

Item 2

Proposed Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
December 5, 2014

Present: Member Eraina Ortega, Chairperson
Representative of the Director of the Department of Finance
Member Andre Rivera, Vice Chairperson
Representative of the State Treasurer
Member Richard Chivaro
Representative of the State Controller
Member Scott Morgan
Representative for Ken Alex, Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member Carmen Ramirez
City Council Member

NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.

CALL TO ORDER AND ROLL CALL

Chairperson Ortega called the meeting to order at 10:01 a.m. Executive Director Heather Halsey called the roll. She noted that Member Saylor was unable to make it to the hearing.

APPROVAL OF MINUTES

Member Olsen made a motion to adopt the minutes. With a second by Member Morgan, the September 26, 2014 hearing minutes were adopted by a vote of 4-0, with Member Ramirez abstaining and Member Chivaro not yet present.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

The Chairperson asked if there was any public comment. There was no response.

Assistant Executive Director Jason Hone announced the retirement of Commission employee Sonny Leung and presented him with a resolution.

CONSENT CALENDAR

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570) (action)

INCORRECT REDUCTION CLAIMS

- Item 13* *Collective Bargaining and Collective Bargaining Agreement Disclosure, 08-4425-I-15*
 Government Code Sections 3540-3549.9
 Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213
 Contra Costa Community College District, Claimant

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

STATEWIDE COST ESTIMATES

- Item 14* *Accounting for Local Revenue Realignments, 05-TC-01*
 Health & Safety Code Sections 33681.12, 33681.13, 33681.14, 33681.15;
 Revenue & Taxation Code Sections 97.68, 97.70, 97.71, 97.72, 97.73, 97.75
 Statutes 2003, Chapter 162; Statutes 2004, Chapter 211; Statutes 2004, Chapter 610
 County of Los Angeles, Claimant

Member Olsen made a motion to adopt the Consent Calendar. With a second by Member Rivera, the Consent Calendar was adopted by a vote of 5-0 with Member Chivaro not yet present.

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570) (action)

Executive Director Heather Halsey noted that Item 8 was withdrawn by the claimant. She then swore in parties and witnesses participating in the hearing.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181.1(c) (info/action)

- Item 2 Appeal of Executive Director Decisions

There were no appeals to consider.

TEST CLAIMS

- Item 3 *Sheriff Court-Security Services, 09-TC-02*
 Government Code Sections 69920, 69921, 69921.5, 69922, 69925, 69926, 69927(a)(5)(6) and (b), and 77212.5
 Statutes 1998, Chapter 764 (AB 92); Statutes 2002, Chapter 1010 (SB 1396); Statutes 2009-2010, 4th Ex. Sess., Chapter 22 (SB 13)
 California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security), Adopted as California Rule of Court, rule 810 effective July 1, 1988; amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Amended and renumbered to Rule 10.810 effective January 1, 2007
 County of Los Angeles, Claimant

This test claim alleges a reimbursable state-mandated program arising from the shift of costs for retiree health benefits for sheriff employees who provide court security services to the trial courts from the state (paid through the Trial Court Funding program) to the counties within the meaning of article XIII B, section 6(c).

Commission Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the proposed decision partially approving the test claim.

Member Chivaro entered the hearing room.

Parties were represented as follows: Ed Jewik, representing the claimant; Margaret Hastings, representing Judicial Counsel of California; Susan Geanacou and Lee Scott, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Chivaro, the motion to adopt the proposed decision partially approving the test claim was adopted by a vote of 6 to 0.

Item 4 *Water Conservation*, 10-TC-12 and 12-TC-01

Water Code Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4
California Code of Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register 2012, No. 28.

South Feather Water and Power Agency, Paradise Irrigation District, Richvale Irrigation District, Biggs-West Gridley Water District, Oakdale Irrigation District, and Glenn-Colusa Irrigation District, Claimants

This consolidated test claim alleges reimbursable state-mandated activities arising from the Water Conservation Act of 2009 and implementing regulations.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the proposed decision denying the test claim.

Parties were represented as follows: Dustin Cooper and Peter Harman, representing the claimants; Alexis Stevens, representing Glenn-Colusa Irrigation District, Claimant; Donna Ferebee and Lee Scott, representing the Department of Finance; Spencer Kenner representing the Department of Water Resources.

