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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY

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| EDWARD D. WRZESIEN and LACEY VAN GRINSVEN, individually and on behalf of all similarly situated persons, and MEGAN ASHTON, individually,<br><br>Plaintiffs,<br><br>vs.<br><br>STATE OF MONTANA and MONTANA PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION,<br><br>Defendants. | Cause No. DDV 2012-931<br>Hon. James P. Reynolds<br><br>**PLAINTIFFS' COMBINED BRIEF OPPOSING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND SUPPORTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** |

## I. Introduction

In 1999, the Montana Legislature decided to change the Montana Public Employees Retirement System ("PERS") to add a defined contribution plan. Prior to 1999, all public employees who participated in PERS were enrolled in a defined benefit plan. Beginning July 1, 2002, PERS-eligible members were allowed to choose between the Defined Benefit Plan ("DB Plan"), more commonly referred to as a pension, and the Defined Contribution Plan ("DC Plan"), which functions like what is commonly referred to as a 401(k).[1] The two plans are intended to be entirely separate. Indeed, once an election is made, there is no going back.

Only for DC Plan participants, the plans are not entirely separate. Though they are not eligible to receive any benefit from the DB Plan, over 40% of DC Plan participants' current employer-paid retirement contribution is paid into the DB Plan. Since the inception of the DC Plan, this has resulted in millions of dollars being diverted from the retirement accounts of DC Plan participants, individuals who have agreed to fund their respective retirements as a known and fixed cost to the State and other public employers rather than require ongoing injections of funds.

Far from being a case of "buyer's regret" as the State deems it, this is a case of fundamental fairness. Rather than fund the DB Plan in its own right, the State has burdened DC Plan participants with helping fund a plan from which they are legally precluded from obtaining any benefit. This has real consequences, as it leaves each DC Plan participant without tens, if not hundreds, of thousands of dollars that would otherwise be available to fund their respective retirements. This

[1] PERS-eligible classified employees of the Montana University System were also given the option of participating in the Montana University Systems' Optional Retirement Program, which had previously been available only to "academic and professional administrative personnel with individual contracts under the authority of the Board of Regents." Mont. Code Ann. §19-21-201; Mont. Code Ann. §19-21-213.

system is fundamentally unfair, has no rational basis, and, therefore, violates DC Plan participants' respective rights to equal protection and due process. Not only should the Court deny the State's motion for summary judgment, it should enter summary judgment in Plaintiffs' favor.

## II. Factual Background

### A. PERS and the Plan Choice Rate.

PERS is established and governed by statute and covers the vast majority of state employees, employees of political subdivisions, and employees of other governmental entities. For most employees of participating employers, participation in PERS is mandatory. *Amd. Compl.*, ¶8 (Oct. 1, 2013)(hereinafter "Compl.") ; *Ans. Amd. Compl.*, ¶4 (Oct. 25, 2013)(hereinafter "Ans."). PERS includes both the DB Plan and the DC Plan. Mont. Code Ann. §19-3-103. Newly hired employees have one year to decide whether to participate in the DB Plan or the DC Plan. Once made, the election is irrevocable. Mont. Code Ann. §19-3-2111.

PERS members must contribute a statutorily-set amount toward their own retirement. Based on amendments passed by the 2013 Legislature, the contribution rate for all members is 7.9%. Mont. Code Ann. §19-3-315(1)(a). In addition to the employee contribution, PERS employers must contribute a statutorily-set amount toward each employee's retirement. Participating employers currently contribute a "base" amount of 6.9% of each employee's compensation, plus an additional contribution that currently stands at 1.27%. Mont. Code Ann. §§19-3-316(1), (3). For DB Plan participants, the entire 8.17% employer contribution is paid into the DB Plan. Mont. Code Ann. §19-3-316. Once eligible, DB Plan participants receive a statutorily-established retirement benefit. Mont. Code Ann. §19-3-901 *et seq.* The retirement benefit is subject to annual increase and is paid for life – and potentially for the life of a beneficiary – regardless of the performance of investments in the DB Plan. Mont. Code Ann. §19-3-1201 *et seq.*; Mont. Code Ann. §19-3-1601 *et seq.*

Unlike DB Plan participants who see their entire employer contribution paid into the plan in which they participate, DC Plan participants see only 4.19% of the 6.9% "base" employer contribution paid into their respective retirement accounts. DC Plan participants pay 2.37% of their employer contribution to the DB Plan through a statutory mechanism called the Plan Choice Rate. Mont. Code Ann. §19-3-2117(2)(a).[2] Yet DC Plan participants are precluded from receiving benefits from the DB Plan. *Compl.*, ¶14; *Ans.*, ¶10. Of the 1.27% "additional" employer contribution, 1% is allocated to the DB Plan.[3] Mont. Code Ann. § 19-3-2117(2)(c). The remaining 0.27% is currently allocated to the DB Plan, but will be paid to the

[2] The remaining base employer contribution is paid as follows: 0.3% is allocated to a long-term disability plan trust fund and 0.04% is allocated to an education fund. Mont. Code Ann. §19-3-2117(2)(a). DC Plan participants are eligible to benefit from the disability plan and the education fund. Mont. Code Ann. §19-3-112; Mont. Code Ann. §19-3-2141.

[3] This will be referred to as "the additional 1% contribution."

disability plan trust fund once certain actuarial triggers are met. Mont. Code Ann. §19-3-2117(2)(b).

The Plan Choice Rate is not a static figure, but is subject to annual review and adjustment. Mont. Code Ann. §19-3-2121(1), (4)(b). If it is determined that the Plan Choice Rate should be increased, the percentage of the employer contribution allocated to a DC Plan participant's account must be decreased by the same percentage. Mont. Code Ann. §19-3-2121(5). There is no cap on the Plan Choice Rate; thus, if the statutory formula dictated, the entire employer contribution to DC Plan participants could be allocated to the Plan Choice Rate, meaning DC Plan participants would not receive any employer contribution toward their retirement.

### B. The Montana University System's Optional Retirement Program.

Classified employees of the Montana University System are eligible to participate in PERS or may elect to participate in the Montana University System's Optional Retirement Program ("ORP").[4] *See* Mont. Code Ann. §19-21-214. Employees who participate in PERS can choose the DB Plan or the DC Plan. Employee and employer contribution rates for classified employees of the Montana University System are the same as those for other public employees. Mont. Code

[4] The DC Plan and the ORP will be referred to collectively as "the DC Plan" unless context requires they be referred to separately.

Ann. §19-21-214. Classified employees who participate in the ORP are subject to the Plan Choice Rate and the additional 1% contribution that applies to DC Plan participants.[5] Mont. Code Ann. §19-21-214. Like with the DC Plan, money obtained from the Plan Choice Rate and the additional 1% contribution obtained from classified employees participating in the ORP is allocated to the DB Plan. *Id.* Classified employees who participate in the ORP do not and cannot receive any benefits from the DB Plan. *Compl.*, ¶20; *Ans.*, ¶15.

### C. Plaintiffs and the effect of the Plan Choice Rate.

Plaintiffs Lacey Van Grinsven and Megan Ashton are currently employed by the State of Montana, where they have been employed since April 2006 and October 2003, respectively. Both participate in the DC Plan, are paid bi-weekly, and are credited with a full 8.17% employer-paid retirement contribution, but have only 4.19% of the contribution credited to their respective retirement accounts. *Decl. Lacey Van Grinsven* (May 23, 2014), attached as **Exhibit 1**; *Decl. Megan Ashton* (May 23, 2014), attached as **Exhibit 2**. Plaintiff Edward Wrzesien is currently employed by the Montana University System, where he has worked since July 2006. Mr. Wrzesien participates in the ORP, is paid bi-weekly, and has only

[5] Classified employees who participate in the ORP have 4.49% of their compensation allocated to their respective retirement accounts. ORP participants are not subject to the 0.30% contribution to the disability plan trust.

4.49% of his 8.17% employer contribution credited to his retirement account. *Decl. Edward Wrzesien* (May 23, 2014), attached as **Exhibit 3**.

As of December 31, 2012, the last date for which the State provided information, there were 2,281 active participants in the DC Plan and 335 active participants in the ORP. *Defs.' Resps. Interrog. No. 1, Interrog. No.2* (March 22, 2013)(hereinafter "*Defs.' Resps.*"), attached as **Exhibit 4**.[6] Meanwhile, as of June 30, 2013, there were 28,401 active members of the DB Plan. *Public Employees Retirement Board Comprehensive Annual Financial Report, FY 2013* at 60 (hereinafter "*Annual Report*"), excerpts attached as **Exhibit 5.**[7] In any given year since the DC Plan's inception, no more than 11% of PERS-eligible employees have elected to participate in the DC Plan. *Defs.' Resps., Interrog. No. 5*). The average participation rate has been under 8% per year and has trended downward since its peak in 2006. *Id.*

Participation in the ORP has been even lower. *Id.* (Resp. Interrog. No. 6). The participation rate peaked at 3.21% in 2003, the year the ORP was first available to classified employees of the University System. *Id.* Other than 2003, the participation rate has never exceeded 3% and has averaged just 2.3%. *Id.*

[6] The DC Plan and the ORP had an additional 743 and 587 people, respectively, who were no longer contributing or who had withdrawn their contributions. *Defs.' Resps. Interrog. No. 1, Interrog. No. 2.*

[7] The entire 265 page report is available at http://mpera.mt.gov/docs/2013CAFR.pdf , last visited May 23, 2014.

As of March 22, 2013, the last date for which the State provided figures, \$21.68 million had been withheld through the Plan Choice Rate and allocated to the DB Plan. *Id.* (Resp. Interrog. No. 3). As of June 30, 2013, the DB Plan had total assets of nearly \$4.5 billion. *Annual Report* at 28. Thus, the total amount allocated to the DB Plan through the Plan Choice Rate since inception of the DC Plan makes up less than one-half of one percent of the DB Plan's total assets.

While the impact of the Plan Choice Rate on the DB Plan is small, the impact on DC Plan and ORP participants is enormous. The Plan Choice Rate and the additional 1% contribution compromise 41% of the total employer contribution. In real-life terms, this will leave DC Plan participants with significantly less money for retirement than they would have if they received the full value of their employer contribution.

To put numbers into the equation, as of March 31, 2014, Ms. Van Grinsven's DC Plan account had a balance of approximately \$60,000, with \$37,579 allocated to "employee" and \$22,562 to "employer." *Van Grinsven Decl., Ex A*. The difference between the "employee" and "employer" figures is the approximate additional amount Ms. Van Grinsven would have in her retirement account but-for the Plan Choice Rate and the additional 1% contribution. For Ms. Van Grinsven, the difference is approximately \$15,000, which is nearly 25% of the total value of her account. *Id.*

Ms. Ashton's and Mr. Wrzesien's situations are no different. As of March 31, 2014, Ms. Ashton's DC Plan account balance was approximately $89,000 while Mr. Wrzesien's ORP account balance was approximately $49,000. *Ashton Decl., Ex. A*; *Wrzesien Decl., Ex. A.* Ms. Ashton's account was allocated $53,564 to "employee" and $32,351 to "employer." *Ashton Decl., Ex. A* Mr. Wrzesien's was allocated $29,926 to employee and $19,244 to employer. *Wrzesien Decl., Ex. A.* The approximately $21,000 difference in Ms. Ashton's account is nearly 25% of her account's total value. The approximately $10,000 difference in Mr. Wrzesien's account is nearly 20% of his account's total value.

While the effects of the Plan Choice Rate on Plaintiffs' retirement accounts are significant now, they greatly compound with the passage of time. Assuming a conservative 6% annual rate of return, the current deficits in Ms. Van Grinsven's, Ms. Ashton's, and Mr. Wrzesien's accounts will grow to about $86,000, $120,000, and $57,000, respectively. Using a 7.75% annual rate of return, the assumed rate of return applied to the DB Plan, the deficits will grow to about $140,000, $197,000, and $93,000, respectively.[8] And these figures are based solely on the amounts withheld under the Plan Choice Rate to date. As Ms. Van Grinsven, Ms. Ashton, and Mr. Wrzesien continue their respective employment, the amounts lost

[8] These figures were calculated based on a 30-year investment period with the stated rate of return compounded annually. Thirty years was used because all three plaintiffs are in their 30s. The Court can take judicial notice of the respective figures because calculation of investment returns is "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." Mont. R. Evid. 201(b)(2).

to the Plan Choice Rate will only grow, as will the lost investment gains. Simply put, while the Plan Choice Rate's contribution to the DB Plan is relatively insignificant, it has and will likely continue to costs Plaintiffs tens, if not hundreds, of thousands of dollars that would – and should – be available to help fund their respective retirements.

## III. Argument

Summary judgment is appropriate when "no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law." *Pappas v. Midwest Motor Express, Inc.*, 268 Mont. 347, 350, 886 P.2d 918, 920 (1994) (citing Mont. R. Civ. P. Rule 56(c)). To the extent there are factual issues in play, the moving party must first demonstrate the absence of any genuine factual issue. *Morgan v. City of Harlem*, 238 Mont. 1, 5, 775 P.2d 686, 689 (1989). If the moving party meets its burden, the opposing party must establish that a genuine issue of material fact exists for trial. *Roe v. Kornder-Owen*, 282 Mont. 287, 290-91, 937 P.2d 39, 42 (1997). Whether a statute is constitutional is a question of law. *Jaksha v. Butte-Silver Bow County*, 2009 MT 283, ¶13, 352 Mont. 46, 214 P.3d 1248. While the party challenging a statute bears the burden of proving it unconstitutional, in the context of an equal protection challenge, "the State must show that the objective of [the statute] is legitimate and rationally related to the classification used by the Legislature." *See id.*, ¶¶13, 21.

### A. The statute of limitations does not bar Plaintiffs from challenging an ongoing constitutional violation.

Focusing on the dates Plaintiffs signed their respective elections to participate in the DC Plan, the State argues that the constitutional challenge to the Plan Choice Rate is time barred. While Plaintiffs made a one-time election, the Plan Choice Rate is not a one-time deduction. Rather, the Plan Choice Rate is deducted from Plaintiffs' employer contribution each time they are paid.

Montana recognizes that in cases with an ongoing injury, a new cause of action arises each time an injury repeats. *See e.g. Burley v. Burlington Northern & Santa Fe Ry. Co.*, 2012 MT 28, ¶¶13-14, 364 Mont. 77, 273 P.3d 825 (Continuing tort doctrine applies in trespass and nuisance cases where a temporary injury gives rise to a new cause of action each time the injury repeats); *Benjamin v. Anderson*, 2005 MT 123, ¶46, 327 Mont. 173, 112 P.3d 1039 (hostile work environment claim remains actionable "*even though* an employee may reasonably have realized that he or she had an actionable claim at an earlier date, so long as the hostile work environment continued to a point in time that lies within the statutory time limits for filing a claim" (emphasis in original)); *Craver v. Waste Mgmt. Partners of Bozeman*, 265 Mont. 37, 45, 874 P.2d 1, 5 (1994)("[W]here an employer continually fails to comport with Montana's wage laws on a monthly basis, the employee's wage claims accrue on a monthly basis").

All three Plaintiffs remain employed in positions that subject them to the Plan Choice Rate on a bi-weekly basis. Each time Plaintiffs are paid, the Plan Choice Rate is deducted from their respective employer contributions and sent to the DB Plan. Thus, the Plan Choice Rate is an ongoing issue that each Plaintiff is entitled to challenge.

The folly in the State's argument is exposed by simply asking: what would happen if a person who made his election to participate in the DC Plan on February 1, 2014, filed suit to challenge the constitutionality of the Plan Choice Rate? The State would have to concede that, under their rationale, the suit would be timely filed. The State would also have to concede that a ruling determining that the Plan Choice Rate is unconstitutional would apply to all DC Plan participants. If Plaintiffs would benefit from such a ruling in another case, they are legally entitled to bring suit to obtain the ruling, and the State has cited no authority to the contrary.

To the extent a statute of limitations applies, it would apply only to limit how far back the Court could reach to recover amounts wrongly withheld through the Plan Choice Rate. If, for example, the Court rules in Plaintiffs' favor on the merits of their claims and later determines that a five-year statute of limitations applies, Plaintiffs would be limited to recovering Plan Choice Rate deductions and associated gains going back to October 25, 2007, five years before the original complaint was filed. To be sure, any claim for damages has not accrued because the Court has yet to determine that the Plan Choice Rate is unconstitutional. The Court need not decide these issues now, however, as the State has argued only that Plaintiffs' claims are barred in their entirety by the statute of limitations. Because the Plan Choice Rate is withheld every time Plaintiffs are paid, the cause of action accrues every two weeks. *See Craver*, 265 Mont. at 45, 874 P.2d at 5.[9]

Finally, the State does not address Plaintiffs' claim that the additional 1% contribution is also unconstitutional. The additional 1% contribution was created and allocated by the 2013 Legislature and became effective July 1, 2013. Plaintiffs amended their complaint in 2013 to encompass this claim. Accordingly, it is not time-barred.

### B. Plaintiffs' claims are not barred by laches because Plaintiffs are challenging the constitutionality of the Plan Choice Rate itself, not the process by which it was enacted.

"Laches is an equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed or been negligent in asserting the claim, when the delay or negligence has prejudiced the party against whom relief is sought." *Montanans for Justice v. State*, 2006 MT 277, ¶23, 334 Mont. 237, 146 P.3d 759.

[9] Plaintiffs disagree with the State's contention that a two-year statute of limitations applies. Rather than the two-year statute of limitations period advocated by the State, the shortest limitation period that would apply is the 5-year period set forth in §27-2-231, MCA. Plaintiffs are seeking damages for constitutional violations. Such a cause of action is not an action to enforce "a liability created by statute," but would better qualify as "[a]n action for relief not otherwise provided for." *See* Mont. Code. Ann. §27-2-231.

Laches applies only when "there has been such delay as to render enforcement of the asserted right inequitable." *Id.*, ¶25. "Laches is not a mere matter of elapsed time, but rather, it is principally a question of inequity of permitting a claim to be enforced." *Cole v. State*, 2002 MT 32, ¶25, 308 265, 42 P.3d 760. As the Montana Supreme Court has "repeatedly stated," for the doctrine of laches to apply, "a showing must be made that the passage of time has prejudiced the party asserting laches or has rendered the enforcement of a right inequitable." *Id.*

The State's laches argument focuses solely on the length of time that Plaintiffs have been employed by the State/University System. The State ignores that Plaintiffs are challenging the constitutionality of the Plan Choice Rate, an ongoing deduction from the employer contribution of every participant in the DC Plan. The State cites no authority that a constitutional right can be lost due solely to passage of time.

Nor has the State made its required showing of prejudice. The State asserts three reasons that prejudice will ensue if the Court considers the merits of Plaintiffs' claims: (1) members of the DB Plan relied on the actuarial soundness of the plan when they elected to remain in the DB Plan; (2) the pension trust fund would be adversely affected by the invalidation of the Plan Choice Rate; and (3) past legislative sessions "relied on funds generated by the Plan Choice Rate when making decisions about how to shore up the pension trust fund." The State cites no facts to support these assertions. To the contrary, DB Plan participants are guaranteed a statutorily-defined retirement benefit regardless of whether the DB Plan pension trust fund is actuarially sound. Eliminating the Plan Choice Rate would have no effect on the benefits these individuals receive, just as the market losses in 2007 and 2008 had no such effect.

Likewise, the State cites no facts to support its assertion regarding the decisions of past legislatures. Indeed, the State's recognition that past legislatures had to "shore up" the pension trust fund is an implicit admission that the actuarial soundness of the DB Plan depends on factors well outside the funds obtained from the Plan Choice Rate. Regardless, the fact that the Legislature may rely upon funds from the Plan Choice Rate does not mean it complies with Montana's constitutional guarantees to equal protection and due process.

