


**Corrected Addendum to
2020 -2021 Kern County Grand Jury Final Report**

Effective today, Thursday, July 22, 2021, this addendum serves to replace report titled Kern County Employee Retirement Association – KCERA on page 47 in the Kern County Grand Jury Final Report book, released on June 17, 2021.

On pages 56 and 57, in the Kern County Retirement Association KCERA report, Recommendation R2 should read Board of Supervisors, not KCERA as printed in the Kern County Grand Jury Final Report Book. Also, Recommendations R3 and R4 were not included in the book. The attached report has all Recommendations which are R1 through R4.

The Grand Jury affirms no other terms or reports of the 2020 – 2021 Kern County Grand Jury Final Report book has or have been amended or changed.

X 

Michael Bryant, Foreman
2021-2022 Kern County Grand Jury

KERN COUNTY EMPLOYEE RETIREMENT ASSOCIATION KCERA

Taxpayers Be Aware!

SUMMARY:

Kern County Employee Retirement Association (KCERA) acts as an investment and administrative agent for Kern County's employee pension plan. Kern County (County) provides the majority of income to KCERA. The County's unfunded employee pension liability and pension costs have been on the rise for eight years and now represent a significant growing expense for the County's annual budget.

Kern County's Comprehensive Annual Financial Report (CAFR) for Fiscal Year End (FYE) June 30, 2020 reflects the County's Net Pension Liability (NPL) for its share of the pension fund in the amount of \$1.8 billion. The Unfunded Pension Liability (UPL) is the amount by which pension benefits promised to current and future retirees exceed pension plan income. Unfunded pensions reflect a serious liability for Kern County as the employer, and to the taxpayer now and in the future. The benefit is for full time County employees and retirees whereas the pension liability is paid by the employer, Kern County.

While funding public employee pensions is not a unique challenge to Kern County, the current UPL will not go away soon and is projected to progressively worsen over the next decade. It should be noted that the State of California is under no obligation to provide assistance to the County, therefore, none should be anticipated.

PURPOSE OF INQUIRY:

Pursuant to Cal. Penal Code § 925(a), the 2020-2021 Grand Jury (Grand Jury) is authorized to investigate and report on the operations, accounts, and records maintaining Kern County's Defined Benefit Retirement Plan, and the related expenses that the County incurs, which is then passed on to the taxpayers.

METHODOLOGY:

The Grand Jury reviewed Kern County Financial Statements, KCERA Financial and Actuarial Statements, and compared the financial and actuarial information of Fresno and Ventura Counties, also governed by County Employees' Retirement Law of 1937 (CERL). The comparisons to those counties were based on similar population and demographics. The Grand Jury also reviewed the by-laws, policies, regulations, historical documents, websites, and interviewed various members of the KCERA Board of Directors, KCERA's Retirement Board members, and other County and KCERA officials.

DISCUSSION OF FACTS:

A. Background

KCERA was established on January 1, 1945, by the Kern County Board of Supervisors under the provisions of CERL. KCERA became independent from the County's supervision and control as a result of the 1992 passage of Proposition 162, which legally established the independent control of the Board of Retirement. KCERA is the cost-sharing, multiple-employer defined benefit plan (Plan) covering all permanent full-time employees of:

- County of Kern
- Berrenda Mesa Water District
- Buttonwillow Recreation and Park District
- East Kern Cemetery District
- Inyokern Community Services District
- Kern County Hospital Authority
- Kern County Superior Court
- Kern County Water Agency
- Kern Mosquito and Vector Control District
- North of the River Sanitation District
- San Joaquin Valley Air Pollution Control District
- Shafter Recreation and Park District
- West Side Cemetery District
- West Side Mosquito and Vector Control District
- West Side Recreation and Park District

The KCERA Board of Retirement is a nine-member board with two alternates. The Board consists of the Kern County Treasurer-Tax Collector, four members appointed by the Kern County Board of Supervisors, and four members elected by the Kern County Employees Retirement Association. KCERA uses a Tier 1, 2, and 3 pension formula policy. Tiers are based on different job descriptions.

At the end of a public employee's career, the formula used to calculate their pension is "years worked times final salary times the multiplier." The multiplier is a percentage that represents the amount of pension earned for each year worked.

Benefit Tiers:

- General Tier 1: 3% at age 60
 - General Tier 2: 1.62% at age 65
 - General Tier 3*: 2.5% at age 67
 - Safety Tier 1: 3% at age 50
 - Safety Tier 2: 2% at age 50
- *Only applies to West Side Recreation and Park District*

The Board of Retirement is the exclusive governing and policy-making body for KCERA. Its primary mandate, as directed by law, is to provide KCERA members with the retirement benefits promised by the County. It establishes the key parameters of the plan benefits, collects the contributions of employers and employees, pools them in investment accounts, selects the investments for those pools, and manages the eventual payouts. Upon retirement, KCERA makes the pension benefit payments to the retired member on behalf of the participating employer. It is important to note, however, that KCERA is *not* legally responsible for the County's pension liability, nor is any other State agency or office. The County, as the employer, remains *solely* liable for any shortfalls.

Based on the FYE 2020 CAFR, the County's net pension liability amounted to approximately \$1,804,165 which is 65.04% of the County's total liabilities and continues to increase each year. The Unfunded Accrued Actuarial Liabilities (UAAL) and bond obligations have a significant fiscal strain on the County. If investment income fails to match projected levels, or if the discount rate used to calculate Unfunded Accrued Liability (UAL) is reduced based on a downturn in the economy, i.e., COVID-19, the liabilities will increase even more over the next decade beyond projected levels.

B. Public Employee Pension Plans and Their Funding

There are two types of retirement plans offered by employers in the private and public sectors, *defined contribution plans* and *defined benefit plans*.

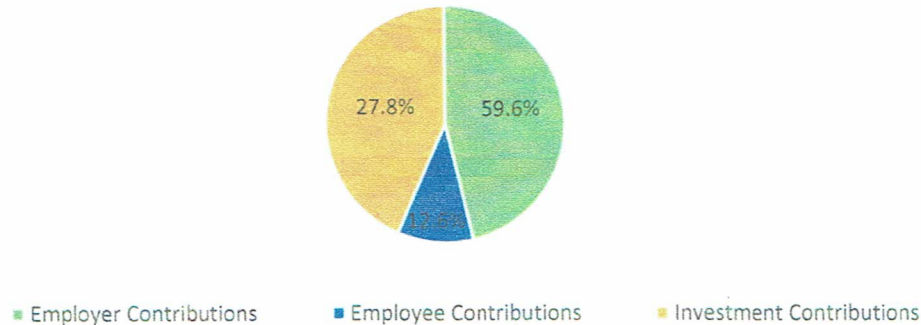
1. *Defined contribution plans* include the familiar 401(k) and 403(b) plans, and are not the focus of this report. They raise no significant long-term funding liabilities for the employer and/or the taxpayer. For this reason, few private employers offer a defined benefit plan to new employees.
2. *Defined benefit plans* provide a lifetime series of regular payments to the retiree and/or their beneficiaries. These payments are a *guaranteed, fixed* amount, which is established in the pension plan or labor contract terms agreed to during the employee's tenure.
 - a. Pension benefits vary, depending on several factors:
 - the number of years of service
 - the base salary amount used to calculate the pension payments
 - employee age at retirement

The benefits may have a Cost of Living Adjustment, (COLA) but usually do not otherwise vary.

- b. Defined Benefit plans have three funding elements:
 - 1) Full-time county employee contributions
 - 2) Employer contributions
 - 3) Investment returns on invested assets

Note: Investment funds are managed by professional consultants. There are 12 classes of investments each with minimum and maximum targeted percentages. Each asset has a different manager with the KCERA Board making the final decisions on spending and investments.

