228.3

COUNTY EXECUTIVE OFFICE – Approval of Responses to Four 2008-09 Ventura County Grand Jury Final Reports Entitled "Detention Facilities: Condition and Management", "Ventura County Pension: An Uncontrollable Cost", "Mentally Ill Housed in Ventura County Jails" and "Land Use Permitting Process Get to Excellence Plan" for Submittal to the Presiding Judge of the Superior Court.

- (X) All board members are present.
- (X) The following persons are heard: Matt Carroll, Marty Robinson, and Meloney Roy.
- (X) Upon motion of Supervisor Long, seconded by Supervisor Zaragoza, and duly carried, the Board hereby Approves as Modified with Direction to staff that statements be added to the transmittal letter, that the Board's approval of the response to the Pension Report does not imply a change to existing County policies or the approval of any new policy positions; and regarding its response to the Mentally Ill in Ventura County Jails Report the County is working to implement measures to keep the mentally ill out of jail and to establish alternative housing for mentally ill inmates.

By: 

Deputy Clerk of the Board

CLERK'S CERTIFICATE

I hereby certify that the annexed instrument  
is a true and correct copy of the document  
which is on file in this office.  
MARTY ROBINSON, Clerk of the Board of Supervisors,  
County of Ventura, State of California.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy Clerk of the Board

Item # 42  
08/11/09

DISTRIBUTION: Originating Agency-CEO, Auditor, File



# county of ventura

COUNTY EXECUTIVE OFFICE  
MARTY ROBINSON  
County Executive Officer

J. Matthew Carroll  
Assistant County Executive Officer

Paul Dorse  
Chief Financial Officer

John K. Nicoll  
Human Resources Director

August 11, 2009

County of Ventura  
Board of Supervisors  
800 South Victoria Avenue  
Ventura, CA 93009

**Subject: Approval of Responses to Four 2008-09 Ventura County Grand Jury Final Reports Entitled "Detention Facilities: Condition and Management", "Ventura County Pension: An Uncontrollable Cost", "Mentally Ill Housed in Ventura County Jails" and "Land Use Permitting Process Get to Excellence Plan" for Submittal to the Presiding Judge of the Superior Court**

Recommendation:

That your Board approves the responses to the four subject Grand Jury reports pertaining to County government under your authority for submittal to the Presiding Judge of the Superior Court in accordance with State statute.

Discussion:

Penal Code §933.05 requires that your Board comment on the findings and recommendations of the Grand Jury pertaining to county government under your authority. The 2008-09 Ventura County Grand Jury issued 11 individual reports, seven of which pertain to County government.

Responses from appointed agency and department heads to four of the seven County government reports are addressed in this letter. These responses have been coordinated through the County Executive Office and are submitted for your approval.

For your reference, the report titles and respondents listed in the Grand Jury Final Report are summarized in the table below.

<p><b>Did Your Vote Count?</b></p> <p>To be presented in September by County Clerk/Rec</p>	<p>County Clerk &amp; Recorder          (CoCkRcdr to make separate presentation to BOS in September)          Board of Supervisors          (Response from BoS would be accepted, but is not required – so no response will be made)</p>
<p><b>Inmate Grievance Procedure</b></p> <p>Sheriff's response is for information only, approval not required.</p>	<p>Sheriff's Department          (Copy of response included for information)</p>
<p><b>Detention Facilities: Condition and Management</b></p> <p>Sheriff response is for information only, approval not required.</p>	<p>Sheriff's Office          (Copy of response included for information)          Board of Supervisors          (Response provided)          County Executive Officer          (Response requested and provided)</p>
<p><b>Ventura County Pension: An Uncontrollable Cost</b></p> <p>VECERA response is for information only, approval is not required.</p>	<p>Board of Supervisors          (Response provided)          County Executive Officer          (Response requested and provided)          VECERA          (VECERA is an independent entity, its response is included for information only, approval is not required.)</p>
<p><b>Mentally Ill Housed in Ventura County Jails</b></p> <p>D.A. and Sheriff responses are for information only, approval not required.</p>	<p>Board of Supervisors          (Response provided)          District Attorney          (Copy of response included for information)          Sheriff's Office          (Copy of response included for information)          Probation          (Response requested and provided)          Health Care Agency-Behavioral Health          (Response requested and provided)          Public Defender          (Response requested and provided)          National Alliance on Mental Illness          (Response from NAMI would be accepted but is not required by the GJ – no response provided)</p>
<p><b>Land Use Permitting Process: Get to Excellence Plan</b></p>	<p>Board of Supervisors          (Response provided)          County Executive Officer          (Response requested and provided)</p>
<p><b>Is Your Favorite Restaurant Clean?</b></p> <p>To be provided in September</p>	<p>Board of Supervisors          (Response to be provided in September)          Resource Management Agency          (Response requested and will be provided in September)</p>