Any adverse effect eliminating the Plan Choice Rate might have on the DB Plan is irrelevant, if any adverse effect would even occur. At the end of fiscal year 2013, after nearly 11 years of existence, the Plan Choice Rate had contributed less than one-half of one-percent of the total assets of the DB Plan. The pension trust fund is adversely affected by market losses and any number of other situations that do not live up to actuarial predictions. As has happened in the past, the State has stepped in to "shore up" the DB Plan. Mont. H.B. 454, 63d Leg. (*eff.* July 1, 2013); *Annual Report* at 17 (noting that the 2013 Legislature, through House Bill

454, appropriated up to $36 million in funds annually for PERS through unallocated portions of coal tax severance collections and interest income from the coal tax permanent fund). To the extent it would even be necessary, the State could take appropriate actions to replace Plan Choice Rate funds.

The State's reliance on *Cole* is misplaced, as the case is readily distinguishable. The plaintiffs in *Cole* sought to overturn a constitutional initiative that imposed term limits on certain political offices. *Cole*, ¶¶1-7. In *Cole*, the plaintiffs did not challenge the constitutionality of term limits themselves, but instead claimed that the ***procedure*** by which term limits were enacted was constitutionally infirm. *Id.*, ¶1-7, 30, 34. Here, Plaintiffs do not challenge the procedure used to enact the Plan Choice Rate, but the constitutionality of the Plan Choice Rate itself. Laches simply does not apply.

The absurdity of the State's argument becomes apparent by applying it to other cases in which the constitutionality of a statute was challenged. In *Gryczan v. State*, for example, six Montana residents who were homosexuals challenged the constitutionality of Montana's deviate sexual conduct law. 283 Mont. 433, 438, 942 P.2d 112, 115 (1997). At the time the declaratory judgment action was filed, the deviate sexual conduct law had been in place for 20 years, with a similar "crimes against nature" statute in effect for many years prior. *Id.* at 439, 942 P.2d at 116. Applying the State's laches theory, the plaintiffs in *Gryczan* would have been barred from challenging the constitutionality of the deviate sexual conduct law because they would have waited too long. Indeed, under the State's laches theory, cases throughout the country that have successfully challenged laws that violate first amendment rights, permit segregation, and discriminate based on race or gender would have been dismissed because the laws had been on the books for years, decades, or even centuries.

### C. Defined benefit plan participants are not necessary parties because a decision in Plaintiffs' favor will not affect the benefits individual DB Plan participants are entitled to receive.

Relying on a twenty-year-old district court case, the State argues all current and retired members of the DB Plan "have a very strong interest in the outcome of this case" and are, therefore, necessary parties. The State has failed to cite the Court to any relevant authority from the Montana Supreme Court. More importantly, the State's argument ignores that DB Plan participants receive statutorily guaranteed benefits. In other words, even if the DB Plan's pension trust fund was zero, the State would still be obligated to make the statutorily-defined retirement payments to all DB Plan participants. Thus, DB Plan participants have no interest in the outcome of this case.

When pursuing a declaratory judgment action, "all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." Mont. Code Ann. § 27-8-301. A person must be joined as a party if (1) the person's absence prevents the court from affording complete relief among the existing parties or (2) the person claims an interest relating to the subject of the action such that a decision would impair the person's ability to protect its interest or leave an existing party subject to a substantial risk of incurring multiple or inconsistent obligations. Mont. R. Civ. P. 19(a)(1). Whether a particular person must be joined as a party depends on the particular facts and circumstances of the case. *John Alexander Ethen Revocable Trust Agreement dated Oct. 17, 1996 v. River Resource Outfitters. LLC*, 2011 MT 143, ¶49, 361 Mont. 57, 256 P.3d 913.

In *River Resource Outfitters*, the plaintiffs brought a declaratory judgment action to resolve a boundary dispute with two neighbors. The district court had declared that "the common boundary line between the parties' properties runs in a meander line along the west bank of Flint Creek." *River Resource Outfitters*, ¶1. On appeal, the defendants argued, in part, that the plaintiffs should have joined as parties "other landowners along Flint Creek." *Id.*, ¶51. The Montana Supreme Court rejected this argument. *Id.*, ¶52. Important to the court was the fact that the boundary at issue was between the properties of the parties to the litigation. *Id.*, ¶51. Thus, while area landowners may have had "an interest in the court's interpretation of the relevant surveys," the only boundary actually in dispute was the one that ran between the properties of the parties to the litigation. *Id.* Because other landowners along Flint Creek did not hold any legal interest in the land in dispute, the district court's decision did not determine the rights of any other landowners; therefore, they were not necessary parties. *Id.*, ¶52.

Here, DB Plan participants do not have any interest that would be affected by this litigation, nor will they be affected by its outcome. As the State recognizes, DB Plan participants receive a statutorily-determined payment in retirement that is based on final average compensation and years of service. *Br.* at 5. The amount or fact of payment does not depend upon investment performance, total assets, or the actuarial soundness of the DB Plan pension trust fund, as it is a statutorily – and contractually – guaranteed amount.

The entire basis for the State's argument is its unsubstantiated contention that "an end to the Plan Choice Rate and recovery of all prior Plan Choice Rate contributions with any gains -- will substantially reduce the DB Plan pension trust fund's capitalization and thereby directly affect the ability of the pension trust fund to provide full benefits to retirees." The State relies upon an unsworn letter from an actuary who provides no basis for his statements, nor does he provide figures for the Court to consider. To be sure, Plan Choice Rate contributions make up well under 1% of the DB Plan's total assets.

The only issue before the Court at this time is whether the Plan Choice Rate is constitutional. While such relief is requested, whether and to what extent past contributions must be refunded would be decided at a later time. Regardless, however, DB Plan participants do not have any legal interest in the assets of the DB Plan pension trust fund, cannot claim an interest in this suit, and are not necessary or proper parties to this declaratory judgment action.

### D. The Plan Choice Rate and the additional 1% contribution violate Plaintiffs' respective rights to equal protection.

Montana's Constitution mandates that "[n]o person shall be denied the equal protection of the laws." Mont. Const., Art. 2, § 4. "Equal protection provides a check on governmental action that treats similarly situated persons in an unlike manner." *Caldwell v. MACo Workers' Comp. Trust*, 2011 MT 162, ¶14, 361 Mont. 140, 256 P.3d 923. Analyzing an equal protection challenge requires a three-step process through which the Court must: (1) determine whether the challenged statute creates similarly situated classes; (2) determine the appropriate level of scrutiny; and (3) apply the level of scrutiny to evaluate the constitutionality of the challenged statute. *Id.*, ¶¶14-15, 20-22.

#### 1. Participants in the DB Plan and DC Plan belong to similarly situated classes.

Persons who are similarly situated regarding a legitimate government purpose must receive like treatment. *Oberson v. U.S. Dept. of Agric.*, 2007 MT 293, ¶19, 339 Mont. 519, 171 P.3d 715. When addressing an equal protection challenge, courts "must first identify the classes involved and determine whether they are similarly situated." *Powell v. State Comp. Ins. Fund*, 2000 MT 321, ¶22, 302 Mont. 518, 15 P.3d 877. However, courts "do not operate on a blank slate regarding the appropriate classification for [ ] equal protection analysis." *Caldwell*, ¶19. Courts instead consider "the statute's purpose in order to determine the threshold question of whether the statute created a discriminatory classification – i.e. a classification that treats two or more similarly situated groups in an unequal manner." *Id. quoting Oberson*, ¶19.

The Montana Supreme Court has found similarly situated classes in a wide variety of situations. In *Reesor v. Montana State Fund*, for example, the plaintiff challenged the constitutionality of a statute that placed an age limitation on eligibility for permanent partial disability (PPD) payments through the state's workers' compensation scheme. 2004 MT 370, ¶1, 325 Mont. 1, 103 P.3d 1019. Under the statute at issue, an injured worker who was retired was ineligible for PPD payments. A person was considered retired if he was receiving or was eligible to receive full social security retirement benefits. *Id.*, ¶¶8-9.

The plaintiff argued that the statute created two similarly situated classes: (1) persons eligible for PPD benefits who receive or are eligible for social security retirement benefits; and (2) persons eligible for PPD benefits who do not receive and are not eligible to receive social security retirement benefits. *Id.*, ¶10. The State Fund argued that the classes were not similarly situated; the Montana

Supreme Court disagreed. *Id.*, ¶12. Specifically, the court found that "both classes have suffered work-related injuries, are unable to return to their time of injury jobs, have permanent physical impairment ratings, and must rely on § 39-71-703, MCA, as their exclusive remedy under Montana law." *Id.*

*Henry v. State Compensation Insurance Fund* is even more instructive. In that case, the plaintiff challenged the unavailability of rehabilitation benefits under the Occupational Disease Act. 1999 MT 126, ¶9, 294 Mont. 449, 982 P.2d 456. The plaintiff argued that it was a violation of equal protection for the Legislature to provide vocational rehabilitation benefits to injured workers covered under the Workers' Compensation Act, while denying the same benefits to injured workers covered under the Occupational Disease Act. *Id.*, ¶1. Generally speaking, a worker who sustained an acute on-the-job injury would be covered under the Workers' Compensation Act, while a worker who developed a condition over two or more work shifts would be covered through the Occupational Disease Act. *Id.*, ¶¶18-21.

The plaintiff in *Henry* argued that the two acts created two similarly situated classes: (1) workers who suffered a work-related injury on one work shift; and (2) workers who suffered a work-related injury on more than one work shift. *Id.*, ¶27. Similar to the argument raised by the State here, the State Fund argued "that the two classes are not similarly situated because each class is required to seek benefits under a separate legislative enactment." *Id.*, ¶28. The Montana Supreme Court bluntly noted that the State Fund "misse[d] the point," as the important facts were that both classes of individuals suffered work-related injuries, were unable to perform their former jobs, needed rehabilitation benefits to return to work, and had their sole source of redress under the Workers' Compensation Act or Occupational Disease Act. *Id.* Thus, the court concluded that the classes were similarly situated for purposes of equal protection. *Id.*

Here, the Plan Choice Rate creates two similarly situated classes: (1) public employees who are eligible to participate in PERS, participate in the DB Plan, and have the full amount of their employer contribution paid to the retirement plan in which they participate; and (2) public employees who are eligible to participate in PERS, participate in the DC Plan or the ORP, and do not have the full amount of their employer contribution paid to the retirement plan in which they participate. Both classes are similarly situated because both are made up of public employees, both are participating in retirement plans available to PERS-eligible members, and both receive an employer retirement contribution equal to 8.17% of salary. The only difference is DC Plan and ORP participants see over 40% of their employer contribution paid as a fee into the DB Plan, a plan from which they are precluded from receiving any benefit.

Like the State Fund in *Henry*, the State's criticism of Plaintiffs' claims misses the point. The State focuses on the differences between the DB Plan and the DC Plan. However, Plaintiffs' claims are not based on differences in benefits or the structures of the two plans. All PERS-eligible public employees participate in the same retirement system. All such employees receive an employer-paid retirement contribution equal to 8.17% of salary. Only DC Plan participants are required to pay part of their employer contribution to a plan from which they cannot benefit.

The State's contention that *Bean v. State* is similar is simply wrong. While *Bean* involved an equal protection challenge to a retirement plan statute, the similarities end there. In *Bean*, the Legislature sought to correct a "'longstanding inequity'" between Montana Air National Guard firefighters and other firefighters in Montana. 2008 MT 67, ¶¶2-3, 342 Mont. 85, 179 P.3d 524. Thus, Guard firefighters hired after October 1, 2001, were enrolled in the Firefighters' Unified Retirement System rather than the PERS. Guard firefighters hired before October 1, 2001, remained in PERS. *Id.* ¶7. The plaintiff in *Bean* was a Guard firefighter who had been hired before October 1, 2001, and, therefore, remained in PERS, which he contended offered inferior benefits. *Id.*, ¶¶8-10.

The Montana Supreme Court determined that the statute at issue in *Bean* created two separate retirement *systems* for Guard firefighters: one for those hired before October 1, 2001, and one for those hired after. *Id.*, ¶17. The court recognized that legislative changes to rights and responsibilities can occur and that all such changes will necessarily involve periods of adjustment. *Id.*, ¶18. Importantly, however, the court noted that, while there was inequity between the classes, the statutory change "operate[d] equally upon members of each class of firefighters." *Id.*, ¶20.

*Bean* is simply not on point because the Legislature did not create a new retirement system when it created the DC Plan and made classified employees of the University System eligible to participate in the ORP. The Legislature could have required all public employees hired after July 1, 2002, to enroll in the DC Plan. The Legislature also could have altered the employer contribution for those hired after July 1, 2002. The Legislature chose not to pursue either option, but instead created a new retirement plan within the same system and attempted to do indirectly what it could not do directly: pay those who participate in the DC Plan a lesser employer contribution. To be sure, the Legislature would not be able to create a statutory scheme under which DB Plan participants receive an 8.17% employer contribution while DC Plan participants receive a contribution of 4.53%. Yet that is precisely what the Legislature has done indirectly through the Plan Choice Rate.

The State's attempt to draw a comparison to the health plans offered to state employees is a non-starter. Plaintiffs do not challenge the "level of benefits" available through the DB Plan and DC Plan. And unlike the retirement plans, participants in the two health plans receive the same state share credit, regardless of the health plan that has been chosen. Mont. Code Ann. §2-18-703. Thus, unlike with the DB Plan and the DC Plan, the State has not attempted to make participants in the "classic" health plan pay part of their state share credit to fund benefits for those in the "choice" health plan.

Finally, the State argues that the Plan Choice Rate "is not withheld from [DC Plan] participants because it was never allocated to them in the first place, but to the DB Plan." *Br.* at 26. The State credits DC Plan participants with their entire employer contribution, yet pays only 4.19% to their respective retirement accounts. If the employer contribution "was never allocated to them in the first place," there would be no need for the entire 8.17% so show up on a paystub. The State is simply giving with one hand only to take with the other – while making DC Plan participants help fund a retirement plan in which they are forbidden from participating.

**2. That PERS-eligible employees choose whether to participate in the DB Plan, the DC Plan, or the ORP does not mean state action is lacking.**

The State argues that "state action" is lacking because Plaintiffs chose to participate in the DC Plan. *Br.* at 22. The State then takes its argument a step further by proclaiming that "Plaintiffs are not in a [DC Plan] because of some immutable characteristic, such as their race, sex or age." *Id.* It was the State that established the DC Plan and the Plan Choice Rate. And it was the State that implemented a system that requires Plaintiffs to pay for a retirement plan from which they are statutorily precluded from benefiting.

The Montana Supreme Court has found statutes violate equal protection even when choice is involved. In *Oberson*, for example, the court found that portions of Montana's snowmobile liability statute violated equal protection, despite the fact that riding a snowmobile is a choice. *Oberson*, ¶22. In *Brewer v. Ski-Lift, Inc.*, the court concluded that portions of Montana's skier responsibility statutes violated equal protection. 234 Mont. 109, 116, 762 P.2d 226, 231 (1988). Like snowmobiling, skiing is a choice.

The State has not cited any authority which has upheld a discriminatory statute because there was some element of choice involved. Indeed, under the State's theory, the concept of equal protection could be thrown out the window, as almost every statute involves some element of choice. For example, under the State's analysis, the State could pass a law making it illegal for women to vote in Billings. People choose where to live, after all, so residence is not an "immutable characteristic, such as [ ] race, sex or age." Even in the context of this case, under the State's theory, the State could constitutionally apply a higher Plan Choice rate based on race, sex or age, since participation in the DC Plan is a choice. While these examples are absurd, so is the State's contention that the Plan Choice Rate involves no state action. Simply put, that public employees are required to choose a retirement plan does not insulate the State from treating employees in a fair and consistent manner.

#### 3. While ensuring the DB Plan is actuarially sound is a legitimate state interest, the Plan Choice Rate is not rationally related to achieving that interest.

To satisfy rational basis, a statute must bear a rational relationship to a legitimate governmental interest. *Caldwell*, ¶23. It is the State's obligation to show that the objective of a statute "is legitimate and rationally related to the classification used by the Legislature." *See Jaksha*, ¶21 ("In order to survive rational basis review, the State must show that the objective of §7-33-4107, MCA, is legitimate and rationally related to the classification used by the Legislature"). Cost containment presents a legitimate state interest, however, it cannot be the sole reason for disparate treatment. *Caldwell*, ¶34. Indeed, "[c]ost alone is insufficient to justify the disparate treatment of similar classes." *Id.*, ¶48 *quoting Satterlee v. Lumberman's Mut. Cas. Co.*, 2009 MT 368, ¶29, 353 Mont. 265, 222 P.3d 566. If courts were to allow otherwise, "'cost containment' alone could justify nearly every legislative enactment without regard for the guarantee of equal protection of the law." *Id.*, ¶34. Though stated in the context of workers' compensation benefits, the following pronouncement applies equally to retirement plans:

> Not surprisingly, discrimination in the form of "offering services to some while excluding others for any arbitrary reason, will *always* result in lower costs." We must scrutinize attempts to disguise violations of equal protection as legislative attempts to "contain the costs" or "improve the viability" of the worker's compensation system. Cost alone does not justify the disparate treatment of similar classes.

*Id.*, ¶35 (citations omitted).

In *Caldwell*, the Montana Supreme Court addressed the constitutionality of §39-71-710, which denied access to rehabilitation benefits based solely on the claimant's age-based eligibility for social security benefits. *Id.*, ¶¶7, 10. The defendant, MACo Workers' Compensation Trust ("MACo"), and amicus Montana State Fund ("MSF") offered seven "interests" that they contended supported the categorical elimination of rehabilitation benefits. *Id.*, ¶37. The Montana Supreme Court addressed each and concluded that the interests offered "either (1) duplicate the cost-containment interest or (2) bear no relation to the elimination of rehabilitation benefits in §39-71-710, MCA." *Id*, ¶48. Ultimately, the court concluded that the categorical elimination of benefits "serve[d] no legitimate governmental interest, other than cost-containment, and therefore violate[d] equal protection." *Id.*

Among the seven "interests" offered by MACo and MSF were "assisting the worker at a reasonable cost to the employer"; "controlling the costs of the workers' compensation program in order to continue providing benefits"; and "creating reasonably constant rates for employers." *Id.*, ¶37. The court specifically found that each of these purported interests simply duplicated the interest in cost-containment. *Id.*, ¶¶39-40, 43. The court rejected the notion that the legislature could "eliminate benefits from one class of people *in order to* continue providing benefits to another class of similarly situated people." *Id.*, ¶43 (emphasis in original).

As *Caldwell* makes clear, it is bedrock law in Montana that cost or cost containment cannot be the sole reason for disparate treatment. And yet, the sole reason the State offers to justify the Plan Choice Rate is "to ensure the actuarial soundness of the DB Plan." *Br.* at 28. Plaintiffs agree that ensuring the actuarial soundness of the DB Plan is a legitimate state interest. The State's means of doing so – the Plan Choice Rate – simply is not rationally related to that interest and is nothing more than cost containment dressed up as a different interest.

The State asserts two reasons the Plan Choice Rate is necessary: (1) to pay past unfunded liability obligations and (2) to compensate the DB Plan for increased costs that result from PERS members selecting the DC Plan. *Br.* at 29. The State does not attempt to explain or support these assertions, which is reason alone to reject them. Nevertheless, they do not hold water.

