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Appellate Court Records

IN THE SUPREME COURT OF THE STATE OF OREGON

EVERICE MORO, TERRI DOMENIGONI; CHARLES CUSTER; JOHN HAWKINS; MICHAEL ARKEN; EUGENE DITTER; JOHN O'KIEF; MICHAEL SMITH; LANE JOHNSON; GREG CLOUSER; BRANDON SILENCE; ALISON VICKERY; and JIN VOEK,

Petitioners,

vs.

STATE OF OREGON; STATE OF OREGON, by and through the Department of Corrections, LINN COUNTY; CITY OF PORTLAND; CITY OF SALEM; TUALATIN VALLEY FIRE & RESCUE; ESTACADA SCHOOL DISTRICT; OREGON CITY SCHOOL DISTRICT; ONTARIO SCHOOL DISTRICT; BEAVERTON SCHOOL DISTRICT; WEST LINN SCHOOL DISTRICT; BEND SCHOOL DISTRICT; and PUBLIC EMPLOYEES RETIREMENT BOARD,

Respondents,

LEAGUE OF OREGON CITIES; OREGON SCHOOL BOARDS ASSOCIATION; CENTRAL OREGON IRRIGATION DISTRICT; and ASSOCIATION OF OREGON COUNTIES,

Intervenors.

SC S061452 (Control)

WAYNE STANLEY JONES, Petitioner, vs. **PUBLIC EMPLOYEES RETIREMENT BOARD, ELLEN ROSENBLUM, Attorney General and JOHN A. KITZHABER, Governor,** Respondents.	SC S061431
MICHAEL D. REYNOLDS, Petitioner, vs. **PUBLIC EMPLOYEES RETIREMENT BOARD, State of Oregon; and JOHN A. KITZHABER, Governor, State of Oregon,** Respondents.	SC S061454
GEORGE A. RIEMER, Petitioner, vs. **STATE OF OREGON, OREGON GOVERNOR JOHN KITZHABER, OREGON ATTORNEY GENERAL ELLEN ROSENBLUM, OREGON PUBLIC EMPLOYEES RETIREMENT BOARD, and OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM,** Respondents.	SC S061475

GEORGE A. RIEMER, Petitioner, vs. **STATE OF OREGON, OREGON GOVERNOR JOHN KITZHABER, OREGON ATTORNEY GENERAL ELLEN ROSENBLUM, OREGON PUBLIC EMPLOYEES RETIREMENT BOARD, and OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM,** Respondents.	SC S061860

SCHOOL DISTRICT AND LINN COUNTY RESPONDENTS' PROPOSED FINDINGS OF FACT AND RESPONSE TO PETITIONERS' PROPOSED FINDINGS OF FACT

RESPONSE TO PROPOSED FINDINGS OF FACT FILED BY PETITIONERS

1. Respondents Linn County, Estacada, Oregon City, Ontario, and West Linn School Districts and Intervenors Oregon School Boards Association and Association of Oregon Counties ("School District and Linn County Respondents") adopt and incorporate by reference the Response to Petitioners' Proposed Findings of Fact filed by the State Respondents.

PROPOSED FINDINGS OF STATE RESPONDENTS

2. School District and Linn County Respondents adopt and incorporate by reference the Proposed Findings of Fact filed by the State Respondents.

STATEWIDE CIRCUMSTANCES UNDERLYING THE 2013 LEGISLATION

3. The Oregon legislature's changes to PERS by passage of SB 822 as amended by SB 861 reduced PERS' accrued liability for future pension payments. Ex. 101 (February 19, 2014 Report of John Tapogna) at 3-4.

4. The changes made by SB 822 as amended by SB 861 were justified by an important, significant, and legitimate public purpose of remedying a broad and general economic problem. *Id.* at 4.

5. The enactment of SB 822 as amended by SB 861 was justified so that Oregon's public agencies could provide levels of service quality, at given levels of taxation, that would be more comparable to those provided in Washington, Idaho, and other states that compete with Oregon for businesses and households. *Id.*

6. The public services provided for a given level of taxation is a factor in the location decisions of businesses and households, especially in intraregional contexts such

as the Portland metropolitan area and other communities along Oregon's border with Washington. Whether businesses and households decide to locate in Oregon has economic ramifications. *Id*.

7. The enactment of SB 822 as amended by SB 861 was justified as an effort to reduce the financial risk facing the state of Oregon and local governments within the state. *Id*.