Board of Supervisors

Responses to Four 2008-09 Grand Jury Reports

August 11, 2009

Page 3 of 3

In all, a total of five responses were required from the Board of Supervisors. Four are included here, the fifth, a response to "Is Your Favorite Restaurant Clean?" will be brought forward at a later date. One other response, to the report "Did Your Vote Count?" was deemed discretionary in that the Grand Jury indicated a response, while not required, would be accepted from your Board. We feel a response from the Board in this case is not necessary as a planned presentation to your Board in September by the County-Clerk and Recorder will address the issues. The Board's required responses were prepared on your behalf by CEO staff and are included in the Exhibits attached to this letter.

The responses submitted under Exhibits 2, 3, 4 and 5 that pertain to County government under your control will serve as your Board's response to the subject 2008-09 Grand Jury Final Reports to be filed as indicated in the above recommended action along with any additional comments your Board may wish to make.

If your Board does elect to amend responses submitted from agencies headed by appointed officials or if your Board elects to change a responses prepared on your behalf by the County Executive's office, then CEO staff, at your direction, will make such changes or additions prior to submitting the responses to the Presiding Judge.

As you are aware, elected officials submit their Grand Jury responses directly to the Presiding Judge. Although your approval is not required for responses from elected officials, a copy of the Sheriff's response to the report "Inmate Grievance Procedure" from the Sheriff's Department is included for your information as Exhibit 1.

Should you have any questions or require additional information, please contact J. Matthew Carroll at 654-2864 or Kathleen Van Norman at 654-2566.

  
MARTY ROBINSON  
County Executive Officer

Attachments:

- Exhibit 1 – Response to "Inmate Grievance Procedure"
- Exhibit 2 – Response to "Detention Facilities: Condition and Management"
- Exhibit 3 – Response to "Ventura County Pension: An Uncontrollable Cost"
- Exhibit 4 – Response to "Mentally Ill Housed in Ventura County Jails"
- Exhibit 5 – Response to "Land Use Permitting Process: Get to Excellence Plan"





**August 11, 2009**

**EXHIBIT 3**

**RESPONSE TO 2008-09 GRAND JURY REPORT**

**“Ventura County Pension: An Uncontrollable Cost”**

**FROM**

**Board of Supervisors  
County Executive Officer  
Ventura County Employees’ Retirement Association\***

\*VCERA response is included for information only, Board approval is not required.

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## County Executive Office MEMORANDUM

DATE: August 11, 2009

SUBJECT: Responses to 2008-2009 Grand Jury Report "Ventura County Pension: "An Uncontrollable Cost"" from the Ventura County Board of Supervisors and the County Executive Officer

### FINDINGS

F-01 Total County payments to the pension fund have increased from \$32,715,209 in FY 1998-1999 to a budgeted amount of \$139,742,615 in FY 2008-2009, a 327% increase over 10 years. The County annual pension costs, including Pension Obligation Bonds (POB) payments<sup>1</sup>, from FY 1998-1999 were:

Fiscal Year	Pension Costs
1998-99	\$32,715,209
1999-00	\$34,768,877
2000-01	\$36,074,330
2001-02	\$39,414,246
2002-03	\$40,050,756
2003-04	\$53,938,205
2004-05	\$96,613,112
2005-06	\$120,618,500
2006-07	\$139,097,134
2007-08	\$146,866,534
2008-09 Budget	\$139,742,615

<sup>1</sup>The County issued \$250 Million of POBs in 1995. The proceeds from the POBs were placed into the VCERA fund. Principal and interest payments added an average of \$18.2 Million per year to the County retirement costs. The POBs were fully paid and retired in FY 2007-2008.

### **RESPONSE: Concur, With Comment**

While the data is factual, some background on the data is necessary to add perspective to the increases. The 1998-99 base year used by the Grand Jury was a year in which the retirement fund was overfunded by \$150 million due to the run up in the stock market in the late 1990's. Since that time the retirement fund has seen a significant correction in the stock market resulting in a corresponding \$376 million underfunding for numbers used in the 2008-09 fiscal year. In addition, valuation overall payroll has increase by approximately 85% over the comparable time period.