Interested Parties were represented as follows: Dorothy Holzem representing California Special Districts Association; and Geoffrey Neil representing California State Association of Counties.

Following discussion among the Commission members, staff, parties, and interested parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to adopt the staff recommendation to deny the test claim was adopted by a vote of 6-0.

MANDATE REDETERMINATION

- Item 5 *Open Meetings Act/Brown Act Reform (CSM-4257/4469), 13-MR-02*
Government Code Sections 54952, 54954.2, 54954.3, 54957.1, 54957.7;
Statutes 1986, Chapter 641; Statutes 1993, Chapters 1136; 1137; 1138
As Alleged to be Modified by:
Proposition 30, General Election, November 6, 2012
Department of Finance, Requester
FIRST HEARING: ADEQUATE SHOWING

The hearing of this matter was to determine whether the Department of Finance had made an adequate showing that a subsequent change in law had occurred that may modify the State's liability for the program.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the decision and direct staff to provide notice of the second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

Parties were represented as follows: Michael Byrne and Donna Ferebee, Department of Finance.

Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion to adopt the staff recommendation, finding that the Department of Finance has made an adequate showing that the state's liability may have been modified and directing staff to provide notice of the second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision, was adopted by a vote of 6-0.

INCORRECT REDUCTION CLAIMS

- Item 6 *Health Fee Elimination, 05-4206-I-03*
Education Code Section 72246 (Renumbered as section 76355)
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.); Statutes 1987,
Chapter 1118
Long Beach Community College District, Claimant

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the proposed decision to deny the incorrect reduction claim.

Parties were represented as follows: Keith Petersen, representing the claimant; Jim Spano and Jim Venneman, representing the State Controller's Office.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the proposed decision to deny the incorrect reduction claim. With a second by Member Olsen, the motion to adopt the staff recommendation to deny the incorrect reduction claim was adopted by a vote of 6-0.

- Item 7 *Health Fee Elimination, 05-4206-I-05*
Education Code Section 72246 (Renumbered as section 76355)
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.); Statutes 1987,
Chapter 1118
State Center Community College District, Claimant

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the proposed decision to deny the incorrect reduction claim.

Parties were represented as follows: Keith Petersen, representing the claimant; Jim Spano and Jim Venneman, representing the State Controller's Office.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the proposed decision to deny the incorrect reduction claim. With a second by Member Ramirez, the motion to adopt the staff recommendation to deny the incorrect reduction claim was adopted by a vote of 6-0.

Item 9 *Health Fee Elimination, 05-4206-I-11*

Education Code Section 72246 (Renumbered as section 76355)

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.); Statutes 1987, Chapter 1118

El Camino Community College District, Claimant

Senior Commission Counsel Tyler Asmundson presented this item and recommended that the Commission adopt the proposed decision to deny the incorrect reduction claim.

Parties were represented as follows: Keith Petersen, representing the claimant; Jim Spano and Jim Venneman, representing the State Controller's Office.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the proposed decision to deny the incorrect reduction claim. With a second by Member Rivera, the motion to adopt the staff recommendation to deny the incorrect reduction claim was adopted by a vote of 6-0.

Item 10 *Health Fee Elimination, 05-4206-I-12*

Education Code Section 72246 (Renumbered as section 76355)

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.); Statutes 1987, Chapter 1118

Santa Monica Community College District, Claimant

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt the proposed decision to deny the incorrect reduction claim.

Parties were represented as follows: Keith Petersen, representing the claimant; Jim Spano and Jim Venneman, representing the State Controller's Office.

Following discussion among the Commission members, staff, and parties, Member Rivera made a motion to adopt the proposed decision to deny the incorrect reduction claim. With a second by Member Chivaro, the motion to adopt the staff recommendation to deny the incorrect reduction claim was adopted by a vote of 6-0.

Executive Director Heather Halsey noted that Item 12 will be heard out of order prior to Item 11.

Item 12 *Collective Bargaining, 05-4425-I-11*

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961

Gavilan Joint Community College District, Claimant

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the proposed decision to deny the incorrect reduction claim.