KCERA Contributions June 30, 2020



Grand Jury

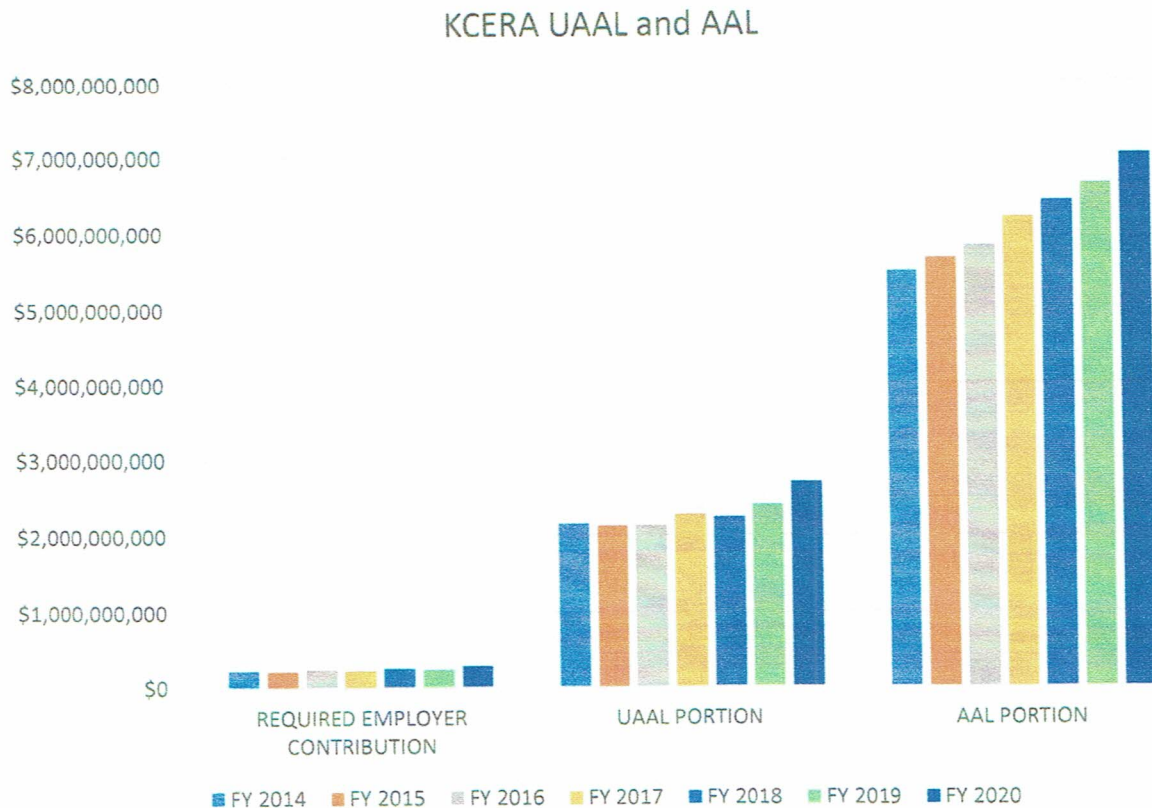
Source: FYE 2020 Comprehensive Annual Financial Report

c. Facts about the funding elements that ended as of FYE 2020:

- 1) Employer contributions are the predominant factor in the equation at 59.6% of the total as of FYE 2020.
 - FYE 2018 and FYE 2019 actual percentages were 43.10% and 46.40% respectively.
- 2) Investments of 27.8% are comprised of stocks, bonds and other market assets and the interest accrued on those investments.
 - FYE 2018 and FYE 2019 actual percentages were 47.60% and 43.50% respectively.
- 3) Employee contributions are 12.6% and are set by multi-year labor or management contracts.
 - FYE 2018 and FYE 2019 actual percentages were 9.30% and 10.10% respectively.
- 4) More importantly, if a plan's total assets are insufficient to cover present and future pension obligations, the employer is solely responsible for paying the deficit.

In 2002, County public safety employees had their multiplier increased from 2% to 3% when the Board of Supervisors decided to retroactively increase pensions to the highest levels allowed by law (Senate Bill 400) *without developing* a viable plan to pay for the increased cost. This increase, awarded retroactively, was possibly the biggest single factor as to why pension contributions have become an unaffordable burden on County taxpayers. In 2020, the KCERA Board approved a 2.5% COLA increase, however, nationally the COLA increase was 1.3%. The national COLA average for the past 5 years was 1.6% vs. KCERA's COLA 2.3%.

C. KCERA Unfunded Accrued Liability



Grand Jury
 UAAL- Unfunded Actuarial Accrued Liability / AAL-Actuarial Accrued Liability

Source: KCERA FYE 2020 Financial Statements

The Actuarial Accrued Liability as of FYE 2020 was \$7 billion, an increase of \$0.4 billion (5.8%) from the prior valuation date. The liability is expected to grow each year with normal costs and interest and will decline based on benefit payments made. Additional fluctuations can occur due to actual experience that differs from projections.

D. Paying Down the Total Unfunded Retirement Liability

In 2014, an article from the California Policy Center determined that Kern County’s total retirement liability was 1.75 times their entire annual revenue. In order to bring the County to 100% funding by 2034 (their projection), Kern County would have to make an unfunded “catch-up” payment each year equivalent to 17% of the County’s annual revenue.

(See: <https://californiapolicycenter.org/evaluating-total-unfunded-public-employee-retirement-liabilities-in-20-california-counties/>)

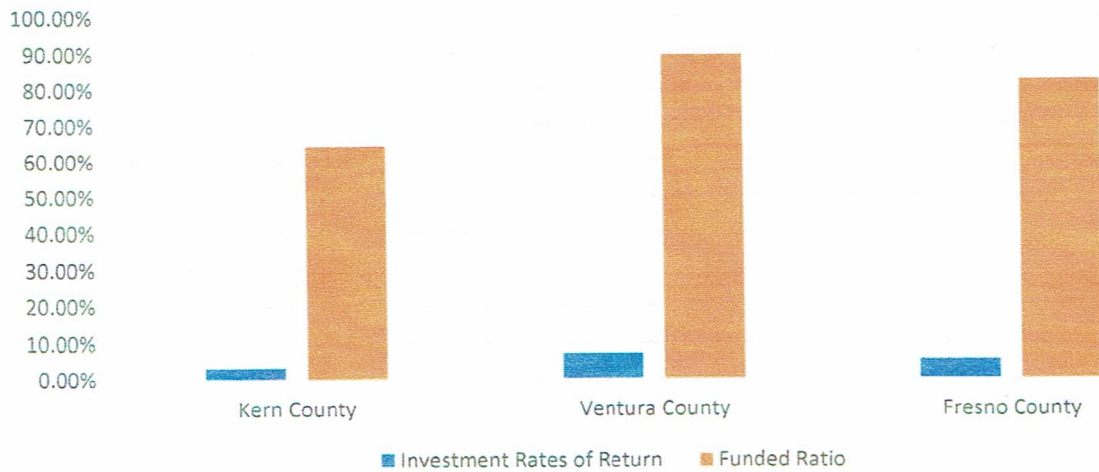
E. Impact of Total Unfunded Retirement Liability on Individual Taxpayers

The most common alternative approach to calculating APL is sometimes called the “market” method; it relies on a discount rate equal to the yield on a risk-free market instrument, such as

the 20-year Treasury Rate. As of July 2020, that yield was about 2.26% per annum. Because the market method uses a lower discount rate than KCERA’s method, it produces a substantially *higher* amount of APL.