8. The information made available to legislators in various presentations during the 2013 regular session, including presentations by public policy analyst John Tapogna, indicated that the financial condition of Oregon's pension system warranted a policy response. *Id.* at 5.

a. Milliman's December 31, 2011 valuation signaled a long term increase in employer contribution rates. *Id.* at 5-6.

b. The valuation recommended increases in PERS' Tier I and Tier II contribution rates, net of side account offsets, of an average of 6.5% for school districts and 4.5% for agencies in the state and local government pool. The actuary predicted that average base employer contribution rates would increase to 25% of payroll under the baseline investment return assumption of 8% per year, and that the elevated rates could persist through 2029. If future investment returns yielded a lower return of 4.5% annually, the actuary predicted base employer contribution rates eventually could exceed 40% of payroll. *Id*.

c. An official from the Redmond School district testified that the predicted rate increase would result in the elimination of 28 teaching positions, exacerbating recession-related cuts made between 2008 and 2012. *Id.* at 6.

d. The Chief Financial Officer for the Portland Public Schools said that the rate increase was equivalent to nine school days. *Id*.

e. In June, 2012, the Pew Center on the States issued "The Widening Gap Update," which reported a $1.38 trillion gap between states' pension assets and their obligations for public sector retirement benefits for fiscal year 2010. *Id.* at 7.

f. Pew reported Oregon's funded status for its state-sponsored plan at 87 percent for fiscal year 2010. Based on the funded status, Pew placed Oregon's system in the category of "needs improvements," but considered Oregon's system in better condition than those of 34 states with funded statuses below an 80 percent threshold. A subsequent report by Milliman drew a similar conclusion about the Oregon system's funded status relative to other systems. Oregon's relatively highly funded status was cited frequently in the public policy debate. *Id*.

g. On October 1, 2012 the University of Chicago's IGM Forum reported survey responses of 39 leading U.S. economists demonstrating concern about the condition of public pension systems. *Id.* at 8.

h. The economists served on the faculties of top universities, including Harvard, Yale, Stanford, University of California at Berkeley, University of Chicago, and MIT. *Id*.

i. Ninety-eight percent of the respondents agreed or strongly agreed that many state and local governments understate their pension liabilities by discounting liabilities at high rates under government accounting standards. *Id*.

j. Ninety-two percent of respondents agreed or strongly agreed that during the next two decades, some states, unless they substantially increase taxes, cut spending, and/or change public sector pensions, will require a combination of severe austerity budgets, a federal bailout, and/or default. *Id.* at 8-9.

k. In September, 2012, Robert Novy-Marx and Joshual Rauh co-authored The Revenue Demands of Public Employee Pension Promises, which provided calculations of the increases in employer contributions that would be required to achieve fully funded pensions systems in 30 years. Each state's contribution increases are calculated relative to a base of Gross State Product. *Id.* at 9.

l. Novy-Marx and Rauh concluded that, under their amortization and asset growth assumptions, Oregon faced one of the most challenging paths in the nation to fully funding its pension liability. They simulated that, if Oregon raised taxes or reduced public services by amounts required to fully fund an unchanged pension system, the tax burdens or service cuts would become so burdensome that "residents flee at a rate that makes paying the benefits impossible." The simulation of Oregon's population exodus is driven by a high level of required contributions relative to the size of the state's economy measured by Gross State Product. In addition, the paper presents the equivalent of a stress test of the nation's public pension systems. It illustrates that, in the even future investment returns were weaker than the actuary's baseline investment projections;

Oregon's pension system would face challenges that are large relative to other states' systems. *Id.* at 10-11.

9. The legislature was also presented with information showing that the design and implementation of the Tier I Money Match program was an important, structural contributor to the system's financial challenges. *Id.* at 12.

a. Employees who retired with 30 years of service in the late 1990's and after receive elevated replacement ratios relative to outcomes that would have resulted from application of the Full Formula. This phenomenon is documented in the 2004 Special Master's report, in periodic reports from PERS, and in an analysis of the PERS data released to the Oregonian regarding individual retirement benefits between 2000 and 2011. *Id*.

b. A May, 2013 report issued by Portland State University's Center for Public Service provided additional evidence of the atypical outcomes produced by the Money Match benefit. The report compared Money Match outcomes to those that would have been earned for identically compensated work in other jurisdictions in the region. The report modeled pension outcomes for archetypical employees, retirees with 30 years of service, under alternative plans. For example, an analysis of Portland-based K-12 teachers compared Money Match outcomes to benefits that would have been earned in public schools in Seattle and Boise. Teachers with 30 years of continuous service and retired under the Money Match on July 1, 2013 had a retirement benefit worth $1.676 million calculated present value. Seattle and Boise counterparts received benefits worth $1.064 million and $1.116 million, respectively. The PSU report also showed elevated

retirement benefits for general service accountants. Inter-jurisdictional differences for police officers and state troopers were less pronounced. The report also shows that retirement benefits for the 2003-enacted OPSRP plan are similar to those that would be provided by the comparison jurisdictions. *Id.* at 13.