Parties were represented as follows: Keith Petersen, representing the claimant; Jay Lal, representing the State Controller's Office.

Following discussion among the Commission members, staff, and parties, Member Ramirez made a motion to adopt the proposed decision to deny the incorrect reduction claim. With a second by Member Rivera, the motion to adopt the staff recommendation to deny the incorrect reduction claim was adopted by a vote of 6-0.

- Item 11 *Emergency Procedures, Earthquake, and Disasters, 04-4241-I-01*
Education Code Sections 35295, 35296, 35297, 40041.5 and 40042
Statutes 1984, Chapter 1659
San Diego Unified School District, Claimant

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt the proposed decision to deny the incorrect reduction claim.

Parties were represented as follows: Jim Spano and Ken Howell, representing the State Controller's Office.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the proposed decision to deny the incorrect reduction claim. With a second by Member Olsen, the motion to adopt the staff recommendation to deny the incorrect reduction claim was adopted by a vote of 6-0.

HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)

- Item 15 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer
Note: This item will only be taken up if an application is filed.

No applications were filed.

STAFF REPORTS

- Item 16 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 17 Executive Director: Workload Update and Tentative Agenda Items for Next Meeting (info)

Executive Director Heather Halsey presented this item and reported on the Commission's backlog reduction. Member Ramirez congratulated Commission staff on successfully reducing the backlog.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (action)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126(e)(1):

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los*

Angeles, et al (petition and cross-petition).
California Supreme Court, Case No. S214855
(Los Angeles County Superior Court, Case No. BS130730, Second
District Court of Appeal, Case No. B237153)
[*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04,
03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality
Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a.,
4C2b, 4E & 4Fc3]

2. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.* (petition and cross-petition)
Third District Court of Appeal, Case No. C070357 (Sacramento County Superior Court Case No. 34-2010-80000604)
[*Discharge of Stormwater Runoff, Order No. R9-207-000*, 07-TC-09
California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
3. *California School Board Association (CSBA) v. State of California et al.*
Alameda County Superior Court, Case No. RG11554698
[2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
4. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*
San Diego County Superior Court,
Case No. 37-2014-00005050-CU-WM-CTL
Mandate Redetermination, *Sexually Violent Predators*,
(12-MR-01, CSM-4509); Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496)
As modified by Proposition 83, General Election, November 7, 2006
5. *Santa Clarita Valley Sanitation District v. Commission on State Mandates, California Regional Water Quality Control Board, Department of Finance*
Los Angeles County Superior Court, Case No. BS148024
Upper Santa Clara River Chloride Requirements, 10-TC-09
(Los Angeles Regional Water Quality Control Board
Resolution No. R4-2008-012, adopted December 11, 2008;
approved by United States Environmental Protection Agency
April 6, 2010)
6. *County of Los Angeles v. Commission on State Mandates, Department of Finance*
Los Angeles County Superior Court, Case No. BS148845
Public Guardianship Omnibus Conservatorship Reform,
07-TC-05(Probate Code Sections 1850(a), 1851(a), 2113,
2250(a)-(c), 2250.4(a)-(d); 2352(a)-(f), 2352.5(a)-(e), 2410,
2540(a)-(b), 2543(a)-(d), 2610(a), 2620(a)-(e), 2620.2(a)-(d),

2590, 2591(a)-(q), 2591.5(a)-(d), 2623(a)-(b), 2640(a)-(c), 2640.1(a)-(c), 2641(a)-(b), 2653(a)-(c), 2920(a)-(c), and 2923 Statutes 2006; Chapter 490 (SB 1116), Statutes 2006, Chapter 492 (SB 1716), and Statutes 2006, Chapter 493 (AB 1363))

7. *Coast Community College District, et al. v. Commission on State Mandates*
Sacramento County Superior Court, Case No. 34-2014-80001842
Minimum Conditions for State Aid, 02-TC-25/02-TC-31 (Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).)
8. *Clovis Unified School Dist. v. Commission on State Mandates, State Controller’s Office*
Sacramento County Superior Court, Case No. 34-2014-80001931
Graduation Requirements, 05-4435-I-50 and 08-4435-I-52 (Education Code Section 51225.3, as added by Statutes 1983, Chapter 498, Fiscal Years 1998-1999, 1999-2000, 2000-2001, and 2001-2002)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a)(1):

The Commission adjourned into closed executive session at 11:33am, pursuant to Government Code section 11126(e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

RECOVENE IN PUBLIC SESSION REPORT FROM CLOSED EXECUTIVE SESSION

At 11:50 a.m., Chairperson Ortega reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

ADJOURNMENT

Hearing no further business, Chairperson Ortega adjourned the meeting at 11:51 a.m.