To the extent the State claims the Plan Choice Rate is necessary to compensate the DB Plan for "past unfunded liability obligations," this was taken into account when the DC Plan was created. People who were active members of PERS "the day before the effective date of the defined contribution plan" who elected to transfer to the DC Plan were permitted to transfer only a portion of their employer contributions. Mont. Code Ann. §19-3-2114(1). The amount eligible for transfer depended upon years of service, with the maximum amount available for transfer capped at 65.53% for those with fewer than five years of service. Mont. Code Ann. §19-3-2114(1)(b). Those with longer terms of service were allowed to transfer an even smaller percentage of their employer contributions. *Id.*

The various percentages were based upon "the contribution amount historically available to pay unfunded liabilities in the defined benefit plan." *Id.* In other words, public employees who elected to transfer to the DC Plan when it went into effect had their employer contributions reduced *to take into account unfunded liabilities in the defined benefit plan.* It goes without saying that public employees hired after the DC Plan went into effect cannot have contributed to, and therefore cannot be responsible for, any unfunded liabilities in the DB Plan that pre-date their employment. Thus, to the extent the State contends paying past unfunded liability obligations is a rational basis for the Plan Choice Rate, it is factually wrong.

The State has also failed to explain its contention that the Plan Choice rate is necessary to compensate the DB Plan for increased costs created by participants in the DC Plan. The State does not identify any costs that are incurred by the DB Plan. Indeed, DC Plan participants cannot cause the DB Plan to incur costs because they are statutorily ineligible to receive any benefits from the DB Plan.

The State may be arguing that DC Plan participants "cost" the DB Plan by not paying into it. The Plan Choice Rate is purportedly designed to reimburse the DB Plan for "normal cost rate changes . . . resulting from member selection of the defined contribution plan." Mont. Code Ann. §19-2-303. The normal cost is "an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future." Mont. Code Ann. §19-2-303(34). The change in the normal cost rate is:

> an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the compensation paid to all of the members in the defined benefit plan, divided by the compensation paid to all of the members in the defined contribution plan.

Mont. Code Ann. §19-3-2121(3).

In plain English, the normal cost is the amount necessary to fund benefits for participants in the DB Plan. The Plan Choice Rate holds DC Plan participants responsible for changes to the normal cost, which is the difference between what the normal cost actually is and what it would be if all PERS-eligible members participated in the DB Plan. The problem with this analysis, and this justification for the Plan Choice Rate, is it does not take into account the fact that DC Plan participants cannot obtain benefits from the DB Plan. In other words, the Plan Choice Rate counts the lack of contributions from DC Plan participants as a "cost," but does not take into account savings that accrue from not having to pay benefits to DC Plan participants.

This reveals the Plan Choice Rate for what it really is: a cost containment measure. The Plan Choice Rate was concocted, not to assess costs to those who caused them to be incurred, but to offer additional funding for the DB Plan without increasing the cost to DB Plan participants, the State or other public employers. The State could have chosen to fund the DB Plan by requiring additional contributions from employers, appropriations from the general fund, or any number of methods. Instead, it chose to make employees who are statutorily precluded from receiving benefits pay into the DB Plan, with the sole reason being to eliminate additional costs. This is precisely what Montana's Equal Protection Clause is designed to prevent. *See Caldwell*, ¶¶33-48.

With its focus on the Plan Choice Rate, the State does not even attempt to justify the basis for the additional 1% employer contribution, which is part of the employer contribution allocated to each employee, including DC Plan participants. The additional 1% contribution has been allocated to the DB Plan solely to provide additional funds for the DB Plan. The only justification for requiring DC Plan participants to contribute this amount rather than enacting some other method of "shoring up" the DB Plan is cost containment. Thus, like the Plan Choice Rate itself, there is no rational basis for allocating the additional 1% contribution granted to DC Plan participants to the DB Plan.

There is no rational basis for requiring public employees who are statutorily precluded from receiving benefits from the DB Plan to pay into it. Yet requiring DC Plan participants to pay a significant portion of their employer contribution into the DB Plan does just that. Plaintiffs respectfully ask the Court to conclude that the Plan Choice Rate and the allocation of the additional 1% contribution violate Plaintiffs' rights to equal protection under the Montana Constitution.

### E. The Plan Choice Rate and the additional 1% contribution violate Plaintiffs respective rights to due process.

The Montana Constitution guarantees that no person shall be deprived of life, liberty, or property without due process of law. Mont. Const., Art II, §17. The due process guarantee has both a procedural and substantive component. *State v. Egdorf*, 2003 MT 264, ¶19, 317 Mont. 436, 77 P.3d 517. "Substantive due process bars arbitrary governmental actions regardless of the procedures used to implement them and serves as a check on oppressive governmental action." *Id.* *See also Hardy v. Progressive Specialty Ins. Co.*, 2003 MT 85, ¶35, 315 Mont. 107, 67 P.3d 892 ("Substantive due process prohibits the state from taking unreasonable, arbitrary or capricious action"). As the Montana Supreme Court has often recognized:

> The theory underlying substantive due process reaffirms the fundamental concept that the due process clause contains a substantive component which bars arbitrary governmental actions regardless of the procedures used to implement them, and serves as a check on oppressive governmental action.... Substantive due process primarily examines underlying substantive rights and remedies to determine whether restrictions are unreasonable or arbitrary when balanced against the purpose of the legislature in enacting the statute.

*Egdorf quoting Newville v. State*, 267 Mont. 237, 249, 883 P.2d 793, 800.

Substantive due process analysis measures the reasonableness of a statute versus the State's power to enact the legislation. *Egdorf*, ¶21. To survive a substantive due process challenge, a statute (1) must be related to a legitimate government concern and (2) "the means chosen by the Legislature to accomplish its objective [must be] reasonably related to the result sought to be obtained." *Walters v. Flathead Concrete Products, Inc.*, 2011 MT 45, ¶17, 359 Mont. 346, 249 P.3d 913. The Montana Supreme Court has "adopted a three-part test for determining whether a statute has exceeded the restraints imposed upon it by substantive due process." *Town Pump, Inc. v. City of Red Lodge*, 1998 MT 294, ¶19, 292 Mont. 6, 971 P.2d 349. The legislation must:

> (a) seek to achieve a legitimate governmental purpose; (b) use means that are rationally related thereto; and (c) be neither arbitrary nor unreasonable in its effects.

*Id.*

In both *Newville* and *Hardy*, the Montana Supreme Court determined that statutes ran afoul of substantive due process guarantees. In *Newville*, the plaintiff challenged the constitutionality of Montana's comparative negligence statute, which at the time permitted a jury to apportion negligence to non-parties. 267 Mont. at 247, 883 P.2d at 799. While the court recognized that "reasons for enactment of comparative negligence tort reform legislation are valid governmental purposes," the court nevertheless determined that the Montana Legislature acted "arbitrarily and unreasonably" in the way it responded to the need. *Id.* at 254-55, 883 P.2d at 803. The court found the statute imposed a burden on plaintiffs to anticipate defendants' attempts to apportion blame up to the time of submission of the verdict form to the jury. *Id.* at 252, 883 P.2d at 802. Ultimately, the court concluded that the statute violated the substantive due process rights of plaintiffs in negligence actions. *Id.*

In *Hardy*, the court likewise concluded that the state had a legitimate interest in the purpose asserted to support a statute, but held that the statute violated substantive due process. In *Hardy*, the plaintiff challenged the constitutionality of a statute that permitted "anti-stacking" clauses in underinsured motorist policies. *Hardy*, ¶¶30-31. The defendants argued that the statute was "reasonably related to making and keeping insurance premiums affordable for all Montanans." *Id.*, ¶36. The court acknowledged that lower insurance rates may constitute a legitimate state interest, but concluded that the anti-stacking statute simply allowed insurers to charge premiums for non-existent coverage, which was "the antithesis of affordable coverage." *Id.*, ¶37. Thus, even with a legitimate governmental interest, the court concluded that the anti-stacking statue was "not rationally related to the stated objective of maintaining affordable insurance in Montana, nor any other 'permissible legislative objective.'" *Id.*, ¶38.

Like the comparative negligence statute in *Newville* and the anti-stacking statute in *Hardy*, the Plan Choice Rate fails the substantive due process analysis. Plaintiffs agree that maintaining an actuarially sound DB Plan is a legitimate state interest. Like the comparative negligence scheme in *Newville* and the anti-stacking statute in *Hardy*, however, the Plan Choice Rate simply is not rationally related to that interest. The Plan Choice Rate requires DC Plan participants to contribute nearly half of their employer contribution to the DB Plan, a plan from which they are statutory precluded from participating. In this way, the Plan Choice Rate reduces the employer contribution of DC Plan participants, while the entire employer contribution of DB Plan participants is paid to the retirement plan in which they participate and from which they benefit. Like the anti-stacking statute in *Hardy*, which allowed insurers "to deprive Montanans of their hard earned money for no consideration," the Plan Choice Rate allows the State to deprive DC Plan participants of a significant portion of their employer contribution, which they have earned. *See id.*, ¶37.

In addition to not being rationally related to the State's objective of ensuring an actuarially sound DB Plan, the Plan Choice rate is arbitrary and unreasonable in its effects. All public employees must choose a retirement plan, but only those who elect to participate in the DC Plan are assessed a fee for their choice. Participants in the DB Plan have their entire employer contribution paid into the retirement plan in which they participate, while DC Plan participants receive only a portion of their employer contribution. Unlike DB Plan participants, DC Plan participants are forced to pay for a plan in which they are statutorily precluded from participating. DB Plan participants receive the full benefit of their employer contribution, as it funds the retirement plan that will provide them with a guaranteed lifetime benefit, regardless of the performance of DB Plan investments. DC Plan participants, on the other hand, receive a lesser contribution, even though they take on all risk of funding their retirement and ultimately cost the State significantly less money. As set forth above, this has real consequences to the tune of hundreds of thousands of dollars. Simply put, this arbitrary process is unreasonable in its effects and violates substantive due process.

The State's contention that the Plan Choice Rate is not a due process violation falls short. The State simply asserts that the stated objective of the Plan Choice Rate, to ensure that the DB Plan is actuarially sound, is important. Having a legitimate state interest alone, however, is not sufficient. *See Newville*, 267 Mont. at 252, 883 P.2d at 803; *Hardy*, ¶¶36-38. The State does not even attempt to defend the Plan Choice Rate as being rationally related to that objective, nor does the State attempt to establish that the Plan Choice Rate is neither "arbitrary nor unreasonable in its effects." *Town Pump*, ¶19. Applying the State's rationale, the State could take any steps in the name of "ensuring the actuarial soundness of the DB Plan," regardless of the discriminatory effect. For example, the State could eliminate the entire employer contribution to DC Plan participants and require all employer contributions to be paid to the DB Plan, so long as the purpose was to ensure the DB Plan is actuarially sound. The State could, likewise, require employees with fewer years of service to pay a higher Plan Choice Rate since they may leave public employment earlier. Indeed, the State could enact any number of discriminatory requirements, so long as the stated goal was to ensure the DB Plan is actuarially sound.

The question before the Court is not whether ensuring the actuarial soundness of the DB Plan is a legitimate state interest. Plaintiffs agree that it is. The questions before the Court are whether the Plan Choice Rate is rationally related to that interest and whether the Plan Choice Rate is arbitrary or unreasonable in its effects. The State has not attempted to address these questions. Plaintiffs, on the other hand, have established that the Plan Choice Rate is not rationally related to the State's interest in ensuring the DB Plan is actuarially sound and is arbitrary and unreasonable in its effect. Accordingly, the Court should deny the State's motion and grant Plaintiffs' cross-motion.

## IV. Conclusion

The Plan Choice Rate and the additional 1% contribution are unreasonable and arbitrary and are not rationally related to keeping the DB Plan actuarially sound. Plaintiffs respectfully ask the Court to find that the Plan Choice Rate and the additional 1% contribution violate Plaintiffs' rights to equal protection and due process. Plaintiffs further ask the Court to deny the State's motion for summary judgment, enter summary judgment in favor of Plaintiffs, and set a schedule to consider issues related to damages and class certification.

DATED this 23rd day of May, 2014.

KALKSTEIN, JOHNSON & DYE, P.C.

By______________________________
Travis Dye
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May, 2014, a true and correct copy of the foregoing was served upon the following by the means indicated:

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Montana Attorney General
J. Stuart Segrest
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______________________________

# EXHIBIT 1

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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY

| | |
|---|---|
| EDWARD D. WRZESIEN and LACEY VAN GRINSVEN, individually and on behalf of all similarly situated persons, and MEGAN ASHTON, individually,<br><br>Plaintiffs,<br><br>vs.<br><br>STATE OF MONTANA and MONTANA PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION,<br><br>Defendants. | Cause No. DDV 2012-931<br>Hon. James P. Reynolds<br><br>**DECLARATION OF LACEY VAN GRINSVEN** |

1. I am a Plaintiff in this lawsuit. I have personal knowledge of the facts set forth in this declaration.

2. I have been employed by the State of Montana since April 2006 and remain employed by the State of Montana today.

3. I continue to participate in the Defined Contribution Plan.

4. I am paid bi-weekly. My pay statements contain a section titled "Employer Paid Benefits" under which there is an amount attributed to "Public Employees Retirement." The amount is 8.17% of my pay.

5. My Defined Contribution Plan account is not credited with the full 8.17% employer contribution.

6. Attached to this declaration are true and correct copies of my most recent pay statement, dated May 14, 2014, and my most recent Defined Contribution Plan account statement, dated March 31, 2014.

7. To the best of my knowledge, the information contained in these documents is accurate.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: 5 · 23, 2014.

Lacey Van Grinsven

Lacey Van Grinsven

State of Montana
Defined Contribution Plan
P.O. Box 173764
Denver, CO 80217-3764

PERA

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

LACEY L VANGRINSVEN

Statement Period: 01/01/2014 - 03/31/2014
Participant ID:
Plan: 98469-02
State of Montana, State of Montana - Unassigned

## What is my account balance?

**$60,142.13**

As of 03/31/2014

## Where can I go for help?

**Website:** www.MPERAdcplans.com
**Phone:** 1-877-699-4015
**Mail:** Great-West Financial
P.O. Box 173764
Denver, CO 80217-3764

## What might my monthly income be at retirement?

Your current account converted to income at retirement may be: **$2,375.03** / month (after tax)

**This figure, referred to on this statement as "Income at Retirement," is a hypothetical illustration that may help you evaluate your retirement readiness. It is not a guarantee of future income or a projection of the future value of your account. It does not represent the performance of any particular investment options.** Your Income at Retirement is calculated based on the current balance of this account using limited factors and assumptions. For information on these factors and assumptions, please see "An Important Message about your Income at Retirement" later in this statement.

To see a more extensive, personalized retirement income projection which may include additional assets and income sources outside of your employer retirement plan, access your **Retirement Income Control Panel** online at www.MPERAdcplans.com.

## How has my account changed?

| | Employee | Employer | Total |
|---|---|---|---|
| **Balance as of December 31, 2013** | **$35,797.17** | **$21,565.63** | **$57,362.80** |
| Payroll Contributions | 1,062.84 | 563.70 | 1,626.54 |
| Change in Value | 738.81 | 444.33 | 1,183.14 |
| Expenses | -18.96 | -11.39 | -30.35 |
| **Balance as of March 31, 2014** | **$37,579.86** | **$22,562.27** | **$60,142.13** |

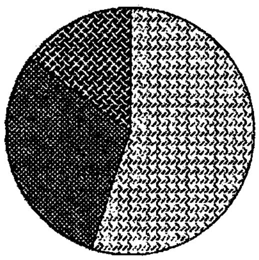


EXHIBIT A

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

LACEY L VANGRINSVEN

## How will my future contributions be invested?

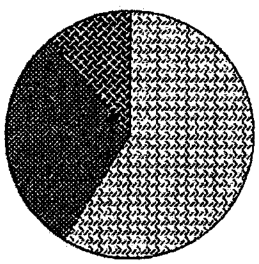


55% Small Cap
  55% Vanguard Small Cap Growth Index

30% Mid Cap
  30% MFS Mid Cap Value R5

15% Fixed
  15% Montana Fixed Fund

## How is my account invested?



58.75% Small Cap

30.02% Mid Cap

11.23% Fixed

| | Beginning Balance | Deposits | Change in Value | Transfers | Withdrawals /Expenses | Ending Balance | Ending Units/ Shares |
|---|---|---|---|---|---|---|---|
| **Small Cap** | | | | | | | |
| Vanguard Small Cap Growth Index | 33,934.51 | 894.60 | 534.66 | | -17.95 | 35,345.82 | 1,012.484 |
| **Mid Cap** | | | | | | | |
| MFS Mid Cap Value R5 | 16,948.67 | 487.92 | 618.56 | | -8.98 | 18,046.17 | 883.317 |
| **Fixed** | | | | | | | |
| Montana Fixed Fund | 6,479.62 | 244.02 | 29.92 | | -3.42 | 6,750.14 | 668.891 |
| **Totals** | **57,362.80** | **1,626.54** | **1,183.14** | | **-30.35** | **60,142.13** | |

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

LACEY L VANGRINSVEN

## How is my account being funded?

| | Beginning Balance | Deposits | Change in Value | Transfers | Withdrawals /Expenses | Ending Balance |
|---|---|---|---|---|---|---|
| Employee Ongoing Contribution | 33,489.59 | 1,062.84 | 689.80 | | -17.78 | 35,224.45 |
| Employee Db To Dc Conversion $ | 2,307.58 | | 49.01 | | -1.18 | 2,355.41 |
| Employer Contribution | 20,164.14 | 563.70 | 414.56 | | -10.67 | 21,131.73 |
| Employer Db To Dc Conversion $ | 1,401.49 | | 29.77 | | -0.72 | 1,430.54 |
| **Totals** | **57,362.80** | **1,626.54** | **1,183.14** | | **-30.35** | **60,142.13** |

## What activity took place this period?

| | Payroll Date | Effective Date | Dollar Amount |
|---|---|---|---|
| **Deposits/Contributions** | | | |
| Payroll Contribution | Jan 06, 2014 | Jan 07, 2014 | 271.09 |
| Payroll Contribution | Jan 21, 2014 | Jan 22, 2014 | 271.09 |
| Payroll Contribution | Feb 03, 2014 | Feb 04, 2014 | 271.09 |
| Payroll Contribution | Feb 18, 2014 | Feb 19, 2014 | 271.09 |
| Payroll Contribution | Mar 03, 2014 | Mar 04, 2014 | 271.09 |
| Payroll Contribution | Mar 17, 2014 | Mar 18, 2014 | 271.09 |
| **Total Deposits/Contributions** | | | **1,626.54** |

| | Effective Date | Dollar Amount | Investment Option | # Units /Shares | Unit/Share Price |
|---|---|---|---|---|---|
| **Expenses** | | | | | |
| Asset based charge | Mar 24, 2014 | -17.95 | Vanguard Small Cap Growth Index | -0.512 | 35.090 |
| Asset based charge | Mar 24, 2014 | -3.42 | Montana Fixed Fund | -0.339 | 10.088 |
| Asset based charge | Mar 24, 2014 | -8.98 | MFS Mid Cap Value R5 | -0.446 | 20.140 |
| **Total Expenses** | | **-30.35** | | | |
| **Dividends/Capital Gains** | | | | | |
| Dividend | Mar 24, 2014 | 3.04 | Vanguard Small Cap Growth Index | 0.087 | 35.090 |
| **Total Dividends/Capital Gains** | | **3.04** | | | |

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

LACEY L VANGRINSVEN

**Important Information**: Montana Fixed Fund Rate for 2nd Quarter is: 1.87%

**MANAGE AND MONITOR YOUR ACCOUNT** 24 hours a day, seven days a week in a secure, user-friendly way.

**Web site at www.MPERADCPLANS.com allows you to:**
- View your account balance, investment allocations, asset allocation, contributions, transfers, and withdrawal history
- Personalize your PIN and username
- Transfer among funds and/or change future contribution allocations, view fund overviews, and monthly performance returns.
- Use Financial Planning tools, Paycheck Calculators, Planners, Investment Option Calculators, and much more.
- Elect to receive statements electronically with Online File Cabinet(R)
- The Retirement Income Control Panel brought to you by Advised Assets Group, LLC (AAG), a federally registered investment adviser.
- It all starts with a projection of how your lump sum account balance will translate into a monthly income amount in retirement.
- Tailor the results by inputting your annual salary, your retirement age, and the percentage of income you want.
- In just a few quick and simple steps you can take control of your retirement readiness.