**F-02** The average County retiree's monthly pension increased from 1999 to 2008 as follows: [Ref-04]

	1999	2008	Increase
General Employees	\$1,195	\$2,013	69%
Safety Employees	\$3,434	\$5,478	60%

**RESPONSE: Concur, With Comment**

While the data is correct, it should be noted that during the same time period the average salaries for General Employees increased by 67% and the average salaries for Safety Employees increased by 59%.

**F-03** The County employee retirement benefits formula has remained substantially constant for more than 30 years.

**RESPONSE: Concur**

**F-04 through F-08**

**F-04** Payments from the pension fund (including benefit payments, member refunds, administrative expenses, and legal settlements) were \$149,917,062 in FY 2007-2008 and \$138,275,948 in FY 2006-2007.

**F-05** The County Chief Financial Officer (County CFO) estimated, at a BOS briefing October 7, 2008, that there will be a \$20 Million to \$30 Million increase in County Pension contributions in FY 2010-2011 due to the negative investment results of VCERA in calendar year 2008.

**F-06** The County CFO, in April 2009 forecasted "... increases of approximately 20% to 25% per year over the next several years in County retirement costs."

**F-07** VCERA presented the *ANNUAL ACTUARIAL VALUATION OF THE VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION* report to the BO on April 28, 2009. The report, based on June 30, 2008 data, included charts which projected the fiscal impact to the County's annual pension costs. (Att-01).

**F-08** Based on the above VCERA presentation to the BOS, by 2013, the County increase in pension costs would be ore than \$100 Million above the FY 2008-2009 budget of \$139.7 Million.

**RESPONSES TO F-04 through F-08: Concur**

**F-09** The VECERA presentation to the BOS assumed an 8% return for FY 2008-2009; however, the fund experienced substantial losses through the first nine months of the fiscal year.

**RESPONSE: Do Not Concur**

The presentation by VCERA incorporated VCERA investment results through November 30, 2008 and assumed those losses of approximately 25% to be maintained though the fiscal year.

~~F-10 The VCERA presentation also assumed that the County payroll costs will remain constant over the next five years.~~

**RESPONSE: Concur**

F-11 Factors affecting the County annual pension costs include:

- Investment results
- Number of active and retired employees in the plan
- Compensation of active employees
- County payment of employee retirement contributions
- Projected compensation increases for active employees
- Retirement benefits formula
- Actuarial assumptions, such as retiree life expectancy and the financial earnings rate
- Use of "Excess Earnings"

**RESPONSE: Concur**

F-12 In years with good investment results, earnings above approximately 10% are treated as "Excess Earnings." The 10% is composed of the assumed 8% investment earnings, plus a 1% reserve, plus the annual administrative costs of the Fund.

VCERA has the option to use the excess earnings to offset members' contributions, or to transfer excess earnings to the County advance reserve, or to leave excess earnings in the undistributed reserve (where they would be treated as a valuation asset), or to use the excess earnings to provide supplemental benefits to existing retirees. Examples of excess earnings being used to provide supplemental benefits to existing retirees, rather than to offset investment losses include:

- Effective October 1, 1997, special payments known as "STAR COLA" were granted to employees who had retired prior to April 1981 and had lost over 20% of the purchasing power from their retirement benefits due to inflation.
- Effective March 17, 2003, special payments of \$27.50 per month were granted to retirees with at least five years of service credit with VCERA.

**RESPONSE: Partially Concur**

We agree with the concept of this finding but there are some technical inaccuracies. If there is a 1% reserve already established the reserve is not a factor in determining excess earnings. In addition, VCERA does not have the option to offset member's contributions with excess earnings.

F-13 On December 18, 2007, the County Executive Officer (CEO) submitted a letter concerning excess earnings to VCERA stating, "It is the County's position that the concept of excess earnings is a legal and accounting anomaly that is not consistent with sound funding practices. The retirement system is a long-term entity that should keep investment earnings from good years to offset for investment losses in bad years. Spending "excess" funds in the good years to increase benefits requires additional County contributions to make up for the loss of funds from the trust. The effect is to

~~increase the cost to the taxpayer above and beyond the promised benefits of the defined public pension plan."~~

**RESPONSE: Concur**

**F-14 TO F-24**

**F-14** On September 15, 2008, the CEO submitted a letter concerning excess earnings to VCERA stating, ". . . the County does not support increasing the amount excluded from Assets Available for Benefits in order to provide non-vested supplemental benefits. As a reminder, every dollar that is excluded from the actuarial value of assets must be made up for by increased employer contribution."