10. Oregon's accrued liability for its state-sponsored retirement plan, expressed as a share of economic activity, is large relative to Washington's. *Id.* at 14.

a. In fiscal year 2010, Pew reported Oregon's accrued liabilities for its state-sponsored plan at $59.3 billion. For the same year, Pew reported Washington's accrued liability for its state-sponsored plans at $61.7 billion. However, Washington's economy, measured by total personal income, was more than twice the size of Oregon's (Washington's equaled $286.7 billion; Oregon's equaled $137.7 billion). In other words, the pension benefits accrued to Oregon's former and current public employees are disproportionately large relative to the resources that could be taxed to finance them. *Id.*

11. During the 2013 legislative session, the legislature was presented with the following information, at the legislature's request, by public policy analyst John Tapogna:

a. Sixty-percent of the system's accrued liability as of December 31, 2011 was associated with people who have already retired. *Id.* at 15.

b. Changes to the COLA adjustment and the out of state tax adjustment were the main options that reduced liabilities associated with the retiree population. *Id.*

c. Ten percent of the system's accrued liability was associated with non-retirees—active and inactive—who were projected to exit under the Money Match

calculation and with benefits above what would have been provided through the Full Formula. *Id*.

d. A targeted public policy response intended to address the impact of the design and implementation of the Money Match formula on the system's accrued liabilities would necessarily focus on these populations of PERS retirees and members. *Id.* at 15-16.

12. The legislature's decision to enact SB 822 as amended by SB 861 was justified by an important, significant, and legitimate public purpose for two compelling reasons:

a. The changes to PERS implemented by the enactment of SB 822 as amended by SB 861 improved the quality of public services and strengthened the economic competitiveness of local communities as they attempt to attract businesses and households. *Id.* at 16.

i. In 2013, the enactment of SB 822 as amended by SB 861 resulted in approximately $368 million annually in additional resources for the current operation of school districts, cities, counties, state agencies, and other special purpose districts. With the change, a higher share of tax revenues will be devoted to supporting current services. *Id.* at 17.

ii. In the case of K-12 education, each percentage point reduction in the school district employer rate is the fiscal equivalent of 1.3 additional school days, implemented statewide. The reduction in employer contribution rates could translate into 5.6 additional school days, or could be used to hire additional teachers to

bring down class sizes, to implement full day kindergarten, or for other targeted strategies to improve student achievement. Policies that seek to improve the quality of education services are especially important in a state such as Oregon with relatively high student-teacher ratios. *Id.*

iii. The quality of education services is a key determinant in business location decisions. *Id.* at 18.

iv. The changes enacted by SB 822 as amended by SB 861 were especially important for communities along the Washington-Oregon border. Given their higher employer contribution rates and legacy pension costs, communities on the Oregon side of the border would face a difficult competitive position. Oregon's schools and other governments would deliver diminished levels of service at a given level of taxation. *Id.* at 19.

v. Tax and service differences are important business location factors within an economic region. *Id.* at 20.

vi. The passage of SB 822 as amended by SB 861 took an important step toward mitigating the differences in employer contribution rates between Washington and Oregon public employers, and, thereby, took a step toward strengthening the economic competitiveness of communities in close proximity to Washington. *Id.* at 21.

b. The legislature's actions were a justifiable response to strong warnings about pension financing from leading U.S. economists. *Id.*

THE INVOLVEMENT AND GOALS OF THE OFFICE OF THE GOVERNOR CONCERNING THE 2013 LEGISLATION

13. In the process of preparing the Governor's proposed budget for the 2013-2015 biennium, officials at the Office of the Governor determined that under then-current assumptions, Oregon faced, and would in coming years continue to face, a growing "budget gap" representing the divergence between available revenue and the revenue required to maintain existing service levels for essential state and local services, including public education. Their projections further indicated that two areas of public spending disproportionately drove the projected increases in that "budget gap": health care spending, and the cost of maintaining the Oregon Public Employees Retirement System. Ex. 102 (Declaration of Curtis Robinhold) at ¶2-3.