**Don't have a PIN?** You can order a new PIN from the home page of **www.MPERADCPLANS.com.**
Just click on "Forgot Your PIN?" then click on the "Order PIN" button and enter your Social Security number to have one mailed to you.

**Can't remember your PIN?** To get a temporary PIN, call KeyTalk(R) at **877-699-4015** and speak with a Customer Service Representative.

**The new eNewsletter is waiting for you online!** Just log into your Plan's website and click on "Newsletters" under the Education tile.

Access to KeyTalk(R) and any Web site may be limited or unavailable during periods of peak demand, market volatility, systems upgrades/maintenance or other reasons. Transfer requests made via the Web site or KeyTalk received on business days prior to close of the New York Stock Exchange (4:00 p.m. Eastern Time or earlier on some holidays or other special circumstances) will be initiated at the close of business the same day the request was received. The actual effective date of your transaction may vary depending on the investment option selected.
The account owner is responsible for keeping the assigned PIN confidential. Please contact Great-West Financial(R) immediately if you suspect any unauthorized use.

The Retirement Income Control Panel is an educational tool that provides hypothetical information for illustrative purposes only. It is not intended to provide financial planning or investment advice. The Retirement Income Control Panel is brought to you by Advised Assets Group, LLC, a registered investment adviser. 

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

LACEY L VANGRINSVEN

## How have the investments in my plan performed?

The Investment Code can be used when you request certain investment related transactions on the voice response system.

Current performance may be lower or higher than performance data shown. Performance data quoted represents past performance and is not a guarantee or prediction of future results. For performance data current to the most recent month-end, please visit www MPERAdcplans.com. The investment return and principal value of an investment will fluctuate so that, when redeemed, shares/units may be worth more or less than their original cost.

Please consider the investment objectives, risks, fees and expenses carefully before investing. For this and other important information about investments offered through your Plan, you may obtain mutual fund prospectuses from your registered representative or Plan website. Read them carefully before investing.

For additional fund information, please refer to the Fund Fact Sheet or Prospectus.

| | | | | **Average Annualized Total Return as of March 31, 2014** | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **Investment Option** | **Investment Code** | **3 Month** | **YTD** | **1 Year** | **3 Year** | **5 Year** | **Inception /10 Year** | **Inception Date** | **Expense Ratio** |
| **Asset Allocation** | | | | | | | | | |
| T. Rowe Price Retirement 2005 Fund [1,2,8] | 532 | 1.70 | 1.70 | 7.88 | 6.85 | 12.78 | 6.29 | Feb 2004 | .59 |
| T. Rowe Price Retirement 2010 Fund [1,2,8] | 5158 | 1.68 | 1.68 | 9.37 | 7.47 | 14.24 | 6.56 | Sep 2002 | .60 |
| T. Rowe Price Retirement 2015 Fund [1,2,8] | 386 | 1.61 | 1.61 | 11.65 | 8.44 | 15.89 | 6.97 | Feb 2004 | .65 |
| T. Rowe Price Retirement 2020 Fund [1,2,8] | 5159 | 1.62 | 1.62 | 13.73 | 9.26 | 17.32 | 7.26 | Sep 2002 | .69 |
| T. Rowe Price Retirement 2025 Fund [1,2,8] | 387 | 1.56 | 1.56 | 15.70 | 9.96 | 18.49 | 7.51 | Feb 2004 | .72 |
| T. Rowe Price Retirement 2030 Fund [1,2,8] | 4508 | 1.50 | 1.50 | 17.26 | 10.54 | 19.41 | 7.77 | Sep 2002 | .75 |
| T. Rowe Price Retirement 2035 Fund [1,2,8] | 388 | 1.41 | 1.41 | 18.48 | 10.90 | 20.00 | 7.81 | Feb 2004 | .77 |
| T. Rowe Price Retirement 2040 Fund [1,2,8] | 4509 | 1.41 | 1.41 | 19.21 | 11.21 | 20.24 | 7.93 | Sep 2002 | .78 |
| T. Rowe Price Retirement 2045 Fund [1,2,8] | 389 | 1.35 | 1.35 | 19.19 | 11.21 | 20.21 | 7.87 | May 2005 | .78 |
| T. Rowe Price Retirement 2050 Fund [1,2,8] | 403 | 1.38 | 1.38 | 19.24 | 11.24 | 20.22 | 6.07 | Dec 2006 | .78 |
| T. Rowe Price Retirement 2055 Fund [1,2,8] | 533 | 1.39 | 1.39 | 19.24 | 11.23 | 20.25 | 6.06 | Dec 2006 | .78 |
| T. Rowe Price Retirement Income Fund [1,2,8] | 5157 | 1.43 | 1.43 | 7.13 | 6.26 | 11.37 | 5.76 | Sep 2002 | .57 |
| **International** | | | | | | | | | |
| American Funds New Perspective A [4,8] | 1019 | .27 | .27 | 19.68 | 10.85 | 18.81 | 8.88 | Mar 1973 | .79 |
| Oakmark International I [4,8] | 1168 | .80 | .80 | 23.75 | 12.28 | 23.73 | 10.20 | Sep 1992 | .98 |
| Oppenheimer Developing Markets Y [4,8] | 1354 | -1.73 | -1.73 | 6.61 | 2.32 | 19.90 | 14.69 | Sep 2005 | 1.06 |
| Vanguard Total Intl Stock Index Inv [4,8] | 1208 | .77 | .77 | 12.71 | 4.35 | 15.36 | 6.86 | Apr 1996 | .22 |
| **Small Cap** | | | | | | | | | |
| Target Small Capitalization Value T [5,8] | 2326 | 1.30 | 1.30 | 22.49 | 12.95 | 23.35 | 10.45 | Jan 1993 | .67 |
| Vanguard Small Cap Growth Index [5,8] | 2354 | 1.58 | 1.58 | 24.75 | 13.58 | 26.96 | 10.16 | May 1998 | .24 |
| Vanguard Small Cap Index Signal [5,8] | 2307 | 2.60 | 2.60 | 25.28 | 14.34 | 26.80 | 9.89 | Dec 2006 | .10 |
| **Mid Cap** | | | | | | | | | |
| MFS Mid Cap Value R5 [7,8] | 1075 | 3.55 | 3.55 | 25.13 | 15.21 | 26.23 | 8.99 | Feb 2013 | .89 |
| Munder Mid-Cap Core Growth A [7,8] | 3254 | 1.70 | 1.70 | 20.35 | 12.93 | 22.58 | 9.59 | Jul 2000 | 1.40 |
| **Large Cap** | | | | | | | | | |
| Alger Capital Appreciation Z [8] | 4878 | .85 | .85 | 24.85 | 14.41 | 22.17 | 10.37 | Dec 2010 | .93 |
| BlackRock Equity Index - Collective F [3] | 10277 | 1.80 | 1.80 | 21.85 | 14.67 | 21.24 | 7.50 | Mar 1997 | .04 |
| JPMorgan US Equity R5 [8] | 4774 | 1.75 | 1.75 | 25.07 | 15.16 | 21.65 | 8.73 | May 2006 | .61 |
| Vanguard Equity-Income Adm [8] | 4384 | 2.34 | 2.34 | 19.74 | 16.26 | 21.79 | 8.78 | Aug 2001 | .21 |

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

LACEY L VANGRINSVEN

## How have the investments in my plan performed? (continued)

| Investment Option | Investment Code | 3 Month | YTD | 1 Year | 3 Year | 5 Year | Inception /10 Year | Inception Date | Expense Ratio |
|---|---|---|---|---|---|---|---|---|---|
| | | | | Average Annualized Total Return as of March 31, 2014 | | | | | |
| **Balanced** | | | | | | | | | |
| Vanguard Balanced Index Fund - Inst'l [2,8] | 5150 | 1.99 | 1.99 | 13.06 | 10.47 | 15.20 | 6.98 | Dec 2000 | .08 |
| **Bond** | | | | | | | | | |
| Vanguard Total Bond Market Index Signal [6,8] | 6364 | 1.91 | 1.91 | -.21 | 3.71 | 4.71 | 4.42 | Sep 2006 | .10 |
| **Fixed** | | | | | | | | | |
| Montana Fixed Fund [9] | 1545 | .45 | .45 | 2.08 | 2.90 | N/A | 3.47 | Jan 2010 | .50 |

These returns and fund operating expenses are expressed as percentages. 3, 5 and 10 Year/Since Inception returns shown are annualized. For 10 Year/Since Inception, if the fund was not in existence for 10 years, returns shown are since inception. If the fund is less than one year old, returns are not annualized.

Performance returns reflect a deduction for fund operating expenses. Your Plan may also assess an administrative fee which would reduce the performance quoted above.

Funds may impose redemption fees, and/or transfer restrictions, on certain transfers, redemptions or exchanges if assets are held less than the period stated in the fund's prospectus or other disclosure documents. For more information, please refer to the fund's prospectus and/or disclosure documents.

Investment decisions should not be based solely on the performance data contained herein. Although data is gathered from reliable sources, the completeness or accuracy of the data cannot be guaranteed.

Securities, when offered, are offered through GWFS Equities, Inc., a wholly owned subsidiary of Great-West Life & Annuity Insurance Company. GWFS Equities, Inc., or one or more of its affiliates, may receive a fee from the investment option provider for providing certain recordkeeping, distribution, and administrative services.

On occasion, the name and/or investment objective of an investment option may change. For specific information on whether the option name has changed within the past year, or if the investment objective has changed in the last ten years, please contact your Registered Representative or investment advisor for a current prospectus.

GWFS Equities, Inc., or one or more of its affiliates, may receive a fee from the investment option provider for providing certain recordkeeping, distribution, and administrative services.

Great-West Financial(R) refers to products and services provided by Great-West Life & Annuity Insurance Company (GWL&A), Corporate Headquarters: Greenwood Village, CO, its subsidiaries and affiliates. The trademarks, logos, service marks, and design elements used are owned by GWL&A.

Expense ratios shown on client statements are gross expense ratios and do not include any applicable fee waivers or expense reimbursements, as do net expense ratios. The expense ratios may be based on a prior reporting period than those shown on the investment performance report. For the most current expense ratios, including the net expense ratios, please visit www.MPERAdcplans.com and review the investment performance report.

[1] Asset allocation funds are generally subject to a fund operating expense at the fund level, as well as prorated fund operating expenses of each underlying fund in which they invest. For more information, please refer to the fund prospectus and/or disclosure document.

[2] Asset allocation and balanced investment options and models are subject to the risks of the underlying funds, which can be a mix of stocks/stock funds and bonds/bond funds. For more information, see the prospectus and/or disclosure documents.

[3] Collective Trust Fund Option. A ticker symbol is not available for this investment option.

[4] Foreign funds involve special risks, including currency fluctuations and political developments.

[5] Equity securities of small-sized companies may be more volatile than securities of larger, more established companies.

[6] A bond fund's yield, share price and total return change daily and are based on changes in interest rates, market conditions, economic and political news, and the quality and maturity of its investments. In general, bond prices fall when interest rates rise and vice versa. Compared to higher-rated securities, high yield bond investment options are subject to greater risk, including the risk of default.

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

LACEY L VANGRINSVEN

## How have the investments in my plan performed? (continued)

[7] Equity securities of medium-sized companies may be more volatile than securities of larger, more established companies.

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[9] The anticipated net return for 2nd quarter 2014 annualized returns is 1.87%.

Please review this statement carefully to confirm that we have properly acted on your instructions. Corrections will be made only for errors which have been communicated within 90 calendar days of the last calendar quarter. Please direct all inquiries/complaints to the following:

Client Service Department
Attn - Enhanced Participant Services
8515 E. Orchard Rd.
Greenwood Village, CO 80111
1-877-699-4015

After this 90 days, this account information shall be deemed accurate and acceptable to you. If you notify the Company of an error after this 90 days the correction will only be processed from the date of notification forward and not on a retroactive basis.

Some of the plan's administrative expenses for the preceding quarter may have been paid from the total annual operating expenses (investment expenses) of one or more of the plan's investment options.

## ------------An Important Message about your Income at Retirement------------

Your Income at Retirement is a hypothetical illustration that may help you evaluate if you are on target for your desired level of retirement income. Using your Income at Retirement as a guide, you can implement a savings and investment strategy now to achieve your desired retirement goals.

Several factors and assumptions are used to arrive at your Income at Retirement, including your net account balance as of this statement date, historical contributions, and age. To arrive at your Income at Retirement, we assume:

- you will retire at age 67;
- you will earn a 6% annual rate of return prior to your retirement;
- a 2.5% annual inflation rate prior to your retirement;
- you will earn a 4% annual rate of return after your retirement;
- you will take monthly distributions from your account until age 92; and
- you will have a 25% combined federal and state effective income tax rate.

Further, we assume that you will continue to contribute to your employer's retirement plan in the same amount as you have in the past, you will reinvest all earnings, and you will not receive any withdrawals from your account until your retirement date. Your Income at Retirement does not reflect any charges, expenses or fees that may be associated with your employer retirement plan, which may reduce your results. Please remember that all of these assumptions may vary from your actual experience.

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

LACEY L VANGRINSVEN

**Remember, your Income at Retirement is a hypothetical illustration only. It is not a guarantee of future income or a projection of the future value of your account. It does not represent the performance of any particular investment options.** Income at Retirement is not intended as financial planning or investment advice. Please consult with your financial planner, attorney and/or tax adviser as needed.

Pursuant to SEC rules, fund companies are required to enter into agreements with intermediaries to provide fund companies with the ability to identify and enforce restrictions on participants engaging in market timing or excessive trading (prohibited trading), as defined by the fund companies. Participants engaging in prohibited trading will receive a warning and, if the prohibited trading continues, will be restricted from transferring into the identified fund(s) for a specific time period determined by the fund company. Some fund companies may restrict participants immediately, without warning when prohibited trading is identified. At the end of the restriction period, the participant will be automatically allowed to resume transfers into the identified fund(s). Transfers out of the identified fund (s) will not be restricted.

**State of Montana**
PO Box 200127
Helena, MT 59620-0127

| | |
|---|---|
| Pay Group: | BW3-Small Agency Paygroup |
| Pay Begin Date: | 04/19/2014 |
| Pay End Date: | 05/02/2014 |

| | |
|---|---|
| Business Unit: | 41132 |
| Advice #: | 000000004325263 |
| Advice Date: | 05/14/2014 |

**Lacey Leigh VanGrinsven**

| | |
|---|---|
| Employee ID: | |
| Department: | 41132FSD-[illegible] Science Division |
| Location: | DOJ - Forensic Sciences Div |
| Job Title: | Forensic Scientist |
| Pay Rate: | $28.028515 Hourly |

| TAX DATA: | Federal | MT State |
|---|---|---|
| Marital Status: | Single | Married |
| Allowances: | 1 | 1 |
| Addl. Percent: | | |
| Addl. Amount: | | |

**HOURS AND EARNINGS**

| Description | Current Hours | Current Earnings | YTD Hours | YTD Earnings |
|---|---|---|---|---|
| State Share Credit | | 403.00 | | 3,590.50 |
| Regular Pay | 80.00 | 2,242.28 | 800.00 | 22,422.80 |
| **TOTAL:** | **80.00** | **2,645.28** | **800.00** | **26,013.30** |

**TAXES**

| Description | Current | YTD |
|---|---|---|
| Fed Withholdng | 297.29 | 2,969.79 |
| Fed MED/EE | 32.51 | 324.95 |
| Fed OASDI/EE | 139.02 | 1,389.44 |
| MT Withholdng | 103.00 | 1,030.00 |
| **TOTAL:** | **571.82** | **5,714.18** |

**BEFORE-TAX DEDUCTIONS**

| Description | Current | YTD |
|---|---|---|
| Pre-Tax Medical | 348.50 | 3,140.00 |
| Pre-Tax Dental | 26.00 | 234.00 |
| Pre-Tax Basic Life | 0.95 | 8.55 |
| Medical FSA | 27.55 | 220.40 |
| Public Employees Retirement | 177.14 | 1,771.40 |
| **TOTAL:** | **580.14** | **5,374.35** |

**AFTER-TAX DEDUCTIONS**

| Description | Current | YTD |
|---|---|---|
| MT Charitable Giving Campaign | 2.00 | 18.00 |
| College Savings Trust | 0.00 | 0.00 |
| **TOTAL:** | **2.00** | **18.00** |

**EMPLOYER PAID BENEFITS**

| Description | Current | YTD |
|---|---|---|
| Public Employees Retirement | 183.19 | 1,831.90 |

***TAXABLE**

| | TOTAL GROSS | FED TAXABLE GROSS | TOTAL TAXES | TOTAL DEDUCTIONS | NET PAY |
|---|---|---|---|---|---|
| Current | 2,645.28 | 2,065.14 | 571.82 | 582.14 | 1,491.32 |
| YTD | 26,013.30 | 20,638.95 | 5,714.18 | 5,392.35 | 14,906.77 |

| Year-to-Date | Vacation | Sick Leave | Exempt Comp | Non Exempt Comp | Banked Holiday | Banked Holiday Non Grandfather | Military Leave | Comp Time On Call |
|---|---|---|---|---|---|---|---|---|
| **Start Balance** | 142.58 | 11.20 | 51.75 | 0.14 | 0.00 | 0.00 | 0.00 | 0.00 |
| **+ Earned** | 41.58 | 33.21 | 10.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| **-Taken** | 132.50 | 0.00 | 55.50 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| **End Balance =** | 51.66 | 44.41 | 6.25 | 0.14 | 0.00 | 0.00 | 0.00 | 0.00 |

**NET PAY DISTRIBUTION**

| Account Type | Account Number | Deposit Amount |
|---|---|---|
| | | 1,491.32 |
| **TOTAL:** | | **1,491.32** |

**MESSAGE:**

EXHIBIT B

# EXHIBIT 2

Travis Dye
KALKSTEIN, JOHNSON & DYE, P.C.
225 Adams * P.O. Box 8568
Missoula, MT 59807-8568
(406) 721-9800
(406) 721-9896 (fax)
travis@kalksteinlaw.com

Attorneys for Plaintiffs

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY

| | |
|---|---|
| EDWARD D. WRZESIEN and LACEY VAN GRINSVEN, individually and on behalf of all similarly situated persons, and MEGAN ASHTON, individually,<br><br>Plaintiffs,<br><br>vs.<br><br>STATE OF MONTANA and MONTANA PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION,<br><br>Defendants. | Cause No. DDV 2012-931<br>Hon. James P. Reynolds<br><br>**DECLARATION OF MEGAN ASHTON** |

1. I am a Plaintiff in this lawsuit. I have personal knowledge of the facts set forth in this declaration.

2. I have been employed by the State of Montana since October 2003 and remain employed by the State of Montana today.

3. I continue to participate in the Defined Contribution Plan.

4. I am paid bi-weekly. My pay statements contain a section titled "Employer Paid Benefits" under which there is an amount attributed to "Public Employees Retirement." The amount is 8.17% of my pay.

5. My Defined Contribution Plan account is not credited with the full 8.17% employer contribution.

6. Attached to this declaration are true and correct copies of my most recent pay statement, dated May 14, 2014, and my most recent Defined Contribution Plan account statement, dated March 31, 2014.

7. To the best of my knowledge, the information contained in these documents is accurate.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: May 23, 2014.