In 2018, the County “Market Basis” liability was \$205,390,023, pension debt was \$201,226,547, and the debt per household reached \$752. This liability refers only to the County employees, however, *every resident and taxpayer* also carries the prorated burden of unfunded liabilities for the local and state government employees who work in their cities, their schools, and state agencies. (See: <https://www.pensiontracker.org>)

Investment Rate of Return/ Fund Ratio

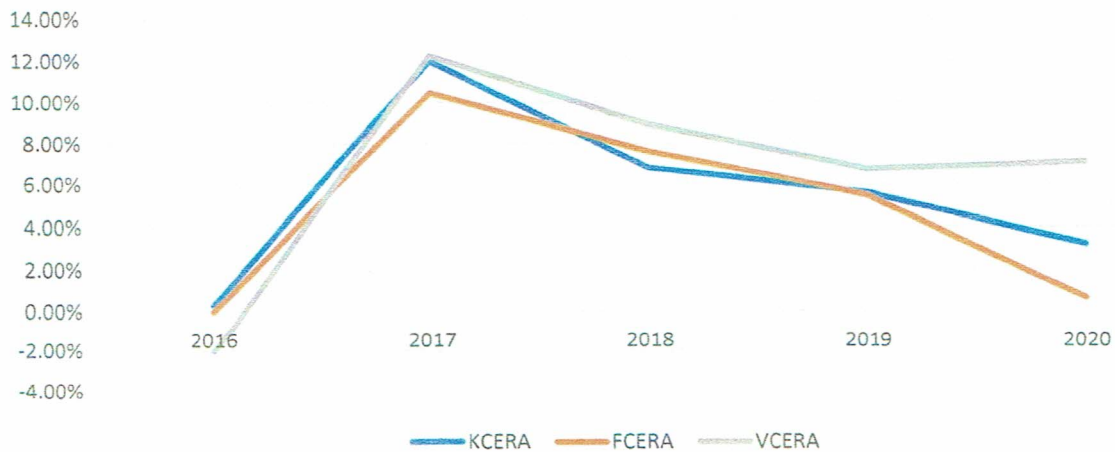


Grand Jury

Source: KCERA FYE 2020 Actuarial Valuation Reports

Funding Ratio: A ratio of a pension or annuity's assets to its liabilities. A funding ratio indicates the percentage that the pension or annuity is able to cover on payments it is obligated to make.

Annual Investment Rates of Returns



Grand Jury

Source: KCERA FYE 2020 Comprehensive Annual Financial Report

Comparative Analysis with Comparable Counties:

	Kern County	Ventura County	Fresno County
2020 Contributions			
Employer	\$273,909,000	\$199,890,664	\$225,492,000
Employee	\$ 57,862,000	\$ 75,199,090	\$ 40,463,000
Investment	\$127,861,000	\$368,664,889	\$254,359,000
Unfunded Actuarial Accrued Liability			
2017	\$2,278,360,000	\$744,326,000	\$1,113,936,000
2018	\$2,235,338,000	\$746,981,000	\$1,090,951,000
2019	\$2,330,922,000	\$774,862,000	\$1,115,429,000
2020	\$2,497,041,000	\$703,736,000	\$1,094,372,000
Investment Rates of Return 2020	3.20%	7.10%	5.38%
Funded Ratio 2020	64.36%	89.57%	82.69%

F. Actuarial Experience Study of June 30, 2019:

Actuarial studies are performed by outside third party companies. KCERA utilizes the same firm that both Fresno and Ventura Counties use. This study utilized the census data for the period July 1, 2016 to June 30, 2019, and provides the proposed actuarial assumptions, both economic and demographic, used in the June 30, 2020 valuation. The study was performed in accordance with Actuarial Standard of Practice (ASOP) No. 27, "Selection of Economic Assumptions for Measuring Pension Obligations" and ASOP No. 35, "Selection of Demographic and Other Non-Economic Assumptions for Measuring Pension Obligations." These standards of practice provide guidance for the selection of the various actuarial assumptions utilized in a pension plan actuarial valuation. The primary economic assumptions reviewed are: inflation, investment return, administrative expenses, and salary increases. In 2016, the KCERA Board of Retirement adopted an investment return assumption of 7.25%. However, over the past five years the investment rate of return averaged 5.58%, which is 1.67% below the return assumption goal.

G. Other Funding Sources

Use of Reserves and Designations: As part of the County's FYE 2022 plan and in order to mitigate impacts on operations, the County is budgeted to release \$6.5 million of the General Fund to strategically offset the increase in the pension debt for the pension obligation bonds. The County intends to continue this strategy throughout the budget year, when the 1995 Pension Obligation Bonds will be paid-off.

The National Association of Counties (NACo) estimates that by FYE 2021, counties nationwide will experience a \$202 billion deficit impact in retirement funds. This estimate includes a \$30 billion in additional unbudgeted COVID-19 costs, a \$114 billion loss in general revenues, and a \$58 billion decrease in funding by states. Also, by FYE 2021, NACo estimates that counties will

be impacted by \$144 billion in additional expenditures and loss of county-generated revenues. This anticipated loss, based on research from the Center on Budget and Policy Priorities, estimates that states will lose 10% of their revenues in FYE 2020 and 25% in FYE 2021. NACo's survey found that COVID-19 impacted 88% of responding county budgets. Sixty percent of the counties indicated an increase in local expenditures and 72% of counties have reported a revenue loss during the current budget cycle. Importantly, only employers are required to pay off pension debt or the "unfunded liability." Paying off the debt is the reason that employer contributions increased during the last decade and member contributions did not. (See <https://www.naco.org/>)

H. National Labor Relation Board (NLRB) and Employer Flexibility

Kern County has 14 Memorandums of Understanding (MOU) with County employees/departments. Research indicates that only one MOU Kern County Firefighters Union is current with an expiration date of June 30, 2021. In 2019, Kern County and the Kern County Firefighters Union, Local 1301, reached an impasse. Through discussions with various management personnel, the MOUs are outdated due to Union representatives and Kern County management negotiations being unable to reach a viable agreement. (See: <https://www.kerncounty.com/government/county-administrative-office/human-resources/employee-relations/unions-and-mous>)

Under the National Labor Relations Act (NLRA), employers whose employees, represented by a union, are required to bargain with that union over changes "to wages, hours, pensions, healthcare and working conditions (commonly referred to as "mandatory subjects" of bargaining)." The National Labor Relations Board and courts determine which subjects are covered by the NLRA and bargaining is divided into three categories:

1. **Mandatory:** Mandatory subjects relate to wages, hours, pensions, healthcare, and working conditions. According to labor laws, employers cannot refuse to bargain over these subjects.
2. **Permissive:** Permissive subjects are non-mandatory subjects of bargaining, meaning employers are not required to bargain over them.
3. **Illegal:** Illegal bargaining subjects are those that violate the NLRA, such as a closed-shop provision in a right-to-work state.

Management in the collective bargaining process has the authority and discretion to take certain actions provided they do not violate other provisions. Management-rights language may be general and, at the same time, clear and unmistakable..

"Impasse" is a provision that is determined when the employer and union reach a point during the collective bargaining process when both parties are reasonable in assuming that further negotiations would be pointless. Once impasse has been reached, then an employer is

permitted to implement changes to the terms and conditions of employment that are consistent with previous proposals to the unions. However, an employer cannot offer greater benefits or ones that differ than those presented during negotiations. (Cal. Gov. Code § 3505.7)

However, the NLRA does not cover government employees, including those of the County of Kern. Public employees in California are covered by regulations administered by the California Public Employment Relations Board (PERB). Many of the regulations found in NLRA are also found in California PERB regulations.

In discussion with County officials, possible future actions to reduce or better manage the unfunded pension liability and prepare for further increases in such liability include:

- Revenue increases (tax or fee income)
- Addressing the problem through debt financing (pension obligation bonds)

Cutting salaried positions to solve the problem would be counter-productive. The more payroll is reduced by job elimination, the less able the County would be to fund accrued pension liabilities through employee payroll. The result would be an increase in unfunded pension liability.