14. Among the materials relied upon by the Governor's Office in concluding that PERS costs would significantly contribute to Oregon's "budget gap" in coming years were several studies and presentations concerning PERS prepared from late 2011 through late 2012 by Milliman, PERS' former actuary. To learn more, officials at the Office of the Governor engaged in an ongoing dialogue with PERS, including its executive director Paul Cleary and its counsel. Those materials and communications indicated that the costs of maintaining PERS would continue to escalate, and that the Employer Contribution Rates necessary to support those costs would continue to increase. The Governor's Office concluded that the cost of maintaining PERS would be growing faster than the state's revenue could keep up with, and that the resulting escalation in Employer Contribution Rates would increasingly adversely impact the ability of public bodies – and

school districts in particular – to provide essential services to the public. They further observed that those adverse impacts threatened to hinder Oregon's ability to compete economically with other states in the region for residents and businesses. *Id*. at ¶4-5.

15. In addition to the effects of PERS' growing costs on Oregon's economic health, those materials and communications with the Governor's Office also shed light on the apparent causes of the system's growing costs. In particular, the Governor's Office determined that the growing cost of PERS was in significant part attributable to the cost of benefits being paid to existing retirees, particularly those at the higher end of the economic spectrum – those receiving amounts well in excess of the income replacement ratios that the system was originally intended to provide – and to the annual cost-of-living adjustments that continued to escalate those retirees' benefits. They also determined that payments that had been created to compensate PERS retirees for Oregon state income taxes on PERS benefits, but which were being paid to retirees even if they resided outside of Oregon and paid no Oregon income taxes, also were contributing to increasing PERS costs, though to a lesser extent than cost of living adjustments. *Id*. at ¶6.

16. Based on those assessments, it was determined in Fall 2012 that the Governor's efforts to improve Oregon's economy would focus substantially on addressing the growing cost of PERS and to helping control future increases in Employer Contribution Rates paid by school districts and other public bodies in the state. The Governor directed that his proposed budget for the 2013-15 biennium should be based upon the assumption that legislation would be enacted to reduce and control PERS costs. To achieve that goal, officials at the Office of the Governor specifically sought out ways

to address the aspects of PERS that disproportionately contributed to the system's growing costs, including the amounts by which cost-of-living adjustments are made to existing retirees' benefits. As part of that effort, officials at the Office of the Governor worked with attorneys at the Oregon Department of Justice to assess the legal feasibility of various statutory changes to PERS. *Id*. at ¶7-8.

17. Based on that series of economic and legal assessments in 2012 and 2013, officials at the Office of the Governor proposed that a legislative effort be made to amend the laws governing certain aspects of PERS, including specifically the statutes governing COLA amounts and tax-offset payments to out-of-state retirees. That effort was intended as a narrowly-focused solution to what had become a broad-based economic concern: In order to help alleviate the increasing difficulty Oregon's public bodies faced with providing essential services to the state, the Governor's legislative effort specifically targeted the individual elements of the retirement system that disproportionately drove the escalation in those public bodies' operating costs. *Id*. at ¶9.

18. Over the course of the 2013 Regular Legislative Session and the Special Legislative Session that followed in the fall of 2013, officials in the Office of the Governor worked with several legislators – particularly Joint Ways & Means Committee Co-Chairs Senator Richard Devlin and Representative Peter Buckley – to design and eventually promote passage of bills that implemented those PERS changes. As those bills proceeded through the legislature, they became even more narrowly focused on the problems driving PERS' growing costs by taking a graduated approach to COLA adjustments, reining in adjustments to benefits at the higher end of the economic

spectrum to a greater degree than for those receiving more modest benefit allowances. Because those changes helped focus the legislation on the greater benefit increases that disproportionately drove PERS costs, without unfairly impacting those retirees receiving smaller monthly benefit amounts, Governor Kitzhaber supported those changes. *Id*. at ¶10.

FACTS PERTINENT TO SCHOOL DISTRICT RESPONDENTS

19. In the 2005-07, 2007-09, and 2009-11 state budget cycles, the net employer contribution rates paid by Oregon's school districts generally remained in the single digits. *See* Ex. 103 (Declaration of Donna M. Cancio) at ¶5; Ex. 104 (Declaration of Brad Henry) at ¶5; Ex. 105 (Declaration of Mary Jo Evers) at ¶5; Ex. 106 (Declaration of Nathan Roedel) at ¶4.