**F-15** At the January 2009 VCERA Board meeting, the Board discussed, in detail, the investment loss of about \$1 Billion in fund assets (about 31% decline of the total value) in calendar year 2008. However, at that same meeting, the issue of "Excess Earnings" reserve from previous years was raised. The Board chose to extend a retiree Cost of Living Adjustment (COLA) funded by "Excess Earnings" from 2007, justified as a "commitment made in earlier years."

**F-16** On December 31, 2007, VCERA's net assets held in trust for pension benefits were \$3.11 Billion. On December 31, 2008, the net assets held in trust for pension benefits were \$2.14 Billion. These results are comparable to those experienced by other public pension funds.

**F-17** San Francisco has required voter approval of pension benefit increases which has been in its charter since 1889. Voters have rejected three attempts in recent decades to let the board of supervisors set pension benefits, each time by a wider margin [Ref-05]

**F-18** In November 2006, the City of San Diego stripped the power to raise pension benefits from elected officials and from the collective bargaining process. That power now resides with the electorate. [R-05]

**F-19** In the 2008 general election, Orange County passed "Proposition J" with 75% of the vote, requiring voter approval for increases in county employee retirement benefits. (Att-02)

**F-20** Orange County "Proposition J" provides that all increases in retirement benefits must be approved by the electorate. Further, prior to any ballot initiative to increase retiree benefits, an actuarial study on the proposed cost of the new benefits will be provided to the electorate. (Att-02)

**F-21** The Orange County ballot statement in favor of "Proposition J" is included in Attachment 03. There were no ballot statements against "Proposition J". (Att-03)

**F-22** *"Defined-benefit plan.* A plan that provides employees with guaranteed retirement benefits that are based on a benefit formula. A participant's retirement age, length of service and pre-retirement earnings may affect the benefit received." [Ref-06]

**F-23** *"Defined-contribution plan.* A plan that specifies the level of employer contributions and places those contributions into individual employee accounts. Retirement benefits are based on the level of funds in the account at the time of retirement." [Ref-06]

**F-24** U.S. Bureau of Labor Statistics stated in 2009, "BLS data on State and local government employees show that 84 percent of workers in 2008 had a defined benefit plan available to them; in contrast, 22 percent of private industry workers had such a

plan available to them in the same year." "Just as the structure of retirement plans differs between public and private sector workers, so too has the pace of change in retirement plans differed between the two sectors. From 1986 to 2008, participation in defined benefit plans among full-time workers in private industry declined from 76 percent to 24 percent. Over a similar period (1987-2008), State and local government employee participation in defined benefit plans declined modestly from 93 percent of full-time workers in 1987 to 88 percent of full-time workers in 2008."

**RESPONSES TO F-14 through F-24: Concur**

**CONCLUSIONS**

**C-01** Increasing pension costs are stressing the County's budget. County pension costs have risen over 327% in the last 11 years (\$32.7 Million in FY 1998-1999 to \$139.7 Million in FY 2008-209). (F-01)

**RESPONSE: Concur, With Comment**

See comment relating to F-01

**C-02 through C-07**

**C-02** The County's future pension costs are projected to increase significantly for the foreseeable future. (F05 through F-09)

**C-03** Pension payments to retirees remain secure, backed by the Fund's assets and the annual contributions. (F-01, F-04, F-16)

**C-04** The factors that cause the County pension costs to increase include:

- VCERS investment results
- Employee salary increases
- Increases in pension formula (not currently used by the County)
- County payment of employee retirement contributions
- Actuarial assumptions
- Excess earnings not used to offset losses

The County bears all costs of these factors, but does not control all of them (F-03, F-11, F-12, F-15)

**C-05** The '37 Act gives VCERA sole discretion on the use of "Excess Earnings" regardless of the Plan funding status. (F-12 through F-15)

**C-06** In an effort to contain retiree benefits costs, San Francisco, Orange County, and the City of San Diego require the electorate to approve retiree benefit increases. (F-17 through F-21)

**C-07** Private industry has substantially transitioned to *defined contribution* plans in order to manage pension costs. Public employee pensions are still substantially *defined benefit* plans. (F-22 through F-24)

**RESPONSES TO C-02 through C-07: Concur**

**RECOMMENDATIONS**

**R-01** The Board of Supervisors should commission an independent study on the merits of replacing the current *defined benefit* pension plan, for new hires, with a combination of reduced *defined benefits* and adjusted *defined contributions* similar to private industry. (C-07)