Megan Ashton

State of Montana
Defined Contribution Plan
P.O. Box 173764
Denver, CO 80217-3764

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

MEGAN A ASHTON

Statement Period: 01/01/2014 - 03/31/2014
Participant ID:
Plan: 98469-02
State of Montana, State of Montana - Unassigned

## What is my account balance?

**$89,075.95**

As of 03/31/2014

## Where can I go for help?

**Website:** www.MPERAdcplans.com
**Phone:** 1-877-699-4015
**Mail:** Great-West Financial
P.O. Box 173764
Denver, CO 80217-3764

## What might my monthly income be at retirement?

Your current account converted to income at retirement may be: **$2,213.57** / month (after tax)

**This figure, referred to on this statement as "Income at Retirement," is a hypothetical illustration that may help you evaluate your retirement readiness. It is not a guarantee of future income or a projection of the future value of your account. It does not represent the performance of any particular investment options.** Your Income at Retirement is calculated based on the current balance of this account using limited factors and assumptions. For information on these factors and assumptions, please see "An Important Message about your Income at Retirement" later in this statement.

To see a more extensive, personalized retirement income projection which may include additional assets and income sources outside of your employer retirement plan, access your **Retirement Income Control Panel** online at www.MPERAdcplans.com.

## How has my account changed?

| | Employee | Employer | Total |
|---|---|---|---|
| **Balance as of December 31, 2013** | **$53,564.09** | **$32,351.93** | **$85,916.02** |
| Payroll Contributions | 1,106.82 | 587.04 | 1,693.86 |
| Change in Value | 936.25 | 564.07 | 1,500.32 |
| Expenses | -21.37 | -12.88 | -34.25 |
| **Balance as of March 31, 2014** | **$55,585.79** | **$33,490.16** | **$89,075.95** |

GREAT-WEST
FINANCIAL
P.O. Box 173764, Denver, CO 80217-3764

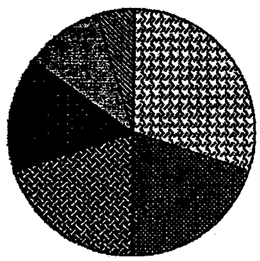


EXHIBIT A

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

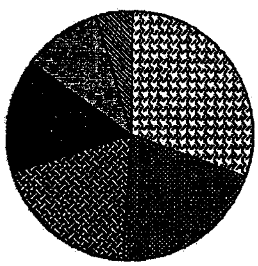
MEGAN A ASHTON

## How will my future contributions be invested?



- 30% Large Cap
  - 30% Vanguard Equity-Income Adm
- 20% Bond
  - 20% Vanguard Total Bond Market Index Signal
- 20% Small Cap
  - 20% Vanguard Small Cap Growth Index
- 15% International
  - 15% Vanguard Total Intl Stock Index Inv
- 10% Mid Cap
  - 10% Munder Mid-Cap Core Growth A
- 5% Fixed
  - 5% Montana Fixed Fund

## How is my account invested?



- 30.41% Large Cap
- 20.38% Small Cap
- 19.41% Bond
- 14.73% International
- 10.24% Mid Cap
- 4.83% Fixed

| | Beginning Balance | Deposits | Change in Value | Transfers | Withdrawals /Expenses | Ending Balance | Ending Units/ Shares |
|---|---|---|---|---|---|---|---|
| **International** | | | | | | | |
| Vanguard Total Intl Stock Index Inv | 12,758.50 | 254.10 | 103.92 | | -6.34 | 13,110.18 | 782.230 |
| **Small Cap** | | | | | | | |
| Vanguard Small Cap Growth Index | 17,555.36 | 338.76 | 276.81 | | -9.17 | 18,161.76 | 520.245 |

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

MEGAN A ASHTON

## How is my account invested? (continued)

| | Beginning Balance | Deposits | Change in Value | Transfers | Withdrawals /Expenses | Ending Balance | Ending Units/ Shares |
|---|---|---|---|---|---|---|---|
| **Mid Cap** | | | | | | | |
| Munder Mid-Cap Core Growth A | 8,790.61 | 169.44 | 153.06 | | 5.45 | 9,118.56 | 214.454 |
| **Large Cap** | | | | | | | |
| Vanguard Equity-Income Adm | 25,978.04 | 508.14 | 627.91 | | -13.37 | 27,100.72 | 427.793 |
| **Bond** | | | | | | | |
| Vanguard Total Bond Market Index Signal | 16,637.20 | 338.76 | 319.42 | | -8.66 | 17,286.72 | 1,617.092 |
| **Fixed** | | | | | | | |
| Montana Fixed Fund | 4,196.31 | 84.66 | 19.20 | | -2.16 | 4,298.01 | 425.902 |
| **Totals** | **85,916.02** | **1,693.86** | **1,500.32** | | **-34.25** | **89,075.95** | |

## How is my account being funded?

| | Beginning Balance | Deposits | Change in Value | Transfers | Withdrawals /Expenses | Ending Balance |
|---|---|---|---|---|---|---|
| Employee Ongoing Contribution | 52,139.90 | 1,106.82 | 911.88 | | -20.82 | 54,137.78 |
| Employee Db To Dc Conversion $ | 1,424.19 | | 24.37 | | -0.55 | 1,448.01 |
| Employer Contribution | 31,486.50 | 587.04 | 549.23 | | -12.53 | 32,610.24 |
| Employer Db To Dc Conversion $ | 865.43 | | 14.84 | | -0.35 | 879.92 |
| **Totals** | **85,916.02** | **1,693.86** | **1,500.32** | | **-34.25** | **89,075.95** |

## What activity took place this period?

| | Payroll Date | Effective Date | Dollar Amount |
|---|---|---|---|
| **Deposits/Contributions** | | | |
| Payroll Contribution | Jan 06, 2014 | Jan 07, 2014 | 282.31 |
| Payroll Contribution | Jan 21, 2014 | Jan 22, 2014 | 282.31 |
| Payroll Contribution | Feb 03, 2014 | Feb 04, 2014 | 282.31 |
| Payroll Contribution | Feb 18, 2014 | Feb 19, 2014 | 282.31 |
| Payroll Contribution | Mar 03, 2014 | Mar 04, 2014 | 282.31 |
| Payroll Contribution | Mar 17, 2014 | Mar 18, 2014 | 282.31 |
| **Total Deposits/Contributions** | | | **1,693.86** |

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

MEGAN A ASHTON

## What activity took place this period? (continued)

| | Effective Date | Dollar Amount | Investment Option | # Units /Shares | Unit/Share Price |
|---|---|---|---|---|---|
| **Expenses** | | | | | |
| Fee Refund | Jan 21, 2014 | 10.01 | Munder Mid-Cap Core Growth A | 0.241 | 41.620 |
| Asset based charge | Mar 24, 2014 | -2.16 | Montana Fixed Fund | -0.214 | 10.088 |
| Asset based charge | Mar 24, 2014 | -4.56 | Munder Mid-Cap Core Growth A | -0.108 | 42.280 |
| Asset based charge | Mar 24, 2014 | -9.17 | Vanguard Small Cap Growth Index | -0.261 | 35.090 |
| Asset based charge | Mar 24, 2014 | -8.66 | Vanguard Total Bond Market Index Signal | -0.811 | 10.680 |
| Asset based charge | Mar 24, 2014 | -13.37 | Vanguard Equity-Income Adm | -0.213 | 62.680 |
| Asset based charge | Mar 24, 2014 | -6.34 | Vanguard Total Intl Stock Index Inv | -0.390 | 16.260 |
| **Total Expenses** | | **-34.25** | | | |
| **Dividends/Capital Gains** | | | | | |
| Dividend | Jan 31, 2014 | 38.18 | Vanguard Total Bond Market Index Signal | 3.568 | 10.700 |
| Dividend | Feb 28, 2014 | 35.65 | Vanguard Total Bond Market Index Signal | 3.322 | 10.730 |
| Dividend | Mar 24, 2014 | 1.57 | Vanguard Small Cap Growth Index | 0.045 | 35.090 |
| Dividend | Mar 24, 2014 | 89.37 | Vanguard Total Intl Stock Index Inv | 5.496 | 16.260 |
| Dividend | Mar 28, 2014 | 207.16 | Vanguard Equity-Income Adm | 3.297 | 62.840 |
| Dividend | Mar 31, 2014 | 38.90 | Vanguard Total Bond Market Index Signal | 3.639 | 10.690 |
| Long Term Capital Gain | Mar 31, 2014 | 1.62 | Vanguard Total Bond Market Index Signal | 0.152 | 10.690 |
| **Total Dividends/Capital Gains** | | **412.45** | | | |

**Important Information**: Montana Fixed Fund Rate for 2nd Quarter is: 1.87%

**MANAGE AND MONITOR YOUR ACCOUNT** 24 hours a day, seven days a week in a secure, user-friendly way.

**Web site at www.MPERADCPLANS.com allows you to:**
- View your account balance, investment allocations, asset allocation, contributions, transfers, and withdrawal history
- Personalize your PIN and username
- Transfer among funds and/or change future contribution allocations, view fund overviews, and monthly performance returns.
- Use Financial Planning tools, Paycheck Calculators, Planners, Investment Option Calculators, and much more.
- Elect to receive statements electronically with Online File Cabinet(R)
- The Retirement Income Control Panel brought to you by Advised Assets Group, LLC (AAG), a federally registered investment adviser.
- It all starts with a projection of how your lump sum account balance will translate into a monthly income amount in retirement.
- Tailor the results by inputting your annual salary, your retirement age, and the percentage of income you want.
- In just a few quick and simple steps you can take control of your retirement readiness.

**Don't have a PIN?** You can order a new PIN from the home page of **www.MPERADCPLANS.com.**
Just click on "Forgot Your PIN?" then click on the "Order PIN" button and enter your Social Security number to have one mailed to you.

**Can't remember your PIN?** To get a temporary PIN, call KeyTalk(R) at **877-699-4015** and speak with a Customer Service Representative.

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

MEGAN A ASHTON

**The new eNewsletter is waiting for you online!** Just log into your Plan's website and click on "Newsletters" under the Education tile.

Access to KeyTalk(R) and any Web site may be limited or unavailable during periods of peak demand, market volatility, systems upgrades/maintenance or other reasons. Transfer requests made via the Web site or KeyTalk received on business days prior to close of the New York Stock Exchange (4:00 p.m. Eastern Time or earlier on some holidays or other special circumstances) will be initiated at the close of business the same day the request was received. The actual effective date of your transaction may vary depending on the investment option selected.
The account owner is responsible for keeping the assigned PIN confidential. Please contact Great-West Financial(R) immediately if you suspect any unauthorized use.

The Retirement Income Control Panel is an educational tool that provides hypothetical information for illustrative purposes only. It is not intended to provide financial planning or investment advice. The Retirement Income Control Panel is brought to you by Advised Assets Group, LLC, a registered investment adviser. 

## How have the investments in my plan performed?

*The Investment Code can be used when you request certain investment related transactions on the voice response system.*

*Current performance may be lower or higher than performance data shown. Performance data quoted represents past performance and is not a guarantee or prediction of future results. For performance data current to the most recent month-end, please visit www.MPERAdcplans.com. The investment return and principal value of an investment will fluctuate so that, when redeemed, shares/units may be worth more or less than their original cost.*

*Please consider the investment objectives, risks, fees and expenses carefully before investing. For this and other important information about investments offered through your Plan, you may obtain mutual fund prospectuses from your registered representative or Plan website. Read them carefully before investing.*

*For additional fund information, please refer to the Fund Fact Sheet or Prospectus.*

| | | Average Annualized Total Return as of March 31, 2014 | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **Investment Option** | **Investment Code** | **3 Month** | **YTD** | **1 Year** | **3 Year** | **5 Year** | **Inception /10 Year** | **Inception Date** | **Expense Ratio** |
| **Asset Allocation** | | | | | | | | | |
| T. Rowe Price Retirement 2005 Fund [1,2,8] | 532 | 1.70 | 1.70 | 7.88 | 6.85 | 12.78 | 6.29 | Feb 2004 | .59 |
| T. Rowe Price Retirement 2010 Fund [1,2,8] | 5158 | 1.68 | 1.68 | 9.37 | 7.47 | 14.24 | 6.56 | Sep 2002 | .60 |
| T. Rowe Price Retirement 2015 Fund [1,2,8] | 386 | 1.61 | 1.61 | 11.65 | 8.44 | 15.89 | 6.97 | Feb 2004 | .65 |
| T. Rowe Price Retirement 2020 Fund [1,2,8] | 5159 | 1.62 | 1.62 | 13.73 | 9.26 | 17.32 | 7.26 | Sep 2002 | .69 |
| T. Rowe Price Retirement 2025 Fund [1,2,8] | 387 | 1.56 | 1.56 | 15.70 | 9.96 | 18.49 | 7.51 | Feb 2004 | .72 |
| T. Rowe Price Retirement 2030 Fund [1,2,8] | 4508 | 1.50 | 1.50 | 17.26 | 10.54 | 19.41 | 7.77 | Sep 2002 | .75 |
| T. Rowe Price Retirement 2035 Fund [1,2,8] | 388 | 1.41 | 1.41 | 18.48 | 10.90 | 20.00 | 7.81 | Feb 2004 | .77 |
| T. Rowe Price Retirement 2040 Fund [1,2,8] | 4509 | 1.41 | 1.41 | 19.21 | 11.21 | 20.24 | 7.93 | Sep 2002 | .78 |
| T. Rowe Price Retirement 2045 Fund [1,2,8] | 389 | 1.35 | 1.35 | 19.19 | 11.21 | 20.21 | 7.87 | May 2005 | .78 |
| T. Rowe Price Retirement 2050 Fund [1,2,8] | 403 | 1.38 | 1.38 | 19.24 | 11.24 | 20.22 | 6.07 | Dec 2006 | .78 |
| T. Rowe Price Retirement 2055 Fund [1,2,8] | 533 | 1.39 | 1.39 | 19.24 | 11.23 | 20.25 | 6.06 | Dec 2006 | .78 |
| T. Rowe Price Retirement Income Fund [1,2,8] | 5157 | 1.43 | 1.43 | 7.13 | 6.26 | 11.37 | 5.76 | Sep 2002 | .57 |
| **International** | | | | | | | | | |
| American Funds New Perspective A [4,8] | 1019 | .27 | .27 | 19.68 | 10.85 | 18.81 | 8.88 | Mar 1973 | .79 |
| Oakmark International I [4,8] | 1168 | .80 | .80 | 23.75 | 12.28 | 23.73 | 10.20 | Sep 1992 | .98 |
| Oppenheimer Developing Markets Y [4,8] | 1354 | -1.73 | -1.73 | 6.61 | 2.32 | 19.90 | 14.69 | Sep 2005 | 1.06 |
| Vanguard Total Intl Stock Index Inv [4,8] | 1208 | .77 | .77 | 12.71 | 4.35 | 15.36 | 6.86 | Apr 1996 | .22 |

MEGAN A ASHTON

## How have the investments in my plan performed? (continued)

| Investment Option | Investment Code | 3 Month | YTD | 1 Year | 3 Year | 5 Year | Inception /10 Year | Inception Date | Expense Ratio |
|---|---|---|---|---|---|---|---|---|---|
| | | | | Average Annualized Total Return as of March 31, 2014 | | | | | |
| **Small Cap** | | | | | | | | | |
| Target Small Capitalization Value T [5,8] | 2326 | 1.30 | 1.30 | 22.49 | 12.95 | 23.35 | 10.45 | Jan 1993 | .67 |
| Vanguard Small Cap Growth Index [5,8] | 2354 | 1.58 | 1.58 | 24.75 | 13.58 | 26.96 | 10.16 | May 1998 | .24 |
| Vanguard Small Cap Index Signal [5,8] | 2307 | 2.60 | 2.60 | 25.28 | 14.34 | 26.80 | 9.89 | Dec 2006 | .10 |
| **Mid Cap** | | | | | | | | | |
| MFS Mid Cap Value R5 [7,8] | 1075 | 3.55 | 3.55 | 25.13 | 15.21 | 26.23 | 8.99 | Feb 2013 | .89 |
| Munder Mid-Cap Core Growth A [7,8] | 3254 | 1.70 | 1.70 | 20.35 | 12.93 | 22.58 | 9.59 | Jul 2000 | 1.40 |
| **Large Cap** | | | | | | | | | |
| Alger Capital Appreciation Z [8] | 4878 | .85 | .85 | 24.85 | 14.41 | 22.17 | 10.37 | Dec 2010 | .93 |
| BlackRock Equity Index - Collective F [3] | 10277 | 1.80 | 1.80 | 21.85 | 14.67 | 21.24 | 7.50 | Mar 1997 | .04 |
| JPMorgan US Equity R5 [8] | 4774 | 1.75 | 1.75 | 25.07 | 15.16 | 21.65 | 8.73 | May 2006 | .61 |
| Vanguard Equity-Income Adm [8] | 4384 | 2.34 | 2.34 | 19.74 | 16.26 | 21.79 | 8.78 | Aug 2001 | .21 |
| **Balanced** | | | | | | | | | |
| Vanguard Balanced Index Fund - Inst'l [2,8] | 5150 | 1.99 | 1.99 | 13.06 | 10.47 | 15.20 | 6.98 | Dec 2000 | .08 |
| **Bond** | | | | | | | | | |
| Vanguard Total Bond Market Index Signal [6,8] | 6364 | 1.91 | 1.91 | -.21 | 3.71 | 4.71 | 4.42 | Sep 2006 | .10 |
| **Fixed** | | | | | | | | | |
| Montana Fixed Fund [9] | 1545 | .45 | .45 | 2.08 | 2.90 | N/A | 3.47 | Jan 2010 | .50 |

*These returns and fund operating expenses are expressed as percentages. 3, 5 and 10 Year/Since Inception returns shown are annualized. For 10 Year/Since Inception, if the fund was not in existence for 10 years, returns shown are since inception. If the fund is less than one year old, returns are not annualized.*

*Performance returns reflect a deduction for fund operating expenses. Your Plan may also assess an administrative fee which would reduce the performance quoted above.*

*Funds may impose redemption fees, and/or transfer restrictions, on certain transfers, redemptions or exchanges if assets are held less than the period stated in the fund's prospectus or other disclosure documents. For more information, please refer to the fund's prospectus and/or disclosure documents.*

*Investment decisions should not be based solely on the performance data contained herein. Although data is gathered from reliable sources, the completeness or accuracy of the data cannot be guaranteed.*

*Securities, when offered, are offered through GWFS Equities, Inc., a wholly owned subsidiary of Great-West Life & Annuity Insurance Company. GWFS Equities, Inc., or one or more of its affiliates, may receive a fee from the investment option provider for providing certain recordkeeping, distribution, and administrative services.*

*On occasion, the name and/or investment objective of an investment option may change. For specific information on whether the option name has changed within the past year, or if the investment objective has changed in the last ten years, please contact your Registered Representative or investment advisor for a current prospectus.*

*GWFS Equities, Inc., or one or more of its affiliates, may receive a fee from the investment option provider for providing certain recordkeeping, distribution, and administrative services.*

*Great-West Financial(R) refers to products and services provided by Great-West Life & Annuity Insurance Company (GWL&A), Corporate Headquarters: Greenwood Village, CO, its subsidiaries and affiliates. The trademarks, logos, service marks, and design elements used are owned by GWL&A.*

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

MEGAN A ASHTON

## How have the investments in my plan performed? (continued)

*Expense ratios shown on client statements are gross expense ratios and do not include any applicable fee waivers or expense reimbursements, as do net expense ratios. The expense ratios may be based on a prior reporting period than those shown on the investment performance report. For the most current expense ratios, including the net expense ratios, please visit www.MPERAdcplans.com and review the investment performance report.*

[1] *Asset allocation funds are generally subject to a fund operating expense at the fund level, as well as prorated fund operating expenses of each underlying fund in which they invest. For more information, please refer to the fund prospectus and/or disclosure document.*

[2] *Asset allocation and balanced investment options and models are subject to the risks of the underlying funds, which can be a mix of stocks/stock funds and bonds/bond funds. For more information, see the prospectus and/or disclosure documents.*

[3] *Collective Trust Fund Option. A ticker symbol is not available for this investment option.*

[4] *Foreign funds involve special risks, including currency fluctuations and political developments.*

[5] *Equity securities of small-sized companies may be more volatile than securities of larger, more established companies.*

[6] *A bond fund's yield, share price and total return change daily and are based on changes in interest rates, market conditions, economic and political news, and the quality and maturity of its investments. In general, bond prices fall when interest rates rise and vice versa. Compared to higher-rated securities, high yield bond investment options are subject to greater risk, including the risk of default.*

[7] *Equity securities of medium-sized companies may be more volatile than securities of larger, more established companies.*



[9] *The anticipated net return for 2nd quarter 2014 annualized returns is 1.87%.*

Please review this statement carefully to confirm that we have properly acted on your instructions. Corrections will be made only for errors which have been communicated within 90 calendar days of the last calendar quarter. Please direct all inquiries/complaints to the following:

Client Service Department
Attn - Enhanced Participant Services
8515 E. Orchard Rd.
Greenwood Village, CO 80111
1-877-699-4015

After this 90 days, this account information shall be deemed accurate and acceptable to you. If you notify the Company of an error after this 90 days the correction will only be processed from the date of notification forward and not on a retroactive basis.

