



**COUNCILMEMBER DONNA FRYE**  
City of San Diego  
Sixth District

*MEMORANDUM*

**DATE:** November 19, 2007  
**TO:** Council President Scott Peters  
City Attorney Michael Aguirre  
**FROM:** Councilmember Donna Frye  
**SUBJECT:** Waterfall

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At their November 16, 2007 meeting, the SDCERS Board approved two items that related to the issue of Undistributed Surplus Earnings aka the "Waterfall". Below are some of the SDCERS Board actions (with documentation attached) from that meeting followed by my request to address this issue.

**Undistributed Surplus Earnings aka "Waterfall"** (See attachments 1 and 2)

The SDCERS Board voted to Approve Undistributed Surplus Earnings transfers for FY 2005 in the amount of "\$186,095,249 from the Undistributed Earnings Reserve to the appropriate Reserves for Employer Contributions."

The SDCERS Board also voted to authorize payment of the 13th check and Contingent Corbett Disbursements at a cost of \$4.7 million for the 13th check and \$5.8 million for Corbett from the "*schedule of surplus undistributed earnings for fiscal year 2007.*" According to the SDCERS staff report dated November 2, 2007, this payment will be made from the "waterfall" to eligible retirees, "*pending the City of San Diego's certification of the schedule of surplus undistributed earnings for fiscal year 2007.*"

The Vinson & Elkins Report, the Navigant Report, the Kroll Report, IBA reports and City Attorney reports all have stated that the practice of using undistributed "surplus" earnings is, at best, ill- advised. It was also my understanding that this practice was discontinued. According to the SDCERS staff report, however, the practice of using surplus earnings (waterfall) is continuing because the Municipal Code still allows this practice.

Please docket this item for the City Council meeting of December 3 and 4, 2007. At that time, it would be my motion to direct the City Attorney to provide an ordinance to repeal

immediately Municipal Code Sections 24.1502(a)(1) through (8), and any other Municipal Code Sections related to the “waterfall.”


CC: Honorable City Councilmembers  
Independent Budget Analyst, Andrea Tevlin  
Stanley Keller, Independent Monitor  
Macias, Gini & O’Connell

DF/ks

## SAN DIEGO CITY EMPLOYEES RETIREMENT SYSTEM STAFF REPORT

DATE: November 2, 2007

TO: Retirement Board of Administration

FROM: Mark Hovey, Chief Financial Officer 

SUBJECT: Authorization for 13<sup>th</sup> Check and Contingent Corbett Disbursements

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### RECOMMENDATION

Authorize the disbursement of 13<sup>th</sup> check supplemental benefits and contingent Corbett Settlement benefits to eligible retirees, pending the City of San Diego's certification of the schedule of surplus undistributed earnings for fiscal year 2007.

### BACKGROUND

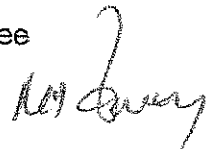
In accordance with Municipal Code Sections 24.1503, 24.1502(a)(6) and 24.1502(a)(7), the supplemental and contingent benefits, commonly known as the 13<sup>th</sup> check and Corbett contingent benefit, are to be paid if sufficient Surplus Undistributed Earnings are available. These benefits are payable under the Municipal Code Section known as the "waterfall", when Investment Earnings Received, as defined in Section 24.1501, are sufficient to satisfy interest crediting or payment of the items listed in 24.1502(a)(1) through (8) respectively. These Sections of the Municipal Code have not been modified to eliminate the waterfall, thus are still in effect for the qualification of payment of these benefits for the fiscal year ended June 30, 2007.

Earnings for the fiscal year ended June 30, 2007 are sufficient to pay the benefits. Based on the unaudited financial statements for fiscal year 2007, Investment Earnings Received before distributions totaled \$464,449,218. Waterfall interest credits and distributions, including the 13<sup>th</sup> Check and Corbett payments, totaled \$129,570,536. The remaining Net Surplus Undistributed Earnings of \$334,878,682 will be credited to the Reserves for Employer Contributions in accordance with Section 24.1502(b).

Staff has estimated the 13<sup>th</sup> check and Corbett distributions will be approximately \$4,700,000 and \$5,800,000, respectively.

Staff recommends approval of these disbursements.

**SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM  
STAFF REPORT  
FINANCE AND ADMINISTRATION DIVISION**

**DATE:** November 2, 2007  
**TO:** Business and Governance Committee  
**FROM:** Mark Hovey, Chief Financial Officer   
**SUBJECT:** Approval of Undistributed Earnings Reserve transfer for FY 2005

**RECOMMENDATION:**

Approve the transfer of \$186,095,249 from the Undistributed Earnings Reserve to the Reserves for Employer Contributions for earnings received that are attributable to fiscal year 2005.

**BACKGROUND:**

Macias Gini & O'Connell LLP (MGO) has prepared a Certification of Surplus Undistributed Earnings for Fiscal Year 2005. With this Certification, the Board can approve the transfer of \$186,095,249 from the Undistributed Earnings Reserve to the appropriate Reserves for Employer Contributions for Fiscal Year 2005.

MGO, acting under provisions of its audit contract with the City, has provided the attached Certification.

I recommend approval of this recommendation.

Attachment