**RESPONSE: Do Not Concur**

There is no need to spend taxpayer resources for an independent study on an issue that the County is very familiar with. We recognize that a defined benefit pension is a very good benefit and the benefit and has worked very well for the County since 1947. The County Board of Supervisors resisted statewide pressure to increase benefits during the time of irrational exuberance in the financial markets that resulted in an overfunded retirement fund. Conversely, cutting pension benefits during a recessionary period not seen since the 1930's may not be the appropriate long term solution to a complex issue. For example, there are limited options to reduce public safety benefits under a new retirement plan and to do so would put the County at a definite disadvantage in recruiting and retaining public safety personnel. In the General Fund, since public safety comprises approximately 60% of the retirement cost there is much less ability to save by assigning a new retirement tier to non public safety employees.

**R-02** The Board of Supervisors should continue the moratorium on increases in pension benefits formula (C-04)

**RESPONSE: Concur**

The Board of Supervisors has not increased benefits when it was the statewide trend and will continue to be a leader this area.

**R-03** The Board of Supervisors should investigate and, if legal, place a proposition (similar to Orange County "Proposition J") on the next County-wide election ballot to require voter approval for increases in retirement benefits as a long term control of pension costs. (C-06)

**RESPONSE: Partially Concur**

The local agencies the Grand Jury refer to as exemplary in the recent voter approval processes have done so after already granting substantial benefit increases. The Ventura County Board of Supervisors has taken a strong position against enhancing retirement benefits and has not required the backstop of requiring voter approval to take this position. Long term, it may be advantageous to look into such a proposal.

**R-04** The Ventura County Employees' Retirement Association should retain "Excess Earnings" in the Fund whenever the Fund is less than 90% funded. (C-04, C-05)

**RESPONSE: Partially Concur**



We believe that all excess earnings should be retained in the retirement fund. As stated several times to the VCERA Retirement Board, it is the County's position that the concept of excess earnings is a legal and accounting anomaly that has no direct correlation to actuarial principles. Although there may be legislative flexibility for the Retirement Board to approve certain non-vested retirement benefits, it is our opinion that the retirement system is a long-term entity that should keep any available earnings from good years to make up for deficiencies in bad years. Spending excess funds in the good years on increased benefits requires additional county contributions to make up for the funds spent from the trust. The effect is to increase the cost to the County taxpayer above and beyond the promised pension benefits and vested rights. Furthermore, it is the County's position that any retirement benefit should be the sole responsibility of the Board of Supervisors.

**R-05** The Board of Supervisors and the Ventura County Employees' Retirement Association should propose state legislation to change the "Excess Earning" provision in the '37 Act, to require that returns from above-target investment performance years must be used to offset investment returns from below-target performance years before considering additional benefits or offsetting contributions. (C-04 C-05)

**RESPONSE: Partially Concur**

This does not take legislative action to correct. The Retirement Board is not required to grant additional benefits from excess earnings. The Retirement Board has the ability to eliminate all non-vested supplemental benefits that they have granted without a change to the '37 Act. We would support the elimination of those benefits and would support legislation eliminating Retirement Boards' ability to grant retirement benefits beyond those benefits granted by the Board of Supervisors.

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# VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

1190 South Victoria Avenue, Suite 200  
Ventura, CA 93003-6572

(805) 339-4250 • Fax: (805) 339-4269  
<http://www.ventura.org/vcera>

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August 5, 2009

Ventura County Grand Jury  
800 S. Victoria Avenue, L#3751  
Ventura, CA 93009

Re: **RESPONSE TO GRAND JURY REPORT TITLED "VENTURA COUNTY  
PENSION: AN UNCONTROLLABLE COST"**

Members of the Grand Jury:

Attached is the Ventura County Employees' Retirement Association's (VCERA's) response to the Ventura County 2008-2009 Grand Jury's report titled "Ventura County Pension: An Uncontrollable Cost".

The response states, as required by Penal Code section 933(c), whether the VCERA concurs, concurs in part, or disagrees with the Grand Jury's findings and also includes the required responses to the Grand Jury's recommendations R-04 and R-05.

In summary, the VCERA's response includes the following:

- Pension costs rose over the decade from historically low levels due to the increase in the County of Ventura's payroll, the increase in the number of employees earning pension benefits, the adoption of recommended actuarial assumption changes designed to achieve the retirement plan's long-term funding goals and the swing in investment returns from very favorable levels to the recent negative markets.
- Average pension benefits have not increased if measured as a percentage of member final compensation, but have increased over time on an absolute basis due to salary increases.
- County of Ventura pension benefit formulas have not changed in thirty years. The Board of Supervisors lowered pension benefits and eliminated cost-of-living benefits for General members in 1979.
- Fiscal year 2008/09 investment losses will increase future plan costs.