20. While in many school districts those rates are lower than they would otherwise be due to offsets from districts' "side accounts," those offsets, too, are paid for by the school districts through the pension bonds by which the accounts are funded. The debt service costs on those bonds for each school district are substantial, ranging from a an annual cost as of 2013 of approximately $700,000 - $800,000 in the smaller districts of Estacada and Ontario (Ex. 103 at ¶6; Ex. 105 at ¶7), to approximately $3.3 million in the Oregon City School District (Ex. 106 at ¶5), up to nearly $5.5 million in 2013 for Bend – La Pine Schools (Ex. 104 at ¶7).

21. In the 2011-2013 biennium, the net employer contribution rates paid by Oregon's school districts escalated dramatically, in some districts by upwards of 300%. *See* Ex. 103 at ¶5; Ex. 104 at ¶5; Ex. 105 at ¶5; Ex. 106 at ¶4.

22. In late 2011, when employer contribution rates were originally set for the 2013-2015 biennium, that steep increase continued. In some districts, net employer contribution rates originally set for the 2013 biennium increased to as much as *nine times* their size from the 2009 biennium four years earlier. In Bend – La Pine Schools, for instance, the net employer contribution rates escalated from approximately 2% of payroll in the 2009 biennium, to 10-11% in the 2011 biennium, up to 16-18% in the 2013 biennium. Ex. 104 at ¶4-5. In Ontario, rates escalated from approximately 6% in the 2009 biennium, to 12-13% in the 2011 biennium, then to 18-20% in the 2013 biennium. Ex. 105 at ¶4-5. In Oregon City, rates escalated from approximately 4-5% in the 2009 biennium, to 9-11% in the 2011 biennium, up to 15-17% in the 2013 biennium. Ex. 106 at ¶4-5. In Estacada, rates escalated from approximately 4% in the 2009 biennium, to 10-12% in the 2011 biennium, up to 16-18% in the 2013 biennium. Ex. 103 at ¶4-5.

23. In many districts, even those increases in employer contribution rate do not fully capture the school districts' escalating costs of supporting PERS, due to the system's "collared rate" approach. Under that approach, portions of employer contribution rate increases are deferred to the 2015-2017 budget cycle. *See* Ex. 104 at at ¶6; Ex. 105 at ¶6. Thus, beyond the increased employer contribution rates already faced by the school districts, the current costs of maintaining the PERS system can increase the districts' employer contribution rates well into the future.

24. As school districts have been made to direct greater amounts of their budgeted funds to PERS, other areas of the school budgets have suffered. The increases in employer contribution rates have adversely impacted school districts' ability to

maintain adequate faculty levels, keep up with student enrollment, and provide an entire school year of instruction each year to Oregon's students. In Bend – La Pine Schools, for instance, the district in 2013-2014 operates with approximately 30 fewer full-time-equivalent ("FTE") teaching positions than it did five years ago. Ex. 104 at ¶3. At the same time, student enrollment in Bend – La Pine schools has increased by more than 750 students. As a result, the district in fact operates with 60 fewer teachers than it needs to maintain the same student-to-teacher ratio the district had only five years ago. *Id.* Districts all across Oregon have faced similar cuts. In Ontario, for instance, the school district from the 2008-2009 school year to the 2012-2013 school year cut its teaching staff by 25% -- from 180 teachers to only 135 – a decrease that far outpaced that district's change in student enrollment. Ex. 105 at ¶4.

25. The legislation at issue in this matter – SB 822, SB 861 as ameanded by SB 862 – was enacted after the rates for the 2013-2015 biennium had originally been set. As a result of those bills' changes to the law, the employer contribution rates to be paid by public employers – including Oregon's school districts – changed significantly. Specifically, school districts' employer contribution rates decreased by 4.4 percentage points. Ex. 103 at ¶9; Ex. 104 at ¶9; Ex. 105 at ¶9; Ex. 106 at ¶7.

26. That change of 4.4 percentage points to the net employer contribution rates made a very significant difference to the operating budgets of Oregon's school districts. Even in the relatively small Estacada and Ontario School Districts, that change in employer contribution rate meant a difference of more than $421,000 and $465,000, respectively, in actual costs – the equivalent of 5 to 6 additional teaching positions in

each district. Ex. 103 at ¶10; Ex. 105 at ¶10. In the larger Oregon City School District, that change in employer contribution rate made available more than $1.7 million – the equivalent of approximately 19 additional licensed teachers, 35 additional classified support staff, or nine instructional school days. Ex. 106 at ¶8. And in Bend – La Pine Schools, the change in employer contribution rate made available approximately $3.4 million in the school district's budget – the equivalent of approximately 47 teachers or seven instructional days. Ex. 104 at ¶10.