FINDINGS:

- F1. Kern County Net Pension Liability for its share of the pension fund is \$1,804,165,000 and, based off current data for FY 2019-2020, will continue to increase.
- F2. The Board of Retirement is the exclusive governing and policy making body of KCERA and controls the investments of pension assets. However, the investment returns do not perform as well as other counties of similar demographics.
- F3. KCERA uses a Tier 1, Tier 2, and Tier 3 pension formula policy that is directed by the plan sponsors. This tier level system is costly to the taxpayers.
- F4. In 2002, County public safety employees had their multiplier increased from 2% to 3% when the Board of Supervisors decided to retroactively increase pensions to the highest levels allowed by law (Senate Bill 400) *without developing* a viable plan to pay for the increased cost. This increase, awarded retroactively, was possibly the biggest single factor as to why pension contributions have become an unaffordable burden on County taxpayers.
- F5. KCERA has a full-time investment officer as well as professional consultants to manage all 12 classes of asset investment. However, they have not achieved their investment goal of 7.25% over the past five years.

- F6. The UAAL and bond obligations create a significant financial strain on the County.
- F7. KCERA's income is derived from the County and employee contributions as well as investment income. However, there is still a deficit that is passed to all taxpayers.
- F8. Paying off pension debt or UAL, "unfunded accrued liability," is owed by the County, the major payer, along with the other 14 Plan Sponsors. This debt continues to be a burden on taxpayers.
- F9. FY 2019-2020, KCERA had a 2.5% COLA whereas nationally the COLA was 1.3%. This increase in the COLA benefit adds to County liabilities.
- F10. KCERA's investment income goal is 7.25%, however, in FYE 2020 the actual income on assets was 3.2%, with the past five years averaging 5.58%. The underperforming assets will continue to increase costs to the taxpayers
- F11. National Association of Counties' survey indicated that 60% of counties had an increase in expenditures during the 2020 budget due to COVID-19. Kern County anticipates a similar increase in expenditures, with a trickle-down increase in pension debt.
- F12. Paying off pension debt is one of the factors that have increased employer contributions during the last decade and it is anticipated to continue.
- F13. Kern County has 13 expired or extended MOUs, leaving the Grand Jury wondering why there has been no mutual agreement reached.

COMMENTS:

Current budget information reported by the Board of Supervisors regarding the proposed 2021-2022 budget, reflects an anticipated pension cost increase of 4.39%. The increase is necessary in order to pay off an Obligation Bond and increased new actuarial assumptions based on the safety employee category.

Congress recently approved a stimulus package that includes an \$86 billion dollar bailout for nearly 200 union pensions. Declining union membership and bankruptcies have contributed to the trend of depleting pension plans nationwide. The trend of failing pensions started long before the COVID-19 pandemic. The bailout included in the stimulus package gives government funding to the weakest pension plans, which will be enough to keep the plans solvent for 30 years. There are no conditions tied to the funding, meaning plans are not required to make changes, pay the government back, freeze accruals, or to end the practices that led to their current distress.

RECOMMENDATIONS:

- R1. Kern County Board of Supervisors should establish a pension reform Ad Hoc Committee consisting of third party consultants to study alternative pension plans to be put in place by FYE 2024. (Findings 1, 8, and 12)
- R2. The Kern County Board of Supervisors should consider using the general Tier 2 category retirement policy for all employees by FYE 2024. (Finding 3 and 4)
- R3. KCERA's COLA should not exceed the national yearly COLA increase. (Finding 9)
- R4. Kern County Board of Supervisors and Union Collective Bargaining Representatives should update all expired County MOUs no later than FYE 2022. If the Board of Supervisors and Union Collective Bargaining Representatives are unable to reach viable agreements, in the best interest of the public, then the Board of Supervisors should implement the Impasse provisions of collective bargaining. (Finding 13)

NOTES:

- Kern County Board of Supervisors and the Kern County Employees Retirement Association Board of Trustees should post a copy of this report where it will be available for public review.
- Persons wishing to receive an email notification of newly released reports may sign up at: www.kerncounty.com/grandjury.
- Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: www.kerncounty.com/grandjury.

RESPONSES ARE REQUIRED PURSUANT TO CAL. PENAL CODE §§ 933(c) AND 933.05 WITHIN 90 DAYS TO:

- **PRESIDING JUDGE**
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE, SUITE 212
BAKERSFIELD, CA 93301
- **FOREPERSON**
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301

Reports issued by the Grand Jury do not identify individuals interviewed. Cal. Penal Code § 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

GLOSSARY:

Actuarial: Relates to a statistical calculation which requires assumptions as to the probability of death, disability, withdrawal, and retirement of each participant for each year. An Actuary will compile and analyze statistics to calculate risk.

Bond Obligations: A General Obligation Bond is a common type of municipal bond that is secured by a state or local government's pledge to use legally-available resources (assets) including tax revenues, to repay bondholders.

Cost Of Living Adjustment (COLA): An increase made to counteract the effects of inflation. Cost-of-living adjustments are typically equal to the percentage increase in the consumer price index for urban wage earners and clerical workers (CPI-W) for a specific period.

Collective Bargaining: A process of negotiation between employers and a group of employees (i.e., a union) aimed at agreement to regulate working salaries, working conditions, and other aspects of workers compensation and rights for worker.

Defined Pension Benefit Formula: Formula used by the retirement system to determine a retirement benefit based on age, years of service, and pensionable compensation earned by an employee up to the limit defined in California government code Section 7522.10.

Fiscal Year End (FYE): Fiscal year end refers to the completion of a one year, 12 month, accounting period rather than a typical calendar year end.

Impasse: Is a provision determine by NLRB when the employer and union reach a point during the collective bargaining process that both parties can no further negotiation as it would be pointless.

Market Basis/Method: Relies on a discount rate equal to the yield on a risk-free market instrument, such as a 20-year Treasury note rate.

Net Pension Liability (NPL): The difference between the total pension liability (the present value of projected benefit payments to employees based on their past service) and the assets (mostly investments reported at fair value) set aside in a trust and restricted to only paying benefits to current employees/retirees.

Normal Cost: The portion of the present value of projected benefits under the defined benefit that is attributable to the current year of service, as determined by the public retirement system's actuary according to the most recently completed valuation.

Pension Actuarial: A pension actuary has the task of calculating and budgeting for funding and disbursing pensions for retired workers.

Public Employer: (1) States and every state entity, including, but not limited to, the legislature, the judicial branch, including judicial officers, and the California State University.

(2) Any political subdivision of the state, or agency or instrumentality of the state or subdivision of the state, including, but not limited to, a city, county, city and county, a charter city, a charter county, school district, community college district, joint powers authority, joint powers agency, and any public agency, authority, board, commission, or district. (3) Any charter school that elects or is required to participate in a public retirement system.

Public Retirement System: Any pension or retirement system of a public employer, including, but not limited to, an independent retirement plan offered by a public employer that the public employer participates in or offers to its employees for the purpose of providing retirement benefits, or a system of benefits for public employees that is governed by Section 401(a) of Title 26 of the United States Code.

Unfunded Accrued Liabilities (UAL): A liability that does not have current or projected assets to cover the liability; therefore it is said to be unfunded. In finance and economics, it is a legal obligation of a person, organization or government entity to pay a debt arising from a past or current transaction or action; a liability is a claim on the debtor's current or future.

Unfunded Actuarial Accrued Liability (UAAL): The total current and expected future benefit obligations, reduced by the sum of the actuarial value of assets and the present value of future normal costs

Unfunded Pension Liability (UPL): The amount by which pension benefits promised to current and future retirees exceed pension plan income.