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VENTURA COUNTY  
GRAND JURY



## RESPONSE TO GRAND JURY REPORT

August 5, 2009

Page 2 of 2

- The Board of Retirement's decisions involving "excess earnings" are held to a fiduciary standard and are determined in the context of the Board of Retirement's duty of loyalty to all plan participants.
- The Board of Retirement believes its fiduciary responsibilities to all plan participants precludes it from pursuing legislative changes to the "excess earnings" provisions of the law on its own or with the County of Ventura.

On behalf of VCERA's Board of Retirement, we thank the 2008-2009 Ventura County Grand Jury for its interest in VCERA's operations and the opportunity to respond to its report.

Sincerely,



TRACY TOWNER  
Chairman



TIM THONIS  
Retirement Administrator

Attachments

c. Honorable Kevin J. McGee, Presiding Judge



## VCERA RESPONSE TO GRAND JURY REPORT

### Findings:

F-01: Concur.

Pension costs have increased over the past decade and the VCERA believes it is important to examine and understand why pension costs have risen. The category "Total County Payments" to the pension fund listed for the last eleven fiscal years in the Grand Jury Report (Report) contains three separate cost components that need to be analyzed individually in order to fully understand why pension costs rose. The cost components utilized in the Report are "Employer Paid Employee Contributions", Pension Obligation Bond payments and the Actuarially Determined Employer Contributions.

"Employer Paid Employee Contributions" are negotiated as part of the collective bargaining process. In the past, "Employer Paid Employee Contributions" often were provided in lieu of salary increases and could be arguably classified as salary, rather than retirement contributions. In fiscal year 1998/99, "Employer Paid Employee Contributions" paid by the County of Ventura totaled approximately \$14 million, while the total in fiscal year 2008/09 will be approximately \$35 million. The increase is attributable to higher employee contribution rates, changes in collective bargaining agreements, increases in the number of employees and increases in the County of Ventura's payroll. "Employer Paid Employee Contributions" would have nearly doubled over the past decade based solely upon the increase in County of Ventura payroll from \$314 million in fiscal year 1998/99 to \$615 million in fiscal year 2008/09, without any associated changes in collective bargaining agreements, the number of employees and employee contribution rates.

The Pension Obligation Bond (POB) payments over the last decade were the result of the County of Ventura's successful refinancing of the \$151 million Unfunded Accrued Actuarial Liability (UAAL) in the pension plan as of December 1995. In effect, the County of Ventura was able to repay the UAAL by transitioning the debt to bondholders at a much lower interest rate, rather than paying VCERA through the employer contribution rate process at the assumed earnings rate, saving taxpayers a significant amount of interest expense on the County of Ventura's retirement debt. The VCERA believes it is important for the Grand Jury to recognize that a material portion of the \$151 million UAAL remaining as of December 31, 1995, from the original 30-year amortization period established in 1977, was attributable to the County of Ventura's 1972 decision to provide cost-of-living (COLA) benefits retrospectively to its Tier 1 General and Safety members in accordance with Article 16.6 of the '37 Act. In 1977, VCERA's funding ratio (ratio of plan assets to plan liabilities) was 44% and had improved to 85% by the time the POBs were issued in 1995. The VCERA believes it would be very difficult to assign the total POB cost to the current generation of employee members and taxpayers given that a significant portion of the UAAL satisfied





## VCERA RESPONSE TO GRAND JURY REPORT

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through the issuance of the POBs was associated with prior generations of employee members. More importantly, assigning the total cost to current employee members does not match with the demographics of VCERA's current membership, of which only 22% are eligible to receive Tier 1 General and Safety COLA benefits.

The VCERA believes that the Actuarially Determined Employer Contributions (Employer Contributions) are the true measure of pension costs. Employer Contributions for the period cited by the Grand Jury by fiscal year were:

<u>Fiscal Year</u>	<u>Amount</u>
98/99	\$ 233,000
99/00	0
00/01	0
01/02	0
02/03	0
03/04	10,072,000
04/05	51,792,000
05/06	74,373,000
06/07	86,455,000
07/08	104,429,000
08/09 (projected)	108,250,000

11-year average: \$39,600,000 annually

11-year average of County payroll: \$462,457,000 annually

Average Contribution Rate Paid over last 11 years: 8.56% of annual average payroll