Some of the plan's administrative expenses for the preceding quarter may have been paid from the total annual operating expenses (investment expenses) of one or more of the plan's investment options.

# STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

MEGAN A ASHTON

## ------------An Important Message about your Income at Retirement------------

Your Income at Retirement is a hypothetical illustration that may help you evaluate if you are on target for your desired level of retirement income. Using your Income at Retirement as a guide, you can implement a savings and investment strategy now to achieve your desired retirement goals.

Several factors and assumptions are used to arrive at your Income at Retirement, including your net account balance as of this statement date, historical contributions, and age. To arrive at your Income at Retirement, we assume:

- you will retire at age 67;
- you will earn a 6% annual rate of return prior to your retirement;
- a 2.5% annual inflation rate prior to your retirement;
- you will earn a 4% annual rate of return after your retirement;
- you will take monthly distributions from your account until age 92; and
- you will have a 25% combined federal and state effective income tax rate.

Further, we assume that you will continue to contribute to your employer's retirement plan in the same amount as you have in the past, you will reinvest all earnings, and you will not receive any withdrawals from your account until your retirement date. Your Income at Retirement does not reflect any charges, expenses or fees that may be associated with your employer retirement plan, which may reduce your results. Please remember that all of these assumptions may vary from your actual experience.

**Remember, your Income at Retirement is a hypothetical illustration only. It is not a guarantee of future income or a projection of the future value of your account. It does not represent the performance of any particular investment options.** Income at Retirement is not intended as financial planning or investment advice. Please consult with your financial planner, attorney and/or tax adviser as needed.

Pursuant to SEC rules, fund companies are required to enter into agreements with intermediaries to provide fund companies with the ability to identify and enforce restrictions on participants engaging in market timing or excessive trading (prohibited trading), as defined by the fund companies. Participants engaging in prohibited trading will receive a warning and, if the prohibited trading continues, will be restricted from transferring into the identified fund(s) for a specific time period determined by the fund company. Some fund companies may restrict participants immediately, without warning when prohibited trading is identified. At the end of the restriction period, the participant will be automatically allowed to resume transfers into the identified fund(s). Transfers out of the identified fund (s) will not be restricted.

**State of Montana**
PO Box 200127
Helena, MT 59620-0127

| | | | |
|---|---|---|---|
| Pay Group: | BW3-Small Agency Paygroup | Business Unit: | 41132 |
| Pay Begin Date: | 04/19/2014 | Advice #: | 000000004325236 |
| Pay End Date: | 05/02/2014 | Advice Date: | 05/14/2014 |

**Megan Anne Ashton**

| | |
|---|---|
| Employee ID: | ( |
| Department: | 41132FSD-Forensic Science Division |
| Location: | DOJ - Forensic Sciences Div |
| Job Title: | Forensic Scientist |
| Pay Rate: | $29.187578 Hourly |

| TAX DATA: | Federal | MT State |
|---|---|---|
| Marital Status: | Single | Single |
| Allowances: | 0 | 0 |
| Addl. Percent: | | |
| Addl. Amount: | | |

**HOURS AND EARNINGS**

| Description | Current Hours | Current Earnings | YTD Hours | YTD Earnings |
|---|---|---|---|---|
| State Share Credit | | 403.00 | | 3,590.50 |
| Regular Pay | 80.00 | 2,335.00 | 800.00 | 23,350.05 |
| Non-Taxable Travel/Relocation | | | | 827.29 |
| TOTAL: | 80.00 | 2,738.00 | 800.00 | 27,767.84 |

**TAXES**

| Description | Current | YTD |
|---|---|---|
| Fed Withholdng | 272.00 | 2,893.99 |
| Fed MED/EE | 34.26 | 341.57 |
| Fed OASDI/EE | 146.49 | 1,460.52 |
| MT Withholdng | 92.00 | 964.00 |
| TOTAL: | 544.75 | 5,660.08 |

**BEFORE-TAX DEDUCTIONS**

| Description | Current | YTD |
|---|---|---|
| Pre-Tax Medical | 348.50 | 3,142.50 |
| Pre-Tax Dental | 30.00 | 270.00 |
| Pre-Tax Basic Life | 0.95 | 8.55 |
| Pre-tax Optional Life Plan C | 12.06 | 108.54 |
| Deferred Compensation | 350.00 | 2,750.00 |
| Public Employees Retirement | 184.47 | 1,844.70 |
| TOTAL: | 925.98 | 8,124.29 |

**AFTER-TAX DEDUCTIONS**

| Description | Current | YTD |
|---|---|---|
| Supplemental Life | 11.73 | 105.57 |
| TOTAL: | 11.73 | 105.57 |

**EMPLOYER PAID BENEFITS**

| Description | Current | YTD |
|---|---|---|
| Pre-tax Optional Life Plan C* | 16.20 | 145.80 |
| Public Employees Retirement | 190.77 | 1,907.70 |

*TAXABLE

| | TOTAL GROSS | FED TAXABLE GROSS | TOTAL TAXES | TOTAL DEDUCTIONS | NET PAY |
|---|---|---|---|---|---|
| Current | 2,738.00 | 1,828.22 | 544.75 | 937.71 | 1,255.54 |
| YTD | 27,767.84 | 18,962.06 | 5,660.08 | 8,229.86 | 13,877.90 |

| Year-to-Date | Vacation | Sick Leave | Exempt Comp | Non Exempt Comp | Banked Holiday | Banked Holiday Non Grandfather | Military Leave | Comp Time On Call |
|---|---|---|---|---|---|---|---|---|
| Start Balance | 29.78 | 15.50 | 7.75 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| + Earned | 49.86 | 33.21 | 7.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| -Taken | 37.50 | 31.50 | 14.50 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| End Balance = | 42.14 | 17.21 | 0.25 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |

**NET PAY DISTRIBUTION**

| Account Type | Account Number | Deposit Amount |
|---|---|---|
| | | 1,255.54 |
| TOTAL: | | 1,255.54 |

**MESSAGE:**

EXHIBIT B

# EXHIBIT 3

Travis Dye
KALKSTEIN, JOHNSON & DYE, P.C.
225 Adams * P.O. Box 8568
Missoula, MT 59807-8568
(406) 721-9800
(406) 721-9896 (fax)
travis@kalksteinlaw.com

Attorneys for Plaintiffs

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY

| | |
|---|---|
| EDWARD D. WRZESIEN and LACEY VAN GRINSVEN, individually and on behalf of all similarly situated persons, and MEGAN ASHTON, individually,<br><br>Plaintiffs,<br><br>vs.<br><br>STATE OF MONTANA and MONTANA PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION,<br><br>Defendants. | Cause No. DDV 2012-931<br>Hon. James P. Reynolds<br><br>**DECLARATION OF EDWARD WRZESIEN** |

1. I am a Plaintiff in this lawsuit. I have personal knowledge of the facts set forth in this declaration.

2. I have been employed by the Montana University System since July 2006 and remain employed by the Montana University System today.

3. I continue to participate in the Optional Retirement Program.

4. I am paid bi-weekly. My pay statements indicate that my ORP account is credited with a 4.49% employer contribution.

5. Attached to this declaration is a true and correct copy of my most recent ORP account statement, dated March 31, 2014.

7. To the best of my knowledge, the information contained in this statement is accurate.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: May 23, 2014.

Edward Wrzesien

EDWARD D WRZESIEN

TIAA CREF

FINANCIAL SERVICES

730 Third Avenue New York, NY 10017-3206

# Quarterly Retirement Portfolio Statement

January 01, 2014 - March 31, 2014

**For**
EDWARD D WRZESIEN

## Customer Service

| | |
|---|---|
| **Website:** | **tiaa-cref.org** |
| Automated 24-hour Information and Personal Assistance (Español disponible) | **800 842-2252** |
| Hearing Impaired (TTY phone users only) | 800 842-2755 |

Monday through Friday, 8:00 a.m. - 10:00 p.m. (ET)
Saturday, 9:00 a.m. - 6:00 p.m. (ET)

To view your most current account information, go to our website at **tiaa-cref.org** and log-in with your user ID and password or call our 24-hour automated system.

## Portfolio Summary

| | This Period | Year-to-Date |
|---|---|---|
| **Beginning Balance** | **$47,305.35** | **$47,305.35** |
| Additions | 1,464.89 | 1,464.89 |
| Gain/Loss | 400.65 | 400.65 |
| **Ending Balance** | **$49,170.89** | **$49,170.89** |

## Retirement Income Projection

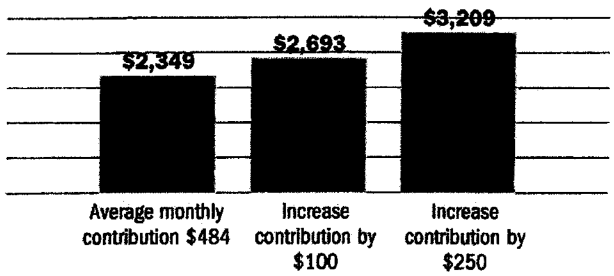
As part of your retirement savings planning, have you considered how much you need to retire? Saving a little more now can add up by the time you retire. **These charts are purely hypothetical and do not illustrate past or projected performance.**

**What can you expect from Retirement Income?**

| Average Monthly Contribution | Monthly Contribution Increased by | Sample Lifetime Retirement Monthly Income at Age 65 |
|---|---|---|
| $484 | $0 | $2,349 |
| $584 | $100 | $2,693 |
| $734 | $250 | $3,209 |

To raise your savings rate or further personalize the retirement income projection, visit us online at tiaa-cref.org or call TIAA-CREF at 800-842-2252. Recent changes to your contribution amounts may not be reflected on this statement.

**Example of Monthly Income at Age 65**




## Message Board

If you are invested in mutual funds in your retirement plans or IRAs, please review the frequent trading policy at www.tiaa-cref.org/tradingpolicy.

**Please refer to the back of this statement for Glossary Terms.**





**EXHIBIT A**

# Quarterly Retirement Portfolio Statement

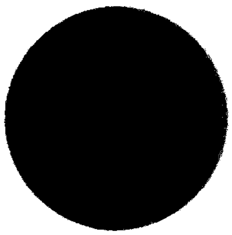
January 01, 2014 - March 31, 2014

EDWARD D WRZESIEN

## Personalized Rate of Return

| | | |
|---|---|---|
| This Period | 0.8% | This figure is an estimate of the performance of the assets in your retirement portfolio, as reflected on this statement, that are maintained at TIAA-CREF during the period(s) specified. Past performance is not a guarantee of future results. Please refer to the Disclosures Section for more information. |
| Year-to-Date | 0.8% | |

## Asset Allocation Summary



If you are invested in more than one asset class, the Asset Allocation percentages may not be exact due to rounding.

| Current Percent | Asset Class | Current Value |
|---|---|---|
| 100% | Multi-Asset | $49,170.89 |
| **100%** | **Total** | **$49,170.89** |

## Activity Summary by Asset Class

| Asset Class/ Investment | Beginning Balance as of 01/01/2014 | Additions | Reductions | Gain/Loss | Ending Balance as of 03/31/2014 |
|---|---|---|---|---|---|
| Multi-Asset | | | | | |
| T-C Lifecycle 2045-Prem | $47,305.35 | $1,464.89 | $0.00 | $400.65 | $49,170.89 |
| **Total Account Value** | **$47,305.35** | **$1,464.89** | **$0.00** | **$400.65** | **$49,170.89** |

**Additions and Reductions:** Additions include your contributions, rollovers and direct transfers into your account. Reductions include withdrawals, rollovers and direct transfers out of your account. Transfers among your investment choices are also shown as Additions and Reductions. For example, if you transferred money from one investment choice to another, the money going into an account is an Addition and the money leaving an account is a Reduction. Other adjustments to your portfolio are also included in the Additions and Reductions total.

To view current performance for your specific investments, log in to your account at tiaa-cref.org or you can visit www.tiaa-cref.org/performance for general performance information.

## Portfolio Breakdown

| | Beginning Balance as of 01/01/2014 | Ending Balance as of 03/31/2014 |
|---|---|---|
| **Plans** | | |
| UNIVERSITY OF MONTANA CLASSIFIED STAFF PLAN | $47,305.35 | $49,170.89 |
| **Other Investments in Your Plans** | | |
| T-C Lifecycle 2045-Prem | $47,305.35 | $49,170.89 |

## UNIVERSITY OF MONTANA CLASSIFIED STAFF PLAN

| Annuity Contract(s) & Other Investments In This Plan | Vested Percentage | Vested Balance |
|---|---|---|
| -& Other Investments | | |
| Employee | 100% | $29,926.75 |

## UNIVERSITY OF MONTANA CLASSIFIED STAFF PLAN *(Continued)*

| Annuity Contract(s) & Other Investments In This Plan | | Vested Percentage | Vested Balance |
|---|---|---|---|
| Employer | | 100% | 19,244.14 |
| **Total** | **& Other Investments** | **100%** | **$49,170.89** |
| **Total** | | **100%** | **$49,170.89** |

## Plan Investment Detail

| Asset Class/ Investment | Beginning Balance as of 01/01/2014 | # of Units/ Shares | Unit/Share Price | Ending Balance as of 03/31/2014 | # of Units/ Shares | Unit/Share Price |
|---|---|---|---|---|---|---|
| **Pre-Tax Investments** | | | | | | |
| Multi-Asset | | | | | | |
| T-C Lifecycle 2045-Prem | $47,305.35 | 4,372.0284 | $10.8200 | $49,170.89 | 4,506.9560 | $10.9100 |
| **Total Pre-Tax Investments** | **$47,305.35** | | | **$49,170.89** | | |
| **Total** | **$47,305.35** | | | **$49,170.89** | | |

## Plan Transaction Detail

| Processing Date | Effective Date | Transaction Description | Investment | Number of Units/Shares | Unit/Share Price | Amount |
|---|---|---|---|---|---|---|
| **Additions** | | | | | | |
| | | **Employee Pre Tax Contributions** | | | | |
| 01/10/2014 | 01/10/2014 | Contribution | T-C Lifecycle 2045-Prem | 12.3318 | $10.8200 | $133.43 |
| 01/21/2014 | 01/21/2014 | Contribution | T-C Lifecycle 2045-Prem | 12.3090 | 10.8400 | 133.43 |
| 02/07/2014 | 02/07/2014 | Contribution | T-C Lifecycle 2045-Prem | 12.5877 | 10.6000 | 133.43 |
| 02/18/2014 | 02/18/2014 | Contribution | T-C Lifecycle 2045-Prem | 12.2751 | 10.8700 | 133.43 |
| 03/05/2014 | 03/05/2014 | Contribution | T-C Lifecycle 2045-Prem | 12.0642 | 11.0600 | 133.43 |
| 03/18/2014 | 03/18/2014 | Contribution | T-C Lifecycle 2045-Prem | 12.1300 | 11.0000 | 133.43 |
| 03/28/2014 | 03/28/2014 | Contribution | T-C Lifecycle 2045-Prem | 12.3318 | 10.8200 | 133.43 |
| | | **Total Employee Pre Tax Contributions** | | | | **$934.01** |
| | | **Employer** | | | | |
| 01/10/2014 | 01/10/2014 | Contribution | T-C Lifecycle 2045-Prem | 7.0092 | $10.8200 | $75.84 |
| 01/21/2014 | 01/21/2014 | Contribution | T-C Lifecycle 2045-Prem | 6.9963 | 10.8400 | 75.84 |
| 02/07/2014 | 02/07/2014 | Contribution | T-C Lifecycle 2045-Prem | 7.1547 | 10.6000 | 75.84 |
| 02/18/2014 | 02/18/2014 | Contribution | T-C Lifecycle 2045-Prem | 6.9770 | 10.8700 | 75.84 |
| 03/05/2014 | 03/05/2014 | Contribution | T-C Lifecycle 2045-Prem | 6.8571 | 11.0600 | 75.84 |

## UNIVERSITY OF MONTANA CLASSIFIED STAFF PLAN *(Continued)*

### Plan Transaction Detail *(Continued)*

| Processing Date | Effective Date | Transaction Description | Investment | Number of Units/Shares | Unit/Share Price | Amount |
|---|---|---|---|---|---|---|
| **Additions** | | | | | | |
| | | Employer | | | | |
| 03/18/2014 | 03/18/2014 | Contribution | T-C Lifecycle 2045-Prem | 6.8945 | 11.0000 | 75.84 |
| 03/28/2014 | 03/28/2014 | Contribution | T-C Lifecycle 2045-Prem | 7.0092 | 10.8200 | 75.84 |
| | | Total Employer | | | | **$530.88** |
| **Total Additions** | | | | | | **$1,464.89** |

Salary reduction contributions have been received from your employer on your behalf. Please compare the information on your pay stub to the Effective Date of the contributions on this statement.

To view or change your current asset allocation and allocation of future contributions visit tiaa-cref.org and sign in to the secure portion of the website.

***The Other Investments In Your Plans are shown to provide you with an alternative view of your investments with TIAA-CREF.***

## OTHER INVESTMENTS IN YOUR PLANS

### Investment Summary

| Investment | Beginning Balance as of 01/01/2014 | # of Units/ Shares | Unit/Share Price | Ending Balance as of 03/31/2014 | # of Units/ Shares | Unit/Share Price |
|---|---|---|---|---|---|---|
| T-C Lifecycle 2045-Prem | $47,305.35 | 4,372.0284 | $10.8200 | $49,170.89 | 4,506.9560 | $10.9100 |
| **Total** | **$47,305.35** | | | **$49,170.89** | | |

### Glossary

**Effective Date:** The date as of which the contribution unit/share price, transfer or payment began or ceased participating in the investment results of the investment option or account.

**Processing Date:** The date on which the transaction (contribution, transfer or payment) is processed by TIAA-CREF. We will furnish you, upon written request, the time when the transaction took place. "Processed" means when amounts are credited (for purchase) or debited (for redemptions) to you. Any transactions processed after the close of this quarter will appear on your next quarterly statement.

**Gain/Loss:** The change in portfolio balances due to : (i) Unrealized Gains/Losses from investment holdings (including variable annuity accounts) after expenses are deducted, (ii) Other Gains/Losses and (iii) TIAA Interest. Only Other Gains/Losses are shown in the Transaction Detail sections of this statement.

**Portfolio Summary:** A high-level overview that totals all your retirement and savings assets together and shows you how this value changed from the beginning January 01, 2014, and from the beginning of the year to, March 31, 2014.

**Asset Allocation:** A breakdown of how your total retirement portfolio is allocated across six major asset classes - equities, fixed income, real estate, multi-asset, money market and guaranteed. For the illustrative pie chart asset class percentages may be rounded to the nearest full number percentage.