Appendix:

Reference Website links: https://www.bakersfield.com/news/pensions-in-peril-proposedsolutions-abound-but-will-theywork-here/article_b2306274-3367-53ee-b07d-25ad9cb49b04.html

https://www.bakersfield.com/news/effort-to-fix-kern-pension-system-fails/article_3be86e74c8a15bb3-8157-2b0ebb0f4ef0.html

https://www.bakersfield.com/news/swell-of-pensioners-earned-six-figures-in-2018-compared-to-previous-year/article_1d91d3c0-05c6-11ea-9892-43f62ad81e3f.html

<https://www.kget.com/fire-facts/kcfd-pensions/>

https://www.bakersfield.com/news/whats-happening-with-county-pension-costs-its-a-mixedpicture/article_d942b497-f5e9-5f64-863b-e5cf1499cf32.html

https://www.bakersfield.com/news/county-pension-unfunded-liability-tops-2-billion/article_2c3d696f-988d-572d-9ebc-a95825c63a93.html

https://www.bakersfield.com/news/supervisors-to-consider-budget-cutsattuesdaysmeeting/article_abe55286-6a75-11eb-a795-3f8d3f407278.html

<https://reason.org/commentary/pension-reform-bakersfield-kern/>

<https://californiapolicycenter.org/evaluating-total-unfunded-public-employee-retirementliabilities-in-20-california-counties/>

<https://californiapolicycenter.org/the-devastating-impact-of-retroactive-pension-increases-in-california/>

<https://www.bloomberg.com/news/articles/2020-12-01/california-city-that-sold-pension-debt-in-july-at-fiscal-brink>

www.pensiontracker.org

<https://www.naco.org/>

Executive Team

Dominic D. Brown, CPA, CFE
Executive Director

Daryn Miller, CFA
Chief Investment Officer

Jennifer Zahry, JD
Chief Legal Officer

Matthew Henry, CFE
Assistant Executive Director

**KERN COUNTY EMPLOYEES’
RETIREMENT ASSOCIATION**



Board of Retirement

Juan Gonzalez, Chair
Tyler Whitezell, Vice-Chair
David Couch
Phil Franey
Joseph D. Hughes
Jordan Kaufman
Rick Kratt
Edward Robinson
Lauren Skidmore
Bradly Brandon, Alternate
Chase Nunneley, Alternate
Robb Seibly, Alternate

August 25, 2021

Via U.S. Mail and E-mail

Presiding Judge
Kern County Superior Court
1415 Truxtun Avenue, Suite 212
Bakersfield, CA 93301

Foreperson
Kern County Grand Jury
1415 Truxtun Avenue, Suite 600
Bakersfield, CA 93301

Subject: KCERA Response to Grand Jury Report

On May 18, 2021 the Kern County Grand Jury published a report (“Report”) regarding the Kern County Employees’ Retirement Association (KCERA). An amended version of the Report was released to the public on May 26, 2021, updated on June 14, 2021, and July 7, 2021. Below is KCERA’s response to the Report (“Response”).

KCERA appreciates the role of the Grand Jury and believes that an independent review of KCERA by the Grand Jury should serve to inform and educate the community about KCERA and potential areas of concern regarding its administration and management. However, to do so requires factually accurate information, free from bias and sensationalism. Unfortunately, the Report contains numerous factual inaccuracies, findings that lack foundation, and recommendations that either don’t pertain to KCERA or would be illegal to implement.

GENERAL BACKGROUND COMMENTS ABOUT KCERA:

KCERA is a multi-employer cost sharing defined benefit plan (“Plan”). The KCERA Board of Retirement was created by the Board of Supervisors and is a unique entity, separate and apart from the County of Kern or any other plan sponsor. The KCERA Board of Retirement is statutorily obligated to administer the benefits agreed upon by plan sponsors and employee groups through collective bargaining and as allowed by law. KCERA does not participate in collective bargaining.

KCERA COMMENTS ON THE REPORT:

Before responding to the findings and recommendations, KCERA is compelled to identify factual inaccuracies presented in the body of the Report. Some, but not all, such inaccuracies are addressed below:

- Inaccurate Statement #1 – Summary Section, Page 1. The last paragraph of this section states, “The benefit is for full time County employees and retirees whereas the pension liability is paid by the employer, Kern County.”
 - Accurate Statement: KCERA is a multi-employer, cost-sharing plan consisting of 15 plan sponsors (employers), one of which is the County. The service retirement benefit offered by the County can be earned by full-time and eligible part-time employees after performing 5 or more years of service and only after making 5 or more years of contribution payments through payroll deductions. The County pays employer costs associated with the pension benefit and employees pay the bargained-for employee share of the benefit. All County employees make bi-weekly payroll contributions to KCERA toward their future pension. Costs associated with the unfunded liability are borne solely by the plan sponsors.

- Inaccurate Statement #2 – Summary Section, paragraph 3, states, “... the current UPL will not go away soon and is projected to progressively worsen over the next decade.”
 - Accurate Statement: The Unfunded Actuarially Accrued Liability is projected to improve significantly over the next decade. As the unfunded liability is fully amortized, the funded ratio is projected to steadily climb to 100% over the next 15 years. See Exhibit A attached to this Response.

- Inaccurate Statement #3 – The Purpose of Inquiry section cites Cal. Penal Code section 925(a) for the Grand Jury’s authority to investigate the County’s defined benefit plan and states that its expenses are then “passed on to taxpayers.”
 - Accurate Statement: The cost of plan benefits is borne solely by plan sponsors and their employees. Tax rates are determined by applicable statutes and other legal provisions. Taxes are assessed by the County Assessor, collected by the County Treasurer-Tax Collector, and apportioned by the County Auditor-Controller. There is no correlation between County tax rates and KCERA contribution rates. Tax rates did not increase when the unfunded liability was created, and tax rates are not expected to decrease when the unfunded liability is fully amortized.

- Inaccurate Statement #4 – The Background section, subsection A at page 4 states that the Board of Retirement of KCERA “...establishes the key parameters of the plan benefits...”
 - Accurate Statement: Plan sponsors, not KCERA, determine the plan benefits through collective bargaining and adoption of optional statutes within the County Employment Retirement Law of 1937 (CERL). KCERA’s responsibility is to merely administer such benefits in accordance with applicable law and

Memorandums of Understanding (“MOU”) created through collective bargaining. KCERA does not participate in collective bargaining.

GRAND JURY FINDINGS AND KCERA RESPONSE:

- F1. Kern County Net Pension Liability for its share of the pension fund is \$1,804,165,000 and, based off current data for FY 2019-2020, will continue to increase.

RESPONSE: KCERA partially disagrees with the finding. The Net Pension Liability (NPL) is projected to decrease, not increase. The Grand Jury Report glossary defines the NPL as “The difference between the total pension liability (the present value of projected benefit payments to employees based on their past service) and the assets (mostly investments reported at fair value) set aside in a trust and restricted to only paying benefits to current employees/retirees.” Although the overall Actuarially Accrued Liability is projected to increase as the value of the benefits increase in future years, the assets are also projected to increase. The NPL is projected to steadily decrease over the next 15 years as the Plan approaches 100% funding and the unfunded liability is fully amortized. See Exhibit A attached to this Response.

- F2. The Board of Retirement is the exclusive governing and policy making body of KCERA and controls the investments of pension assets. However, the investment returns do not perform as well as other counties of similar demographics.

RESPONSE: KCERA wholly disagrees with the finding related to KCERA’s investment returns. The return data included in the Report is inaccurate. According to the respective Comprehensive Annual Financial Reports for the fiscal year ended June 30, 2020, KCERA outperformed comparison peers:

- Kern – 3.0%
- Ventura – 2.5%
- Fresno – 1.0%

Defined benefit pension plans are very long-term systems. In order to effectively evaluate a pension plan, long-term data should be favored because any investment portfolio can experience short-term volatility. This was especially true for the fiscal year ended June 30, 2020, when the effects of COVID-19 and the global economic shut-down significantly impacted financial markets. In addition, see response to Finding 5.

- F3. KCERA uses a Tier 1, Tier 2, and Tier 3 pension formula policy that is directed by the plan sponsors. This tier level system is costly to the taxpayers.

RESPONSE: KCERA wholly disagrees with this finding. Tiers are statutory benefit adoptions that were enacted by plan sponsors or the California legislature, not

“policies.” Each plan sponsor received actuarial analysis about the future cost of the elected benefit before executing the MOU or adopting the related statute. KCERA expresses no opinion about the appropriateness of the benefits defined in MOUs or the costs related thereto. KCERA’s role is to administer benefits, collect and invest funds, and calculate contribution rates.