27. Oregon's school districts have been able to put those changes in PERS costs into action by helping schools to again provide the education services that Oregon's students need. For example, Bend – La Pine schools in 2013-2014 returned to a full school year and added teaching positions to reduce class sizes in kindergarten and first grade classrooms, as well as at the high school level. Ex. 104 at ¶10.

FACTS PERTINENT TO RESPONDENT LINN COUNTY

28. The increasing costs of PERS have also affected the ability of other public entities in Oregon to provide essential services. In Linn County, Net Employer Contribution Rates in the 2009 biennium ranged from approximately 10% to 13% of payroll. In the 2011 biennium, those rates escalated to approximately 12% to 16% of payroll. Then, as originally set for the 2013 biennium, those rates again escalated to approximately 16% to 19% of payroll. Ex. 107 (Declaration of Ralph Wyatt) at ¶4-5.

29. Those continued increases in PERS costs have come at a time when Linn County's ability to provide essential public services like law enforcement and health services is already under significant and growing pressure. For instance, federal forest

payments to the county have been reduced by more than $8 million since FY 2007-08, and compression on the County's local option law enforcement levy resulted in a loss of nearly $5 million in funds in FY 2013-14 alone. *Id.* at ¶3. Those losses have forced real cutbacks in essential services, such as the closure of a 48-bed pod in the county jail in 2012. *Id.*

30. As a result of the 2013 PERS legislation, Linn County's Employer Contribution Rates for the 2013-2015 biennium have eased. Linn County now pays Employer Contribution Rates of approximately 14% to 16%, representing a total savings of 2.47% of payroll each year. Under the current 2013-2014 budget, that 2.47% difference currently represents approximately $835,682 in saved costs, or the equivalent of 8.5 "average" positions (based on the average cost to the County of an employee) or 7.5 deputy sheriff positions. *Id*. at ¶7-8.

PORTIONS OF 2004 SPECIAL MASTER'S REPORT

31. Linn County Respondents incorporate by reference the findings regarding employer contribution rates as set forth at pages 20-22 of the Special Master's Written Report and Recommended Findings of Fact dated April 8, 2004 (Petitioners' Joint Proposed Findings of Fact, Ex. 1), with the exception of those facts that are specific to the year 2003 and therefore do not bear on this litigation.

32. Linn County Respondents incorporate by reference the findings regarding allocation of earnings as set forth at pages 25-35 of the Special Master's Written Report and Recommended Findings of Fact dated April 8, 2004 (Petitioners' Joint Proposed Findings of Fact, Ex. 1).

33. Linn County Respondents incorporate by reference the findings regarding historical PERS employer contribution rates as set forth at pages 40-44 of the Special Master's Written Report and Recommended Findings of Fact dated April 8, 2004 (Petitioners' Joint Proposed Findings of Fact, Ex. 1).

34. Linn County Respondents incorporate by reference the findings regarding the financing of unfunded actuarial liabilities from 1999 through 2003 as set forth at pages 40-44 of the Special Master's Written Report and Recommended Findings of Fact dated April 8, 2004 (Petitioners' Joint Proposed Findings of Fact, Ex. 1), with the exception of those paragraphs concerning Multnomah County, Roseburg School District, City of Corvallis, City of Eugene, and Canby Utility Board, who are not parties to this litigation.

DATED this 17th day of March, 2014.

HARRANG LONG GARY RUDNICK P.C.

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Of Attorneys for Respondents Linn County, Estacada School District, Oregon City School District, Ontario School District, West Linn School District, Bend School District and Intervenors Oregon School Boards Association and Association of Oregon Counties

CERTIFICATE OF FILING AND SERVICE

I certify that on March 17, 2014, I filed the foregoing **SCHOOL DISTRICT AND LINN COUNTY RESPONDENTS' FINDINGS OF FACT AND RESPONSE TO PETITIONERS' PROPOSED FINDINGS OF FACT** with the Appellate Court Administrator by using the eFiling system.

Participants in this case who are registered eFilers will be served via the electronic mail function of the eFiling system.

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I further certify that on said date I served one true and correct copy of said document on the party or parties listed below, via first class mail, postage prepaid, and addressed as follows:

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