Long-term historical average composite contribution rate: 11.00% of County of Ventura payroll (since 1978)

{One should recognize the extreme difficulty in making contribution rate comparisons over long time periods due to the impact of actuarial assumption changes on employer contribution rates.}

Employer Contributions rose, on an absolute basis, during the period as VCERA's funded status decreased from a high of 123% to a low of 83%, and then rose again recently to 91%. As a rule, Employer Contributions increase as a pension plan's funding status decreases. If one assumes VCERA's funding status falls to 85% as of June 30, 2009 due to a decline in assets, then the average funded status for the VCERA was a very healthy 99% for the period cited in the Grand Jury report. As the Grand Jury is aware, a pension plan with a funding status of 80% is considered "well funded". Other factors contributing to the increase in Employer Contributions over the past decade included the Board of Retirement's adoption of the consulting actuary's



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recommendations to lower the earnings assumption rate from 8.25% to 8.0% in 2003 and to increase the mortality assumption for all plan members in 2006. Additionally, Employer Contributions increased on an absolute basis due to the nearly 100% increase in payroll over the decade and the 14% increase in the number of employees over the time period eligible to receive retirement benefits from the County of Ventura. Employer Contributions were, when expressed as a percentage of the County of Ventura's payroll, lower than in previous decades.

VCERA recognizes that the extraordinary capital market events of the last two years will impact future employer contribution rates over the next several years.

F-02: Concur in Part.

The VCERA concurs that average benefits have increased, but this increase is expected and part of the natural dynamics of a pension plan. In any given year the dollar amount of new retiree benefits added to VCERA's retiree pension payroll exceeds the dollar amounts subtracted from the pension payroll due to the deaths of retired members. This occurrence is due to the fact that people retiring in recent periods, although receiving a similar percentage of final compensation as those retired in previous decades based upon age and years of service, have higher salaries upon which the benefit is based when compared to those members who retired decades earlier. If the Grand Jury indexed the average monthly pension of retirees to be one based upon a percentage of final compensation, rather than on a simple comparison of average monthly benefits paid over time, then one would not see 69% and 60% increases in the average retirement benefit for General and Safety members who retired over the past decade.

F-03: Concur in Part.

Agree that benefit formulas, based upon Government Code Sections 31664, 31676.1 and 31676.11, have not changed and believe it is important to illustrate that the change made 30 years ago decreased the retirement benefit formula and eliminated cost-of-living benefits for General members hired after June 30, 1979.

F-04: Concur.

Increases in pension payments and administrative expenses are anticipated by the VCERA as average benefit payments increase, the actual number of retirees increase and the active membership continues to grow.



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F-05: Not appropriate for the VCERA to Comment.

F-06: Not appropriate for the VCERA to Comment.

F-07: Concur.

F-08: Concur.

Assuming there are no changes in the County of Ventura's payroll.

F-09: Concur.

The VCERA believes it is important for the Grand Jury to note that approximately 1/3 of the investment loss incurred in the first 9 months of FY 2008/09 was recovered in the last 3 months of the fiscal year.

F-10: Concur.

Assumptions are an integral part of any forecast and/or projection.

F-11: Concur in Part.

The VCERA believes the finding would be more accurate if the statement regarding number of retired employees was removed as a factor affecting annual pension cost because 100% of the retired employees cost is considered financed (see "Actuary Solvency Test", page 53, VCERA Comprehensive Annual Financial Report, dated June 30, 2008), if the Grand Jury was to consider changing the wording from "projected compensation increases for active employees" to "actual compensation increases for active employees" and if the Grand Jury was to consider adding language to finding F-11 describing the impact of the timing of when contribution rates are implemented in accordance with Government Code Section 31454 as a factor affecting annual pension costs. For example, annual pension costs may have been approximately \$2 million less in fiscal year 2008/09 had the County of Ventura decided to implement the recommended lower employer contribution rate earlier in the fiscal year as permitted by the Government Code.



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F-12: Concur in Part

It should be noted that "excess earnings" may also occur in any year where investment results are less than the assumed earnings because the determination of "excess earnings" may also include accumulated "excess earnings" from prior years.