- F4. In 2002, County public safety employees had their multiplier increased from 2% to 3% when the Board of Supervisors decided to retroactively increase pensions to the highest levels allowed by law (Senate Bill 400) *without developing* a viable plan to pay for the increased cost. This increase, awarded retroactively, was possibly the biggest single factor as to why pension contributions have become an unaffordable burden on County taxpayers.

RESPONSE: KCERA expresses no opinion as to this finding, as the finding does not relate to any action taken by KCERA. Each plan sponsor received actuarial analysis about the future cost of the elected benefit before executing the MOU or adopting the related statute. KCERA’s role is to administer benefits, collect and invest funds, and calculate contribution rates. KCERA expresses no opinion about the appropriateness of the benefits defined in MOUs or the costs related thereto. Moreover, there is no correlation between County tax rates and KCERA contribution rates.

- F5. KCERA has a full-time investment officer as well as professional consultants to manage all 12 classes of asset investment. However, they have not achieved their investment goal of 7.25% over the past five years.

RESPONSE: KCERA wholly disagrees with the finding that KCERA’s investments have not achieved the assumed rate of return set by its Board of Retirement. KCERA is a long-term investor. Therefore, analyzing performance over a short time-frame can be very misleading because of short-term market volatility. For the 10-year period ended June 30, 2020, KCERA had an investment return of 7.20%, which is very close to the assumed rate of return of 7.25%. In addition, the performance figures have now been updated as of June 30, 2021, and actual returns now exceed the assumed rate of return for the following time intervals:

- 1 year – 23.9%
- 5 year – 9.8%
- 10 year – 7.6%

- F6. The UAAL and bond obligations create a significant financial strain on the County.

RESPONSE: KCERA expresses no opinion as to this finding, as each plan sponsor received actuarial analysis about the future cost of the elected benefit before executing the MOU or adopting the related statute.

- F7. KCERA's income is derived from the County and employee contributions as well as investment income. However, there is still a deficit that is passed to all taxpayers.

RESPONSE: KCERA expresses no opinion as to this finding, as the finding does not relate to any action taken by KCERA. Each plan sponsor received actuarial analysis about the future cost of the elected benefit before executing the MOU or adopting the related statute. Moreover, there is no correlation between County tax rates and KCERA contribution rates.

- F8. Paying off pension debt or UAL, "unfunded accrued liability," is owed by the County, the major payer, along with the other 14 Plan Sponsors. This debt continues to be a burden on taxpayers.

RESPONSE: KCERA expresses no opinion as to this finding, as the finding does not relate to any action taken by KCERA. Each plan sponsor received actuarial analysis about the future cost of the elected benefit before executing the MOU or adopting the related statute. KCERA expresses no opinion about the appropriateness of the benefits defined in MOU's or the costs related thereto. Moreover, there is no correlation between County tax rates and KCERA contribution rates.

- F9. FY 2019-2020, KCERA had a 2.5% COLA whereas nationally the COLA was 1.3%. This increase in the COLA benefit adds to County liabilities.

RESPONSE: KCERA wholly disagrees with the comparison of its statutory COLA with a national COLA. Per Government Code 31870, KCERA is statutorily obligated to utilize a Cost-of-Living Adjustment (COLA) that corresponds to the Kern region and KCERA has no legal ability to utilize a national COLA.

It is important to note that the statutory COLA for KCERA members who retired between April 2, 2020 and April 1, 2021 was 1.5%. In addition, future projected COLAs are included in the Annual Actuarial Valuation. Therefore, the realization of the COLA does not add to the liability because it is already included in the liability.

- F10. KCERA's investment income goal is 7.25%, however, in FYE 2020 the actual income on assets was 3.2%, with the past five years averaging 5.58%. The underperforming assets will continue to increase costs to the taxpayers.

RESPONSE: KCERA wholly disagrees with this finding. See KCERA response to Finding 5 and Inaccuracy #3.

- F11. National Association of Counties' survey indicated that 60% of counties had an increase in expenditures during the 2020 budget due to COVID-19. Kern County anticipates a similar increase in expenditures, with a trickle-down increase in pension debt.

RESPONSE: KCERA expresses no opinion as to this finding, as the finding does not relate to any action taken by KCERA. Each plan sponsor received actuarial analysis about the future cost of the elected benefit before executing the MOU or adopting the related statute. KCERA expresses no opinion about the appropriateness of the benefits defined in MOU's or the costs related thereto. In addition, see Inaccuracy #3 above regarding how taxes are assessed, collected, and apportioned. Moreover, there is no correlation between County tax rates and KCERA contribution rates.

- F12. Paying off pension debt is one of the factors that have increased employer contributions during the last decade and it is anticipated to continue.

KCERA partially disagrees with the finding. Actuarial analysis was performed in 2002, before plan sponsors implemented the retroactive benefit enhancement. Plan sponsors had full knowledge that contribution rates would increase, an unfunded liability would be created, and that the funded ratio of the pension plan would decrease due to the change in benefits. However, the unfunded liability is projected to be fully amortized in the future and contribution rates will decrease significantly when the unfunded liability is fully amortized. See Exhibit A attached to this Response.

- F13. Kern County has 13 expired or extended MOUs, leaving the Grand Jury wondering why there has been no mutual agreement reached.

RESPONSE: KCERA expresses no opinion on the current status of MOUs as KCERA does not participate in employee bargaining.

GRAND JURY RECOMMENDATIONS AND KCERA RESPONSE:

- R1. Kern County Board of Supervisors should establish a pension reform Ad Hoc Committee consisting of third-party consultants to study alternative pension plans to be put in place by FYE 2024. (Findings 1, 8, and 12)

RESPONSE: The recommendation will not be implemented by KCERA because the recommendation is directed to a KCERA plan sponsor, not KCERA.

- R2. The Board of Supervisors should consider using the general Tier 2 category retirement policy for all employees by FYE 2024. (Finding 3 and 4)

RESPONSE: The recommendation will not be implemented by KCERA because the recommendation is directed to a KCERA plan sponsor, not KCERA.

- R3. KCERA's COLA should not exceed the national yearly COLA increase. (Finding 9)

RESPONSE: The recommendation will not be implemented by KCERA because KCERA does not have the legal authority to alter the statutory COLA. See also response to Finding 9.

- R4. Kern County Board of Supervisors and Union Collective Bargaining Representatives should update all expired County MOUs no later than FYE 2022. If the Board of Supervisors and Union Collective Bargaining Representatives are unable to reach viable agreements, in the best interest of the public, then the Board of Supervisors should implement the Impasse provisions of collective bargaining. (Finding 13)

RESPONSE: The recommendation will not be implemented by KCERA because the finding is directed to a KCERA plan sponsor, not KCERA.

KCERA values the role that the Grand Jury could provide in increasing accountability and transparency with the public regarding KCERA. However, accurate and sound reasoning, along with well-supported conclusions are essential to achieve those goals. It is the hope of KCERA that the information provided in this Response will aid the citizens of Kern County in understanding KCERA's statutory obligations and demonstrate KCERA's unwavering commitment to fulfill its fiduciary duty and abide by all applicable statutes.