**Additions and Reductions:** Additions include your contributions, rollovers and direct transfers into your account. Reductions include withdrawals, rollovers and direct transfers out of your account. Transfers among your investment choices are also shown as Additions and Reductions. For example, if you transferred money from one investment choice to another, the money going into an account is an Addition and the money leaving an account is a Reduction. Other adjustments to your portfolio are also included in the Additions and Reductions total.

## Disclosures

Please review your statement and let us know promptly of any inaccuracies. To protect your rights, you should also notify us in writing. Unless we receive written notification within 60 days, we will assume our information is correct.

With respect to financial services provided by TIAA-CREF Individual & Institutional Services, LLC and Teachers Personal Investors Services, Inc., please note that FINRA BrokerCheck is available to help you check the background of brokers and brokerage firms. FINRA has published an investor brochure that includes information regarding FINRA BrokerCheck. To learn more, please visit www.finra.org or call (800) 289-9999.

Diversified and Well-Balanced Portfolio: To help achieve long-term retirement security, you should give careful consideration to the benefits of a well-balanced and diversified investment portfolio. Spreading your assets among different types of investments can help you achieve a favorable rate of return, while minimizing your overall risk of losing money. This is because market or other economic conditions that cause one category of assets, or one particular security, to perform very well often cause another asset category, or another particular security, to perform poorly.

It is also important to periodically review your investment portfolio, your investment objectives, and the investment options under the Plan to help ensure that your retirement savings will meet your retirement goals. For more information or additional resources regarding individual investing and diversification, visit the Internet website of the Department of Labor at www.dol.gov/ebsa/investing.html.

If you invest more than 20% of your retirement savings in any one company or industry, your savings may not be properly diversified. Although diversification is not a guarantee against loss, it is an effective strategy to help you manage investment risk. In deciding how to invest your retirement savings, you should take into account all of your assets, including any retirement savings outside of the Plan. No single approach is right for everyone because, among other factors, individuals have different financial goals, different time horizons for meeting their goals, and different tolerances for risk.

Fees and Expenses: The cumulative effect of fees and expenses can substantially reduce the growth of your retirement savings. Visit the Department of Labor's Web site for an example showing the long-term effect of fees and expenses at http://www.dol.gov/ebsa/publications/401k_employee.html. Fees and expenses are only one of many factors to consider when you decide to invest in an option. You may also want to think about whether an investment in a particular option, along with your other investments, will help you achieve your financial goals. Expenses to pay for the administration of your plan(s) may be paid directly by you through the reduction of your account balance and reflected in the Plan Transaction Detail section of your quarterly statement. For the preceding quarter, plan administration expenses may also be paid from the total annual operating expenses of one or more of the plan's designated investment alternatives.

Portions of this statement provide information about specific transactions that have occurred during the quarter. Other portions of the statement provide information about the total number of units or shares held in your account, gains and losses during the quarter, account balances and other account related information. Each entity listed in this statement may contract with other entities for services related to the described activities. Annuity products are issued by TIAA (Teachers Insurance and Annuity Association), New York, NY.

Account information for mutual funds held in your employer's retirement or savings plan is provided by TIAA on behalf of the plan and JPMorgan Chase Bank, N.A., as custodian.

Your right to direct investments or transfer funds may be subject to certain limitations and/or restrictions under your employer's plan, if applicable and the terms of any funding options. Contact your Benefits Manager or call TIAA-CREF at 800 842-2776 if you have questions.

Personalized Rate of Return is an estimate of the performance of the assets in your retirement portfolio maintained by TIAA-CREF during the period specified. The figure: (1) includes expenses, interest and dividend payments; (2) includes contributions and withdrawals, weighted by the number of days between the date of contribution or withdrawal and the end of the quarter; (3) excludes the performance of products purchased through TIAA-CREF's brokerage window and retirement healthcare program; and (4) may be different from the return of the individual funds or other investment options included in the portfolio. If your retirement portfolio included cash outflows or inflows the figure may differ from your actual rate of return depending on market volatility following these cash flows. The Personalized Rate of Return is based on the Modified Dietz Method of evaluating performance. Past performance is not a guarantee of future results.

TIAA-CREF Individual & Institutional Services, LLC (Services) is a broker/dealer registered with the Securities and Exchange Commission (SEC) and must comply with SEC Net Capital Rule 15c3-1. At December 31, 2013, Services had net capital of $84,480,399 which exceeded its required net capital of $3,081,299 by $81,399,100. Services' Audited Statement of Financial Condition as of December 31, 2013 can be obtained free of charge by visiting tiaa-cref.org and clicking the link at the bottom of the page or by calling 800 842-2252.

## Disclosures *(Continued)*

Retirement Income Projection Assumptions: Sample Lifetime Retirement Monthly Income at age 65 is not based upon your current asset allocation. It is based on your ending balance (excluding Minimum Distribution Option contracts and Transfer Payout Annuity contracts that are withdrawn in cash or transferred to other financial institutions) from your Portfolio Summary and does not consider assets outside those identified in this Quarterly Report. The Ending Balance is projected to grow according to the following assumptions: the 12-month average of your total employer and personal contributions shown in the chart, each projected to grow 3% annually (rounded to the nearest year, using your birthday) reflecting assumed inflation increases, as well as a non-guaranteed hypothetical annual growth rate of 6% until age 65. Accumulations in Interest Only contracts are assumed to remain at their current levels.

Sample Lifetime Retirement Monthly Income is based on using a single life annuity with a 10 year guarantee period starting at age 65. The amount of lifetime income reflects an annuity payout rate based upon an assumed interest rate of 4% and the mortality assumptions used in computing current total income under TIAA pension payout annuities. This projected income at retirement was discounted 3% annually to reflect the income amount in today's dollars. Your actual account performance will differ, and may be higher or lower. These charts are for informational and educational purposes only and do not constitute advice. Sample values shown are estimates and not guarantees and do not reflect federal/state taxes or investment fees and charges.

The minimum guaranteed annual interest rate for TIAA Traditional in IRA contracts issued prior to 10/11/2010, most Retirement Annuity, Group Retirement Annuity, Supplemental Retirement Annuity and Group Supplemental Retirement Annuity contracts is 3%.

The minimum guaranteed annual interest rate for TIAA Traditional in most IRA contracts* issued on or after 10/11/2010 and in all Retirement Choice, Retirement Choice Plus and TIAA Stable Return Annuity contracts ranges from 1% to 3%. The current minimum rate for Retirement Choice contracts is 1.00%, is effective through December 31, 2014 and continues to be guaranteed for contributions and transfers made in 2014 through December 31, 2023. The current minimum rate for most IRA contracts* issued on or after 10/11/2010 and in all Retirement Choice Plus and TIAA Stable Return Annuity contracts is 1.00% and is guaranteed through February 28, 2015.
*All IRA Minimum Distribution Option contracts and IRA contracts issued as a result of a divorce settlement have the same guarantee and rate as the originating contract.

TIAA Traditional also offers the opportunity for additional amounts above the guaranteed rate. These additional amounts can be declared every month and remain in effect for the "declaration year," which begins each March 1 and are not guaranteed for future years.

# EXHIBIT 4

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COUNSEL FOR DEFENDANTS

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

| | | |
|---|---|---|
| EDWARD D. WRZESIEN and MEGAN ASHTON, individually and on behalf of all similarly situated persons, | ) | Cause No. DDV 2012-931 |
| Plaintiffs, | ) | **DEFENDANTS' RESPONSE TO PLAINTIFFS' FIRST DISCOVERY REQUESTS** |
| v. | ) | |
| STATE OF MONTANA and MONTANA PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION, | ) | |
| Defendants. | ) | |

**GENERAL OBJECTION:** The State and MPERA object to the definition of "you" as including "the Legislature of the State of Montana and its committees." Neither the Attorney General nor MPERA is entitled to or purports to answer on behalf of the Legislature, and in any case the current Legislature is not the Legislature that passed the Act creating the DC Plan and the Plan Choice Rate.

**INTERROGATORY NO. 1:** Please state the total number of people who currently participate in or who have participated in the DC PLAN since its inception. As part of YOUR answer, please specify the number of active versus past participants in the DC PLAN.

**ANSWER:**

As of December 31, 2012:

| | |
|---|---|
| Active (currently contributing): | 2281 |
| Non-Active (non-contributing or withdrawn) | 743 |

**INTERROGATORY NO. 2:** Please state the total number of people who currently participate in or who have participated in the ORP. As part of YOUR answer, please specify the number of active versus past participants in the ORP.

**ANSWER:**

As of December 31, 2012:

| | |
|---|---|
| Active (currently contributing): | 335 |
| Non-Active (non-contributing or withdrawn) | 587 |

**INTERROGATORY NO. 3:** Please state the amount of money allocated to the DB PLAN each year through the Plan Choice Rate from the inception of the DC PLAN to the present. Please include in your response the percentage of Plan Choice Rate funds paid to the DB PLAN that has come from DC PLAN participants versus ORP participants. Also, please specify whether the calculations are based on a calendar or fiscal year.

**ANSWER:**

| | | ORP Plan Choice | | DC Plan Choice |
|---|---|---|---|---|
| | % of Total | | % of Total | |
| FY2003 | 39.3% | $222,149.33 | 60.7% | $343,004.12 |
| FY2004 | 31% | $422,967.29 | 69% | $945,289.72 |
| FY2005 | 26.5% | $339,524.33 | 73.5% | $940,863.69 |
| FY2006 | 23% | $353,796.39 | 77% | $1,182,666.39 |
| FY2007 | 21% | $379,797.61 | 79% | $1,464,470.82 |
| FY2008 | 20% | $440,407.51 | 80% | $1,773,712.67 |
| FY2009 | 18% | $451,248.56 | 82% | $2,047,847.10 |
| FY2010 | 17% | $490,114.01 | 83% | $2,323,928.93 |
| FY2011 | 17% | $482,408.74 | 83% | $2,305,225.77 |
| FY2012 | 16% | $471,690.98 | 84% | $2,401,210.61 |
| FY2013(to date) | 17% | $325,936.31 | 83% | $1,570,594.17 |
| Grand Total | 20% | $4,380,041.06 | 80% | $17,298,813.99 |

**INTERROGATORY NO. 4:** Please IDENTIFY all governmental entities, political subdivisions, and other entities whose employees are eligible to participate in the DC PLAN.

**ANSWER:** See the "Schedule of participating Employers" list in the Montana Public Employees Retirement Board's Comprehensive Annual Financial Report for the Fiscal Year ending June 30, 2012. The employees of all employers listed under PERS-DBRP are or were eligible to elect to participate in the DC PLAN (the PERS-DBRP list continues through where the JRS (Judges Retirement System) list starts). Employers with employees who have elected to participate in the DC PLAN are listed under PERS-DCRP.

**INTERROGATORY NO. 5:** For each year from the inception of the DC PLAN to the present, please state the percentage of employees eligible to participate in the Montana Public Employees Retirement System who have elected to participate in the DC PLAN. Please specify whether your calculations are based on a calendar or fiscal year.

**ANSWER NO. 5:**

| FY | DC |
|---|---|
| 2003 | 3.99% |
| 2004 | 8.33% |
| 2005 | 9.97% |
| 2006 | 10.95% |
| 2007 | 10.33% |
| 2008 | 9.22% |
| 2009 | 6.78% |
| 2010 | 7.03% |
| 2011 | 6.29% |
| 2012 | 4.86% |
| 2013 | 1.42% |

**INTERROGATORY NO. 6:** For each year from the inception of the DC PLAN to the present, please state the percentage of classified employees of the Montana University System who have elected to participate in the ORP. Please specify whether your calculations are based on a calendar or fiscal year.

**ANSWER:**

| FY | ORP |
|---|---|
| 2003 | 3.21% |
| 2004 | 2.71% |
| 2005 | 2.52% |
| 2006 | 3.00% |
| 2007 | 2.89% |
| 2008 | 2.62% |
| 2009 | 2.10% |
| 2010 | 1.62% |
| 2011 | 1.35% |
| 2012 | 1.12% |
| 2013 | 0.53% |

**INTERROGATORY NO. 7:** Please provide the following information regarding the Plan Choice Rate:

(a) The original rate adopted by the Legislature;

(b) The current rate; and

(c) If adjustments have been made in the interim, the date of the adjustment and the rate that went into effect with the adjustment.

**ANSWER:**

(a) The original Plan Choice Rate adopted by the Legislature was 2.37%.

(b) The current Plan Choice Rate is technically still 2.37% (*see* Mont. Code Ann. § 19-3-2117(2)(a)(ii)), but the current total employer contribution rate to the DB Plan is currently 2.64% (*see* Mont. Code Ann. § 19-3-2117(2)(b)(i)) .

(c) Statutory adjustments occurred effective July 1, 2007 and July 1, 2009. On July 1, 2007 and again on July 1, 2009, the employer's contribution to the DB Plan increased by .135%, for a total increase of .27%. The current .27% increase in PERS employer contributions will terminate when the amortization period required to amortize the DB Plan's unfunded liability is less than 25 years and ending the additional contribution will not cause the amortization period to exceed 25 years. *See* Mont. Code Ann. § 19-3-316.

**INTERROGATORY NO. 8:** Please state the complete factual basis for YOUR contention that "Plaintiffs assumed the risk by electing to join the DC

PLAN or ORP." As part of YOUR response, please IDENTIFY all DOCUMENTS and DATA that support the contention and each PERSON with knowledge of facts that support the contention.

**ANSWER:** The forms filed out and signed by Plaintiffs when electing the DC Plan or ORP acknowledged the risk associated with the election and accepted "complete responsibility" for the election.

**INTERROGATORY NO. 9:** Please state the complete factual basis for YOUR contention that "Plaintiffs released any claims when electing the DC Plan or ORP." As part of YOUR response, please IDENTIFY all DOCUMENTS and DATA that support the contention and each PERSON with knowledge of facts that support the contention.

**ANSWER:** The forms filed out and signed by Plaintiffs when electing the DC Plan or ORP acknowledged the risk associated with the election and accepted "complete responsibility" for the election.

**INTERROGATORY NO. 10:** Please state the complete factual basis for YOUR contention that "Plaintiffs' claims are barred by the statute of limitations." As part of YOUR response, please IDENTIFY all DOCUMENTS and DATA that support the contention and each PERSON with knowledge of facts that support the contention.

**ANSWER:** Plaintiffs filed forms electing the DC Plan or ORP on October 28, 2003 and December 5, 2006.

**INTERROGATORY NO. 11:** Please state the complete factual basis for YOUR contention that "Plaintiffs waived any claim against the State when electing the DC Plan or ORP." As part of YOUR response, please IDENTIFY all DOCUMENTS and DATA that support the contention and each PERSON with knowledge of facts that support the contention.

**ANSWER:** The forms filed out and signed by Plaintiffs when electing the DC Plan or ORP acknowledged the risk associated with the election and accepted "complete responsibility" for the election.

**INTERROGATORY NO. 12:** Please state the complete factual basis for YOUR contention that "Plaintiffs' claims are barred by the doctrine of laches and estoppel." As part of YOUR response, please IDENTIFY all DOCUMENTS and DATA that support the contention and each PERSON with knowledge of facts that support the contention.

**ANSWER:** Plaintiffs filed forms electing the DC Plan or ORP on October 28, 2003 and December 5, 2006. The forms filed out and signed by Plaintiffs when electing the DC Plan or ORP acknowledged the risk associated with the election and accepted "complete responsibility" for the election.

**INTERROGATORY NO. 13:** Please state the complete factual basis for YOUR contention that "[t]he State is required by Art. VIII, §15(1) of the Montana Constitution to fund the public retirement system 'on an actuarially sound basis,' which precludes the relief sought." As part of YOUR response, please IDENTIFY all DOCUMENTS and DATA that support the contention and each PERSON with knowledge of facts that support the contention.

**ANSWER:** The Constitutional provision speaks for itself. *See also* Mont. Code Ann. § 19-2-409; and the actuary reports provided in response to RFP 3 and 4.

**INTERROGATORY NO. 14:** Please state the complete factual basis for YOUR contention that "[t]he Montana Public Employees' Retirement Board has met its fiduciary duties under Art. VIII, §15(2) of the Montana Constitution to participants of the public retirement system." As part of YOUR response, please IDENTIFY all DOCUMENTS and DATA that support the contention and each PERSON with knowledge of facts that support the contention.

**ANSWER:** The Constitutional provision speaks for itself. *See also* Mont. Code Ann. § 19-2-409; and the actuary reports provided in response to RFP 3 and 4.

**INTERROGATORY NO. 15:** Please state the complete factual and legal basis for YOUR contention that "Plaintiffs have failed to join as parties 'all persons . . . who have or claim any interest which would be affected by the declaration.'" As part of YOUR response, please IDENTIFY all DOCUMENTS and DATA that support the contention and each PERSON with knowledge of facts that support the contention.

**ANSWER:** Members of the DB Plan are not parties to the lawsuit as required by Mont. Code Ann. § 27-8-301.

**INTERROGATORY NO. 16:** Please state the complete factual basis for YOUR partial denial of the allegations in paragraph 9 of Plaintiffs' complaint. As part of YOUR response, please IDENTIFY all DOCUMENTS and DATA that support the denial and each PERSON with knowledge of facts that support the denial.

**ANSWER:** Pursuant to Mont. Const. Art. VIII Sec 15, Mont. Code Ann. §§ 19-2-501 and -503, and 19-3-316, the employer contribution for DB Plan participants is paid to the DB Plan pension trust fund, not to individual accounts.

**INTERROGATORY NO. 17:** Please state the complete factual basis for YOUR partial denial of the allegations in paragraph 11 of Plaintiffs' complaint. As part of YOUR response, please IDENTIFY all DOCUMENTS and DATA that support the denial and each PERSON with knowledge of facts that support the denial.

**ANSWER:** Paragraph 11 of the complaint inaccurately describes the Plan Choice Rate. The PCR is a requirement that the employer pay a specified amount, based on a percentage of the compensation paid to DC Plan participants, to the DB Plan pension trust fund. *See* Mont. Code Ann. §19-3-2117(2)(a)(ii) (percentage "allocated to the defined benefit plan as the plan choice rate"). The employer, not the DC Plan participant, is subject to the PCR. It does not "reduce[] the employer contribution that is allocated to each DC Plan participant's individual account." The employer contribution to the individual accounts of employees enrolled in the DC Plan is 4.19% (Mont. Code Ann. §§19-3-2117(2)(a)(i) ("allocated to the member's retirement account")). The PCR does not reduce this percentage.

**INTERROGATORY NO. 18:** Please state the complete factual basis for YOUR denial of the allegations in paragraph 12 of Plaintiffs' complaint. As part of YOUR response, please IDENTIFY all DOCUMENTS and DATA that support the denial and each PERSON with knowledge of facts that support the denial.

**ANSWER:** Under Mont. Code Ann. § 19-3-2121(5), if the *Board* determines that the Plan Choice Rate should be increased, the employer contribution to participant accounts is decreased correspondingly. However, the employer contribution to participant's retirement accounts has remained at 4.19 % despite two *statutory* increases to the employer's contribution to the DB plan's unfunded actuarial liability. The PCR was initially 2.37%. The employer contribution to the DB Plan increased from 2.37% to 2.505% in 2007 and to 2.64% in 2009. *See* Mont. Code Ann. § 19-3-2117 (2007). Therefore, the employer's contribution to the DC Plan member's account was not decreased even though the employer contribution to the DB Plan was increased.

**INTERROGATORY NO. 19:** Please state the complete factual basis for YOUR denial of the allegations in paragraph 18 of Plaintiffs' complaint. As part of YOUR response, please IDENTIFY all DOCUMENTS and DATA that support the denial and each PERSON with knowledge of facts that support the denial.