The Board of Retirement's decisions to use "excess earnings" to provide the STAR COLA benefit and the \$27.50 monthly supplemental benefit were made after extensive study by all involved parties and, in the case of the \$27.50 monthly supplemental benefit, the settlement of a lawsuit. The STAR COLA benefit was approved after the Board of Retirement received a recommendation from a 1997 VCERA Ad Hoc Committee established to determine an appropriate long-term policy for the distribution of "excess earnings". The Ad Hoc Committee requested input on the subject from all impacted groups including retiree organizations, labor and the County of Ventura. In the County of Ventura's written response to the Ad Hoc Committee, it was noted that the County of Ventura did not favor using "excess earnings" to provide supplemental benefits to all retirees, but did support providing supplemental benefits, if any were to be provided, to those former employees most affected by inflation since their retirement. In the case of the \$27.50 monthly supplemental benefit, there was language in the settlement agreement, inserted solely at the request of the County of Ventura, that recommended if a new supplemental benefit was established with the \$25 million transferred to "excess earnings", then such new benefit should be a long term annuitized benefit available to all retirees in order to offset health care costs.

Additionally, it should be noted that the Board of Retirement has utilized "excess earnings" to significantly reduce County of Ventura pension costs. For example, "excess earnings" were utilized to offset approximately \$70 million of the past service costs associated with the granting of the cost-of living benefits described in the response to finding F-01.

F-13: Not appropriate for the VCERA to Comment.

F-14: Not appropriate for the VCERA to Comment.

F-15: Concur in Part.

The action taken by the Board of Retirement in January 2009 was not to extend a benefit, but rather to replenish assets previously transferred from the \$27.50 supplemental benefit reserve in order to maintain the STAR COLA benefit and to reduce legal liability risk. The Board of Retirement spent months analyzing whether the STAR COLA benefit could be maintained and requested input from all parties of interest including the County of Ventura, REAVC (Retired Employees Association of Ventura





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County), active and retired members, VCERA's consulting actuary and VCERA's fiduciary counsel. The Board of Supervisors voted 4:1 on December 18, 2007 to recommend the Board of Retirement continue providing the STAR COLA benefit and suggested the Board of Retirement consider utilizing assets previously set aside to pay the \$27.50 monthly supplemental benefit in order to maintain the STAR COLA benefit. The Board of Retirement was required, in considering the Board of Supervisor's suggestion, to make a decision in the context of its loyalty to all plan beneficiaries and maintain its duty to avoid unreasonable favoritism toward one beneficiary group over another. After careful consideration, the Board of Retirement decided, in January 2008, to transfer a more conservative level of assets than that suggested by the Board of Supervisors from the \$27.50 reserve to maintain STAR COLA benefits and committed to replenish the transferred assets at the earliest possible date. The action in January 2009 was the Board of Retirement maintaining its commitment to current and future recipients of the \$27.50 monthly supplemental benefit by replenishing the transferred assets and thereby eliminating any appearance of showing unreasonable favoritism toward one group of plan beneficiaries.

F-16: Concur.

F-17 – F-24: Unnecessary for the VCERA to comment on these Findings.

### **Conclusions:**

C-01: Not appropriate for the VCERA to comment on the County of Ventura's budget.

C-02: Concur.

As was detailed in the VCERA's response to finding F-01.

C-03: Concur.

C-04: Concur in Part.

The VCERA questions the inclusion of "Employer Paid Employee Contributions" as detailed in response to F-01.



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C-05: Concur.

Government Code Section 31592.2 describes the use of "excess earnings" and all Board of Retirement decisions involving "excess earnings" are determined in the context of the Board's duty of loyalty to all plan participants.

C-06: Concur.

The VCERA understands that the electorate in these jurisdictions is required to approve any retirement benefit increase.

C-07: Concur.

Although it has yet to be determined whether defined contribution plans are an adequate substitute for defined benefit plans.

### **Required Responses:**

R-04: Board of Retirement decisions regarding "excess earnings" are held to a fiduciary standard, which the Grand Jury is aware is the highest standard of care under the law. Assigning an additional outside standard as recommended could prevent the Board of Retirement from fulfilling its fiduciary duty by not allowing actions which in the informed opinion of the Board of Retirement would be in the best interest of the VCERA as a whole under certain circumstances.

### **Recommendation will not be implemented.**

R-05: The VCERA is prevented, under its fiduciary duty obligations to all members and beneficiaries, from pursuing legislation to change the plan in a manner that has potentially adverse impact on some or all of those plan participants for the purpose of benefitting the plan sponsor. The co-sponsorship of the legislation designed to change the "excess earnings" provisions of the '37 Act has the potential to be considered by certain plan participants as solely favoring the plan sponsor (County of Ventura) and creating potential legal liability. The VCERA suggests that the County of Ventura would be better served in pursuing the legislation on its own or with other organizations such as CSAC (California State Association of Counties).

### **Recommendation will not be implemented.**