Respectfully submitted, and on behalf of the Board of Retirement of KCERA,



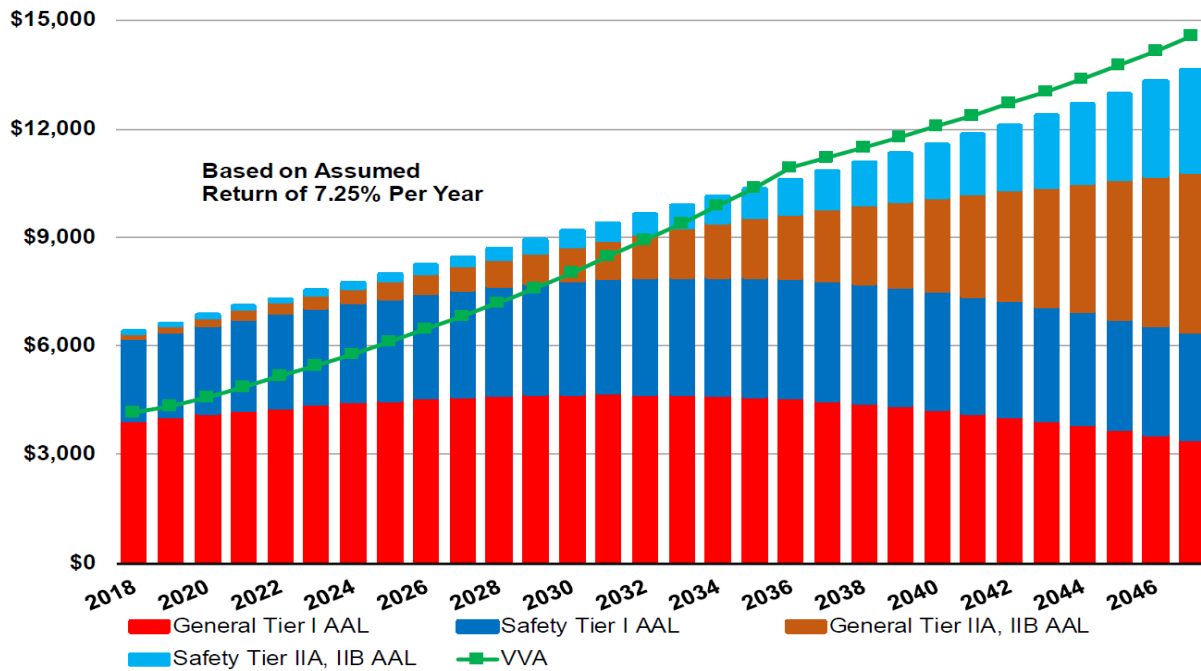
Dominic D. Brown
Executive Director

cc: Board of Retirement
Clerk of the Board of Supervisors
Each Member of the Board of Supervisors
County Administrative Office

Exhibit A

The following charts were created by KCERA's actuary, Segal Consulting, and were presented to the Board of Retirement on September 11, 2019 and to the Board of Supervisors on February 4, 2020. The first chart shows the projected Actuarially Accrued Liability (AAL) by Tier, and projected value of assets (VVA) from 2018-2048. The second chart shows projected employer (ER) and employee (EE) contribution rates, as well as projected benefit payments. The chart shows how contribution rates are projected to fall significantly once the current unfunded liability is fully amortized.

Projected Valuation Value of Assets and Actuarial Accrued Liability (\$ Millions)



Comparison of Projected Contributions versus Benefit Payments (\$ Millions)

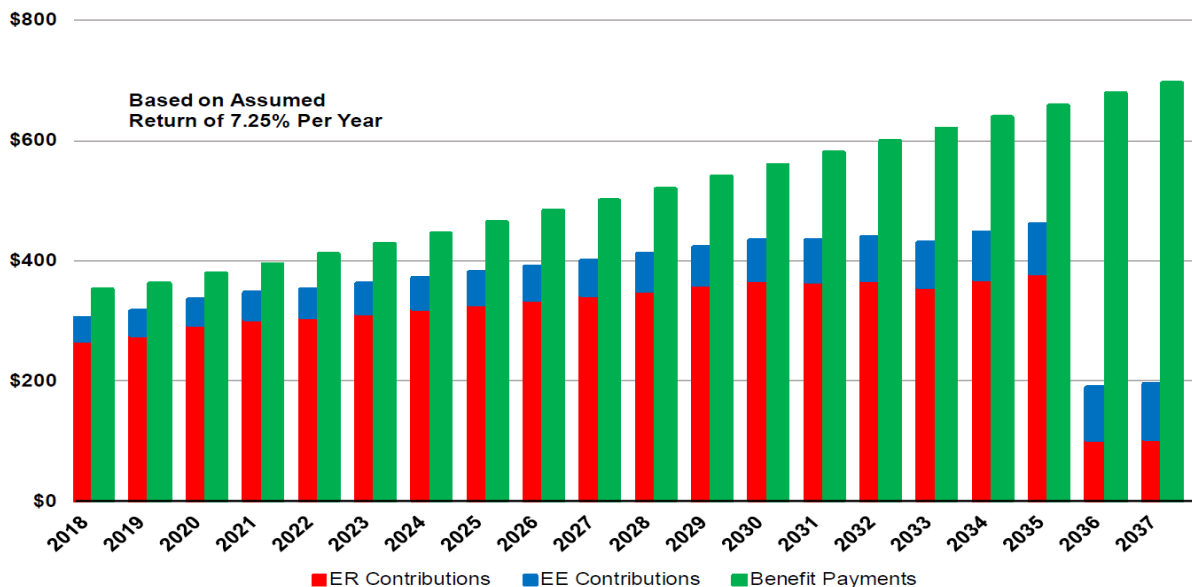
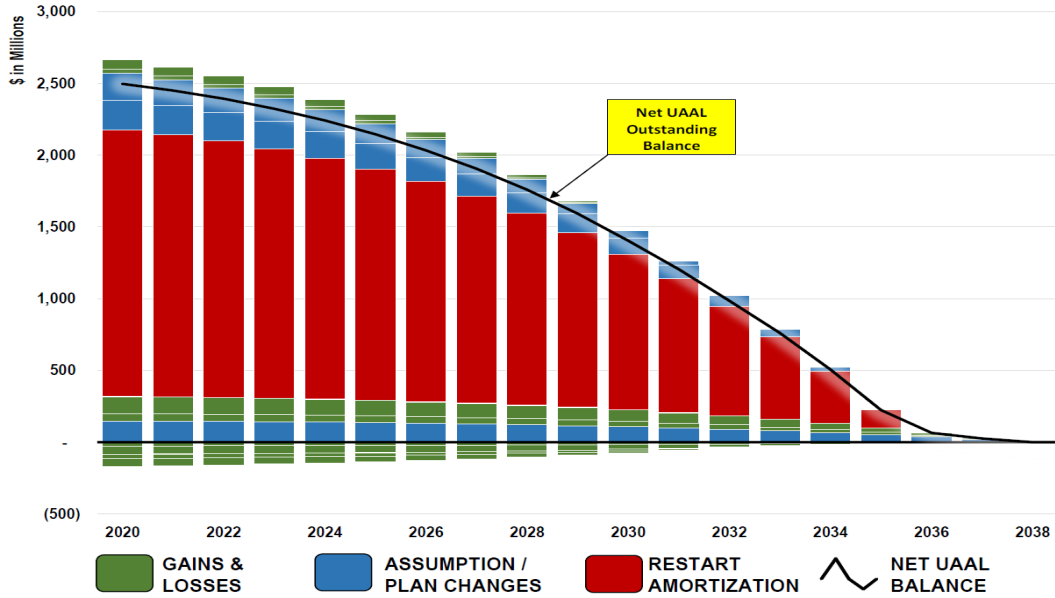


Exhibit A (continued)

The following charts were created by KCERA's actuary, Segal Consulting, and were submitted to the Board of Retirement on December 9, 2020, and to the Board of Supervisors on March 9, 2021. The first chart shows the projected amortization of the Unfunded Actuarially Unfunded Liability (UAAL). The second chart shows projected contribution rates over the same time period and demonstrates how contribution rates will fall significantly once the current unfunded liability is fully amortized.