**ANSWER:** Paragraph 18 of the complaint includes ORP participants within the allegations made in paragraphs 11 and 12 of the complaint. As to paragraph 11, see answer to Interrogatory 17. *See also* Mont. Code Ann. § 19-21-214(2)(a)(ii) (percentage "allocated to the defined benefit plan as the plan choice rate") and Mont. Code Ann. §19-21-214(2)(a)(i) (4.49% "allocated to the member's retirement account")).

As to paragraph 12, see answer to Interrogatory 18. *See also* Mont. Code Ann. § 19-21-214 (2007).

**INTERROGATORY NO. 20:** Please state the complete factual basis for YOUR denial of the allegations in the first sentence of paragraph 19 of Plaintiffs' complaint. As part of YOUR response, please IDENTIFY all DOCUMENTS and

DATA that support the denial and each PERSON with knowledge of facts that support the denial.

**ANSWER:** As explained in the answer to Interrogatory 17, the Plan Choice Rate is not "obtained from classified employees," but instead is paid by employers based on a percentage of the compensation paid to ORP participants. No portion of the participant's compensation is used to pay the PCR. *See* Mont. Code Ann. § 19-21-214(1)(a) (setting participants' contribution rate).

**INTERROGATORY NO. 21:** Please state the complete factual basis for YOUR contention that the existence of or participation in the DC PLAN has any impact on the DB PLAN. Please include in your answer detailed information regarding specific impacts to the DB PLAN. Also, please IDENTIFY all DOCUMENTS and DATA that support the contention and each PERSON with knowledge of facts that support the contention.

**ANSWER:** Participation in the DC Plan (and ORP) reduces the funds available to be allocated to the DB Plan pension trust fund "normal cost" and "unfunded liability" (*see* definitions at Mont. Code Ann. § 19-2-303(33) and (53)). Employee contributions for DB Plan participants pay most of the participants' normal cost in the DB plan. A small percentage of the contribution paid by the DB Plan participants' employers covers the remaining normal cost. The rest of the employers' contributions are allocated to the DB Plan's unfunded liability.

please IDENTIFY all DOCUMENTS and DATA that support the contention and each PERSON with knowledge of facts that support the contention.

**ANSWER:** See answer to Interrogatories 17 and 20.

**INTERROGATORY NO. 24:** Please explain the complete factual and legal basis for the adoption and implementation of the Plan Choice Rate. In other words, we are asking YOU to provide a complete, detailed justification for the existence of the PLAN CHOICE RATE?

**ANSWER:** Objection, overly broad and burdensome, seeks privileged work product and opinion. *See* Mont. R. Civ. P. 26(b); *Palmer by Diacon v. Farmers Ins. Exchange*, 261 Mont. 91, 115-16, 861 P.2d 895 (1993). The Plan Choice Rate was adopted by the Legislature, not MPERA. The legislative history of the adoption of the Plan Choice Rate is publicly available and as easily accessible to Plaintiffs as Defendants.

Without waiving the objection, see responses to RFP 3, 4 and 7.

**INTERROGATORY NO. 25:** Please IDENTIFY the discrete legal arguments that support YOUR contention that the Plan Choice Rate is constitutional. For each discrete legal argument set forth, please IDENTIFY all facts, evidence, and other information that supports the argument.

**ANSWER:** Objection, overly broad and burdensome, seeks privileged attorney-client communication and opinion work product. *See* Mont. R. Civ. P.

26(b); *Palmer by Diacon v. Farmers Ins. Exchange*, 261 Mont. 91, 115-16, 861 P.2d 895 (1993). This interrogatory cannot be answered without disclosing the mental impressions, opinions, and legal conclusions of counsel for the State, as well as communication with MPERA.

**REQUESTS FOR PRODUCTION NOS. 1 TO 7**:

**RESPONSE**: See enclosed CD and education materials.

DATED this 22nd day of March, 2013.


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Montana Attorney General
J. STUART SEGREST
MICHAEL G. BLACK
Assistant Attorney General
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Helena, MT 59620-1401


By: J. Stuart Segrest
J. STUART SEGREST

## VERIFICATION

Melanie Symons hereby declares under penalty of perjury that the following is true and correct:

That she is an authorized representative of the Montana Public Employee Retirement Administration in the above matter, that she has read the foregoing, and that the representations are true and correct to the best of her knowledge.

Dated this 22nd day of March, 2013, at Helena, Montana.

Melanie Symons

MELANIE SYMONS
MPERA Chief Legal Counsel

## CERTIFICATE OF SERVICE

I certify that I caused a true and accurate copy of the foregoing to be mailed to:

Travis Dye
Kalkstein, Johnson & Dye, P.C.
225 Adams
P.O. Box 8568
Missoula, MT 59807-8568

Dated: 3/22/13

J. Stuart Segrest

J. STUART SEGREST

# EXHIBIT 5

# MONTANA

## Public Employees Retirement Board
A Component Unit of the State of Montana

## Comprehensive Annual Financial Report
For the fiscal year ended June 30, 2013

# *2013 Legislative Highlights*

During the 2013 legislative session, the PERB proposed several legislature bills to address funding and policy concerns. This summary also includes legislative bills, proposed externally, that impacted the retirement systems.

## **457 ROTH** - House Bill 91, Deferred Compensation Plan, effective July 1, 2013

Allows post-tax contributions to a designated ROTH account for participants in the Deferred Compensation Plan (457).

## **Working Retirees** - House Bill 95 - PERS, SRS, and FURS, effective July 1, 2013

- Requires employer contributions on working retiree compensation. Member contributions are not required.
- Working retiree limitations are not impacted. PERS working retirees may still work up to 960 hours a year, without impacting benefits. SRS and FURS retirees may still work up to 480 hours a year, without returning to active service.

## **Highest Average Compensation (HAC) Cap** - House Bill 97, All Systems, effective July 1, 2013

- For members hired on or after July 1, 2013, establishes a 110% annual cap on compensation considered as part of a member's highest or final average compensation with the excess compensation, if any, divided by the member's total months of service credit and added to the compensation for each month that is considered part of the member's highest or final average compensation.
- Bonuses paid on or after July 1, 2013 to any member, will not be treated as compensation for retirement purposes. Employer and member contributions will no longer be paid on bonuses.

## **General Revisions** - House Bill 105, effective July 1, 2013

- Requires that a **retired PERS** employee working as an independent contractor in a PERS - covered position be subject to working retiree limitations.
- For **SRS**, regarding the survivorship benefit, the actuarial reduced age changes to age 60 instead of age 65.

## **ORP to MUS-RP** - House Bill 320, effective July 1, 2013

Changes the name of the Optional Retirement Plan (ORP) to the Montana University System Retirement Program (MUS-RP).

## **HPORS Funding Bill** - House Bill 336, effective July 1, 2013

At the request of the Montana Trooper's Association, this bill revises the HPORS to address funding concerns.

*All HPORS members regardless of hire date:*

- State employer contribution increases from 36.33% to 38.33%;

- Member contribution increases 1% annually for four years commencing FY2014; and
- Benefit multiplier increases from 2.5% to 2.6%.

*HPORS members hired on or after July 1, 2013:*

- GABA reduces from 3.0% to 1.5%;
- GABA waiting period increases from 1 year to 3 years; and
- The vesting period increases from 5 years to 10 years.

## **PERS Funding Bill** - House Bill 454, effective July 1, 2013

This bill addresses PERS funding concerns and includes a severability clause. If any part of the bill is determined to be invalid all parts that are severable from the invalid part remain in effect.

*Funding of PERS through natural resources:*

- PERS will receive from the unallocated portion of coal tax severance collections, approximately $15 million beginning in FY2014 and growing approximately 2% per year thereafter. The payments will be received quarterly.
- PERS will receive up to $21 million of interest income from the coal tax permanent fund until July 1, 2019. Beginning FY2020, PERS will receive up to $24 million of interest income contributions. The interest payments will be received monthly.

*PERS - covered employee contributions temporarily increased:*

- **All** members contribute **7.9%** of compensation starting on **July 1, 2013**. This is an **increase of 1%** for members **hired prior to July 1, 2011**.
- Member contributions **decrease to 6.9%** on **January 1** following the actuary valuation results showing the amortization period has dropped below 25 years and remains below 25 years following the termination of the additional contribution rates for both the employer and member.

*PERS - covered employer contributions temporarily increased:*

- Employer contributions for all members increase 1% on **July 1, 2013.**
- Beginning **July 1, 2014**, employer contributions increase 0.1% a year over 10 years, through FY2024.
- The employer additional contributions, including the increase of 0.27% in 2007 and 2009, terminate on **January 1** following the actuary valuation results in an amortization period below 25 years and remains below 25 years following the termination of the additional contribution rates for both the employer and member.

*Guaranteed Annual Benefit Adjustment (GABA) revised for **all PERS** members, including current and future retirees regardless of when they retired or the date they will retire in the future:*

- GABA is 1.5% for all current and future retirees each year PERS is funded at or above 90%;
- The 1.5% GABA is reduced 0.1% for each 2% PERS is funded below 90%; and
- GABA is 0% for all current and future retirees whenever the PERS's amortization period is 40 years or more.

## *2013 Legislative Highlights continued*

*PERS - DCRP allocaton of employer contribution increases:*

- The 1% increase in employer contributions is allocated to the Defined Benefit Retirement Plan Unfunded Actuarial Liability.
- The 0.1% annual additional increases, beginning July 1, 2014, are allocated first to the DCRP Plan Choice Rate, and then the DCRP long-term disability fund.

## Defined Benefit Plans Total Investments

At June 30, 2013, the PERB's defined benefit plans held total investments of $5.3 billion, an increase of $481.1 million from fiscal year 2012 investment totals. Below are the schedules of Fiduciary Net Position and Changes in Fiduciary Net Position for the defined benefit plans including comparative totals from fiscal year 2012. These schedules were formerly known as the Fiduciary Net Assets and Changes in Fiduciary Net Assets. This change is due to GASB Statement No. 63 *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position.*

### Fiduciary Net Position - Defined Benefit Plans

***As of June 30, 2013** - and comparative totals for June 30, 2012*

(dollars in thousands)

| | PERS | | JRS | | HPORS | | SRS | |
|---|---|---|---|---|---|---|---|---|
| | **2013** | **2012** | **2013** | **2012** | **2013** | **2012** | **2013** | **2012** |
| **Assets:** | | | | | | | | |
| Cash and Receivables | $ 67,395 | 50,022 | 1,259 | 1,095 | 1,723 | 1,383 | 4,507 | 3,394 |
| Securities Lending Collateral | 192,294 | 176,225 | 3,247 | 2,899 | 4,903 | 4,460 | 10,873 | 9,701 |
| Investments | 4,236,336 | 3,879,208 | 71,548 | 63,797 | 108,008 | 98,159 | 239,536 | 213,467 |
| Property and Equipment | 9 | 11 | 3 | 3 | 2 | 3 | 3 | 3 |
| Intangible Assets | 114 | 35 | 34 | | 28 | | 34 | |
| Total Assets | 4,496,148 | 4,105,501 | 76,091 | 67,794 | 114,664 | 104,005 | 254,953 | 226,565 |
| **Liabilities:** | | | | | | | | |
| Securities Lending Liability | 192,294 | 176,225 | 3,247 | 2,899 | 4,903 | 4,460 | 10,873 | 9,701 |
| Other Payables | 2,021 | 5,064 | 52 | 136 | 70 | 254 | 204 | 198 |
| Total Liabilities | 194,315 | 181,289 | 3,299 | 3,035 | 4,973 | 4,714 | 11,077 | 9,899 |
| Total Net Position | $4,301,833 | 3,924,212 | 72,792 | 64,759 | 109,691 | 99,291 | 243,876 | 216,666 |

### Changes In Fiduciary Net Position - Defined Benefit Plans

***For the year ended June 30, 2013** - and comparative totals for June 30, 2012*

(dollars in thousands)

| | PERS | | JRS | | HPORS | | SRS | |
|---|---|---|---|---|---|---|---|---|
| | **2013** | **2012** | **2013** | **2012** | **2013** | **2012** | **2013** | **2012** |
| **Additions:** | | | | | | | | |
| Contributions | $ 163,257 | 159,917 | 2,363 | 2,045 | 6,514 | 6,534 | 12,111 | 11,721 |
| Investment Income (Loss) | 505,052 | 91,355 | 8,409 | 1,517 | 12,826 | 2,321 | 28,154 | 5,109 |
| Total Additions | 668,309 | 251,272 | 10,772 | 3,562 | 19,340 | 8,855 | 40,265 | 16,830 |
| **Deductions:** | | | | | | | | |
| Benefits | 274,021 | 252,762 | 2,553 | 2,344 | 8,709 | 8,223 | 11,583 | 10,379 |
| Refunds | 11,637 | 12,308 | | | 51 | 68 | 1,184 | 1,271 |
| OPEB Expenses | 82 | 81 | 1 | 1 | 1 | 1 | 1 | 1 |
| Administrative Expenses | 3,761 | 3,308 | 184 | 117 | 180 | 121 | 286 | 206 |
| Miscellaneous Expenses | 1,211 | 732 | | | | | | |
| Total Deductions | 290,712 | 269,191 | 2,738 | 2,462 | 8,941 | 8,413 | 13,054 | 11,857 |
| Incr/(Decr) in Net Position | $ 377,597 | (17,919) | 8,034 | 1,100 | 10,399 | 442 | 27,211 | 4,973 |
| Prior Period Adjustments | 23 | 24 | | | | | | |

## *Analysis of Individual Systems*

### PERS-DBRP and Education

*The PERS-DBRP provides retirement, disability, and death benefits for covered employees of the State, local governments, certain employees of the Montana University System, and school districts. Member and employer contributions and earnings on investments fund the benefits of the plan. All new members are initially members of the PERS-DBRP and have a 12-month window during which they may choose to remain in the PERS-DBRP or join the PERS-DCRP by filing an irrevocable election. The PERS-DBRP and the DB Education Fund have*

| GWPORS | | MPORS | | FURS | | VFCA | | TOTAL | |
|---|---|---|---|---|---|---|---|---|---|
| 2013 | 2012 | 2013 | 2012 | 2013 | 2012 | 2013 | 2012 | [redacted] | 2012 |
| 2,307 | 2,153 | 16,015 | 14,345 | 16,094 | 13,988 | 1,992 | 1,722 | [redacted] | 88,102 |
| 5,156 | 4,441 | 11,578 | 10,194 | 11,609 | 10,166 | 1,238 | 1,156 | [redacted] | 219,242 |
| 113,666 | 97,893 | 255,112 | 224,417 | 255,833 | 223,790 | 27,147 | 25,387 | [redacted] | 4,826,118 |
| 3 | 3 | 2 | 3 | 2 | 3 | 2 | 3 | [redacted] | 32 |
| 34 | | 30 | | 30 | | 27 | | [redacted] | 35 |
| 121,166 | 104,490 | 282,737 | 248,959 | 283,568 | 247,947 | 30,406 | 28,268 | [redacted] | 5,133,529 |
| 5,156 | 4,441 | 11,578 | 10,194 | 11,609 | 10,166 | 1,237 | 1,156 | [redacted] | 219,242 |
| 169 | 414 | 150 | 128 | 133 | 128 | 102 | 99 | [redacted] | 6,421 |
| 5,325 | 4,855 | 11,728 | 10,322 | 11,742 | 10,294 | 1,339 | 1,255 | [redacted] | 225,663 |
| 115,841 | 99,635 | 271,009 | 238,637 | 271,826 | 237,653 | 29,067 | 27,013 | [redacted] | 4,907,866 |

| GWPORS | | MPORS | | FURS | | VFCA | | TOTAL | |
|---|---|---|---|---|---|---|---|---|---|
| 2013 | 2012 | 2013 | 2012 | 2013 | 2012 | 2013 | 2012 | [redacted] | 2012 |
| 7,786 | 7,618 | 22,883 | 22,120 | 22,110 | 21,201 | 1,711 | 1,635 | [redacted] | 232,791 |
| 13,106 | 2,388 | 30,037 | 5,717 | 30,035 | 5,726 | 3,383 | 592 | [redacted] | 114,725 |
| 20,892 | 10,006 | 52,920 | 27,837 | 52,145 | 26,927 | 5,094 | 2,227 | [redacted] | 347,516 |
| 3,575 | 3,203 | 18,463 | 17,355 | 17,670 | 16,519 | 2,819 | 2,046 | [redacted] | 312,831 |
| 864 | 1,241 | 1,838 | 710 | 73 | 119 | | | [redacted] | 15,717 |
| 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | [redacted] | 88 |
| 246 | 173 | 245 | 177 | 228 | 162 | 205 | 144 | [redacted] | 4,408 |
| | | | | | | 15 | 12 | [redacted] | 744 |
| 4,686 | 4,618 | 20,547 | 18,243 | 17,972 | 16,801 | 3,040 | 2,203 | [redacted] | 333,788 |
| 16,206 | 5,388 | 32,373 | 9,594 | 34,173 | 10,126 | 2,054 | 24 | [redacted] | 13,728 |
| | | | | | | | | [redacted] | 24 |

*been combined in these comparisons.* The PERS-DBRP net position restricted for pension benefits at June 30, 2013 amounted to $4.30 billion, an increase of $377.6 million (9.6%) from $3.92 billion at June 30, 2012.

Additions to the PERS-DBRP net position restricted for pension benefits include employer, member and state contributions, and investment income. For the fiscal year ended June 30, contributions increased to $163.3 million in fiscal year 2013 from $159.9 million in fiscal year 2012, an increase of $3.3 million (2.1%). Contributions increased due to new members contributing at the higher rate of 7.9%. The plan recognized total net investment income of $505 million for the fiscal year ended June 30, 2013, compared with total net investment income of $91 million for the fiscal year ended June 30, 2012. The increase in investment income is a result of a strong year of investment returns.

Deductions from the PERS-DBRP net position restricted for pension benefits primarily include retirement benefits, refunds, and administrative expenses. For fiscal year 2013, benefits amounted to $274 million, an increase of $21.3 million (8.4%) from fiscal year 2012. The increase in benefit payments was due to the increase in benefit recipients and the increase in the average recipient's benefit due to the guaranteed annual benefit adjustment (GABA). For fiscal year 2013, refunds amounted to $11.6 million, a decrease of $671 thousand (5.4%) from fiscal year 2012. The decrease in refunds was due to less people refunding their accounts. For fiscal year 2013, the costs of administering the plan's benefits amounted to $3.8 million, an increase of $453 thousand (13.7%) from fiscal year 2012. The increase in administrative expenses for fiscal year 2013 was due to the increased personnel and consultation costs associated with the continuing data cleansing and technological development of a new computer application to modernize the administrative processes associated with the PERS-DBRP.

An actuarial valuation of the PERS-DBRP assets and benefit obligations is performed annually. At June 30, 2013, the date of the most recent actuarial valuation, the years to amortize the unfunded actuarial liability is 14.5 years. This amortization period would increase to 43.7 years if the additional member and employer contributions required by HB 454 were terminated; thus the contributions remain in effect as of January 1, 2014 under the provisions of HB 454. The funded status of the plan increased to 80% at June 30, 2013 from 67% at June 30, 2012.

The PERS-DBRP actuarial value of assets was less than actuarial liabilities by $1,021 million at June 30, 2013, compared with $1,844 million at June 30, 2012. The decrease in the unfunded actuarial liability as of the last actuarial valuation is a result of recognizing past investment gains of $156 million and a total liability gain deducting $772 million from the actuarial liability as a result of the experience of the plan being different from the actuarial assumptions. The changes in plan design for new hires in 2011 have also had an impact on plan costs and liabilities.

**JRS**

*The JRS provides retirement, disability, and death benefits for all Montana judges of the district courts, justices of the Supreme Court, and the Chief Water Judge or Associate Water Judge. Member and employer contributions and earnings on investments fund the benefits of the plan.* The JRS net position restricted for pensions at June 30, 2013 amounted to $72.8 million, an increase of $8.0 million (12.4%) from $64.8 million at June 30, 2012.