Exhibit I: Projection of UAAL Balances and Payments

Outstanding Balance of \$2,497 Million in Net UAAL as of June 30, 2020



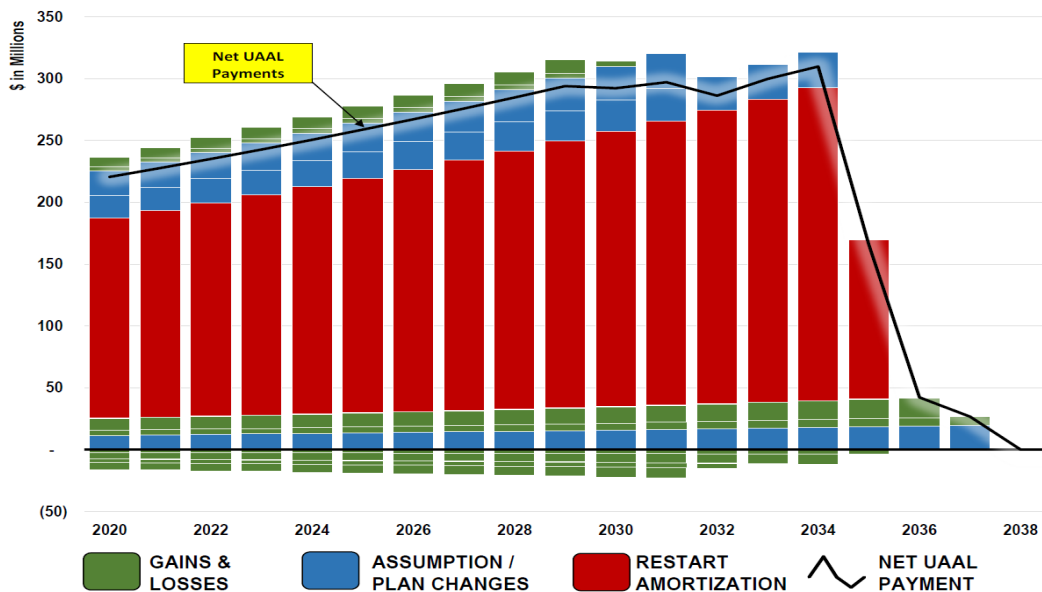
Kern County Employees' Retirement Association

Segal

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Exhibit I: Projection of UAAL Balances and Payments (continued)

Annual Payments Required to Amortize \$2,497 Million in Net UAAL as of June 30, 2020



Kern County Employees' Retirement Association

Segal

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BOARD OF SUPERVISORS

SUPERVISORS

Phillip Peters District 1
Zack Scrivner..... District 2
Mike Maggard District 3
David R. Couch District 4
Leticia Perez..... District 5



KATHLEEN KRAUSE
CLERK OF BOARD OF SUPERVISORS
Kern County Administrative Center
1115 Truxtun Avenue, 5th Floor
Bakersfield, California 93301
Telephone (661) 868-3585
TTY Relay 800-735-2929

September 14, 2021


The Honorable Colette M. Humphrey, Presiding Judge
Kern County Superior Court
1415 Truxtun Avenue
Bakersfield, CA 93301

Dear Judge Humphrey:

Transmitted herewith is the Board of Supervisors' response to the 2020-2021 Grand Jury's Final Report titled Kern County Employee Retirement Association-KCERA.

The Board of Supervisors appreciates the Grand Jury's review and input.

Sincerely,


Phillip Peters, Chair
Kern County Board of Supervisors

PP/EM/COMPL_GJ Kern County Employee Retirement Association-KCERA

Attachment

cc: Grand Jury

Kern County Board of Supervisors
Response to Grand Jury Final Report
Kern County Employee Retirement Association – KCERA

Response to Findings:

The Board of Supervisors is providing a response to the July 7, 2021 amended Grand Jury report titled Kern County Employee Retirement Association – KCERA. While this report was issued to the retirement association, there are findings and recommendations addressed to the County. The Board of Supervisors notes the following clarifications or corrections to findings F3, F4, F7, F8, F11 and F13.

Finding F3 - KCERA does not grant pension formulas. Pension formulas are the responsibility of the plan sponsors. The County and other plan sponsors decide the benefits for their organizations. KCERA administers them. By definition, any benefit offered is costly to the taxpayers. The current multi-tier structure offered by the County reduces the cost to the taxpayers because the newer tiers 2 and 3 offer a significantly lower pension benefit.

Finding F4 - the Board of Supervisors decision to adopt the 3%@50 for safety members and the 3%@60 for general members was based on an actuarial study that determined that the increase in annual retirement costs would be approximately \$3 million which is “equivalent to cost of 3% salary increase”. Additionally, a presentation prepared by KCERA on September 7, 2016 clearly shows that the biggest increase to the unfunded actuarial liability was the market losses of 2008/2009. To mitigate the impacts of the increased costs, the Board of Supervisors completed pension reform prior to the State PEPRA reform by lowering the benefit for general members to 1.62%@65 and making our defined benefit a hybrid plan with a deferred contribution component. While the County’s current cost for retirement benefits is certainly a financial burden, we would not describe it as “unaffordable” because all retirement payments have, and will continue to, be made on time and County pension reform has already taken place which will reduce future retirement costs.

Finding F7 – While the County is the largest KCERA plan sponsor, accounting for approximately 67% of the total unfunded accrued liability, there are 14 other plan sponsors that also contribute to KCERA. The described deficit only occurs when KCERA has unfavorable variances from the assumptions. There is not always a deficit, it could also be neutral or a surplus. When there is a variance, the deficit is passed along to the plan sponsors in the form of rate increases and not directly to the taxpayers. There is no relationship between KCERA’s performance and tax rates.

Finding F8 – We generally agree that the current pension obligation bond payments and the retirement contribution rates, which include paying down the unfunded actuarial liability, continue to be a financial burden on the County. However, it does not require additional taxes from taxpayers to pay these obligations, but it does impact service levels in other areas due to the County’s inherent limitation on resources.

Finding F11 – While we cannot confirm NACO’s survey information, it is likely true due to costs incurred in response to the COVID-19 pandemic. The County’s expenditures will be higher in 2020 compared to the prior fiscal year for these same reasons. The additional expenditures to address the pandemic were paid with supplemental federal and state funding. We do not agree with the trickle-down statement. Many of the additional expenses were contract for program and services or purchase of equipment and supplies, not

payroll related expenses. Employees hired to respond to COVID-19 were mostly extra help and do not receive a pension benefit. Overall, we do not believe there is a correlation between increases in COVID-19 related expenditures and increases in pension debt.

Finding F13 - The County has a well-documented fiscal emergency extending over the past seven years due primarily to significant reductions in the value of oil and gas, stagnant growth in discretionary revenues, and increases in pension costs. The employee groups covered by those expired Memoranda of Understanding (MOUs) have requested increases that the County simply cannot afford given the overall financial situation. While the MOUs are expired negotiations are ongoing.

Response to Recommendations:

R1: Kern County Board of Supervisors should establish a pension reform Ad Hoc Committee consisting of third-party consultants to study alternative pension plans to be put in place by FYE 2024.

The Grand Jury's recommendation requires further analysis. Public employees in California have vested rights in their pension benefits. The Courts have held that these pension benefits cannot be modified unless (1) the modification maintains the integrity of the system; (2) bears some relation to the theory of the pension system; and (3) if the modification results in some disadvantage, it is accompanied by a comparable new advantage. This makes it difficult for revisions to pension statutes to allow reduction in benefits that would result in meaningful cost reductions. In addition, as previously noted the Board of Supervisors completed pension reform prior to the State PEPRA reform.

R2: The Kern County Board of Supervisors should consider using the general tier 2 category retirement policy for all employees by FYE 2024.

The Grand Jury's recommendation will not be implemented. The tier category is not a policy of the Board of Supervisors. State law provides for the definition of classes or positions that meet the criteria for the safety category of membership in the retirement system.

R4: The Kern County Board of Supervisors and Union Collective Bargaining Representatives should update all expired County MOUs no later than FYE 2022. If the Board of Supervisors and Union Collective Bargaining Representatives are unable to reach viable agreements, in the best interest of the public, then the Board of Supervisors should implement the Impasse provisions of collective bargaining.

The County is engaged in negotiations with all of its represented bargaining units to negotiate successor Memoranda of Understanding. We are hopeful to complete negotiations by 2022 but are limited by the state labor process.

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