Heather Halsey
Executive Director

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**COMMISSION ON
STATE MANDATES**

PUBLIC MEETING

COMMISSION ON STATE MANDATES



TIME: 10:00 a.m.

DATE: Friday, December 5, 2014

**PLACE: State Capitol, Room 447
Sacramento, California**



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA
(Chair of the Commission)
Representative for MICHAEL COHEN, Director
Department of Finance

RICHARD CHIVARO
Representative for JOHN CHIANG
(Vice Chair of the Commission)
State Controller

SCOTT MORGAN
Representative for Ken Alex, Director
Office of Planning & Research

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member

ANDRÉ RIVERA
Representative for BILL LOCKYER
State Treasurer



COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Items 2 and 17)

JASON HONE
Assistant Executive Director

CAMILLE N. SHELTON
Chief Legal Counsel
(Items 3 and 16)

TYLER ASMUNDSON
Commission Counsel
(Item 9)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

continued

ERIC FELLER
Senior Commission Counsel
(Item 10)

MATTHEW B. JONES
Commission Counsel
(Items 4, 5, 6, 7, and 12)



PUBLIC TESTIMONY

Appearing Re Item 3:

For Claimant County of Los Angeles:

ED JEWIK
Program Specialist V
Department of Auditor-Controller Accounting Division
500 W. Temple Street, Room 603
Los Angeles, California 90012

For Judicial Council of California:

MARGARET HASTINGS
Transactions and Business Operations Unit
Office of the General Counsel
Judicial Council of California
Administrative Office of the Courts
Northern/Central Regional Office
2860 Gateway Oaks Drive, Suite 400
Sacramento, California 95833

For Department of Finance:

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance
915 L Street, Suite 1280
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 3: *continued*

For Department of Finance:

LEE SCOTT
Mandates Unit
Department of Finance
915 L Street, Eighth Floor
Sacramento, California 95814

Appearing Re Item 4:

For Claimants

DUSTIN C. COOPER
Minasian, Meith, Soares,
Sexton & Cooper
1681 Bird Street
Oroville, California 95965

PETER C. HARMAN
Minasian, Meith, Soares,
Sexton & Cooper
1681 Bird Street
Oroville, California 95965

For Claimants Glenn-Colusa Irrigation District:

ALEXIS K. STEVENS
Somach Simmons & Dunn
500 Capitol Mall Ste 1000
Sacramento, California 95814

For Department of Water Resources:

Spencer L. Kenner
Department of Water Resources
1416 Ninth Street
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4: *continued*

For Department of Finance:

DONNA FEREBEE
Legal Department
Department of Finance
915 L Street, Suite 1280
Sacramento, California 95814

LEE SCOTT
Mandates Unit
Department of Finance

For California Special Districts Association:

DOROTHY HOLZEM
Legislative Representative
Advocacy & Public Affairs Department
California Special Districts Association
1112 I Street Suite 200
Sacramento, California 95814

For California State Association of Counties:

GEOFFREY NEILL
Senior Legislative Analyst
Revenue and Taxation
California State Association of Counties
1100 K Street, Suite 101
Sacramento, California 95814

Appearing Re Item 5:

For Department of Finance:

MICHAEL BYRNE
Mandates Unit
Department of Finance
915 L Street
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 5: *continued*

For Department of Finance:

DONNA FEREBEE
Legal Department
Department of Finance

Appearing Re Item 6:

For Claimant Long Beach Community College District:

KEITH B. PETERSEN
SixTen and Associates
5252 Balboa Avenue, Suite 900
San Diego, California 92117

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

JIM VENNEMAN
Audit Manager, Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

Appearing Re Item 7:

For Claimant State Center Community College District:

KEITH B. PETERSEN
SixTen and Associates

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 7: *continued*

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
State Controller's Office

JIM VENNEMAN
Audit Manager, Division of Audits
State Controller's Office

Appearing Re Item 9:

For Claimant El Camino Community College District:

KEITH B. PETERSEN
SixTen and Associates

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
State Controller's Office

JIM VENNEMAN
Audit Manager, Division of Audits
State Controller's Office

Appearing Re Item 10:

For Claimant Santa Monica Community College District:

KEITH B. PETERSEN
SixTen and Associates

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 10: *continued*

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
State Controller's Office

JIM VENNEMAN
Audit Manager, Division of Audits
State Controller's Office

Appearing Re Item 11:

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
State Controller's Office

KENNETH C. HOWELL
Audit Manager, Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

Appearing Re Item 12:

For Claimant Gavilan Community College District

KEITH B. PETERSEN
SixTen and Associates

For State Controller's Office:

JAY LAL
Manager, Local Reimbursements Section
State Controller's Office
3301 C Street, Suite 700
Sacramento, California 95816

I N D E X

<u>Proceedings</u>	<u>Page</u>
I. Call to Order and Roll Call	14
II. Approval of Minutes	
Item 1 September 26, 2014	15
III. Public Comment for Matters Not on the Agenda	16
Presentation of resolution to Sonny Leung .	16
IV. Proposed Consent Calendar	
Items 13 and 14	18
V. Hearings and Decisions on Test Claims and Parameters and Guidelines Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A. Item 2 Appeal of Executive Director Pursuant to California Code of Regulations, Title 2, Section 1181(c) <i>(None)</i>	19
B. Test Claims	
Item 3 <i>Sheriff Court-Security Services 09-TC-02 County of Los Angeles</i>	19
Item 4 <i>Water Conservation 10-TC-12 and 12-TC-01 South Feather Water and Power Agency, Paradise Irrigation District, Richvale Irrigation District, Biggs-West Gridley Water District, Oakdale Irrigation District, and Glenn-Colusa Irrigation Districts</i>	31

I N D E X

<u>Proceedings</u>	<u>Page</u>
V. Hearings and Decisions on Test Claims and Parameters and Guidelines Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
C. Mandate Redeterminations	
Item 5 <i>Open Meetings Act/Brown Act Reform (CSM-4247/4469)</i> 13-MR-02 Department of Finance	77
D. Incorrect Reduction Claims	
Item 6 <i>Health Fee Elimination</i> 04-4206-I-03 Long Beach Community College District	79
Item 7 <i>Health Fee Elimination</i> 04-4206-I-05 State Center Community College District	82
Item 8 <i>Health Fee Elimination</i> 04-4206-I-09 North Orange Community College District (<i>withdrawn</i>)	19
Item 9 <i>Health Fee Elimination</i> 04-4206-I-11 El Camino Community College District	84
Item 10 <i>Health Fee Elimination</i> 04-4206-I-012 Santa Monica Community College District	86

I N D E X

Proceedings

Page

V. Hearings and Decisions on Test Claims and Parameters and Guidelines Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7

D. Incorrect Reduction Claims *continued*

Item 11 *Emergency Procedures, Earthquakes and Disasters*
04-4241-I-01
San Diego Community College
District 91

Item 12 *Collective Bargaining*
04-4425-I-11
Gavilan Joint Community College
District 88

Item 13* *Collective Bargaining and Collective Bargaining Agreement Disclosure*
08-4425-I-15
Contra Costa Community College
District
(Consent calendar item) 18

VI. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8

A. Statewide Cost Estimates

Item 14* *Accounting for Local Revenue Realignments*
05-TC-01
County of Los Angeles
(Consent calendar item) 18

I N D E X

<u>Proceedings</u>	<u>Page</u>
VII. Hearings on County Applications for Findings of Significant Financial Distress Pursuant to Welfare and Institutions Code Section 17000.6 and California Code of Regulations, Title 2, Article 6.5	
Item 15 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commissions, or to a Hearing Officer (None)	93
VIII. Reports	
Item 16 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar	94
Item 17 Executive Director: Workload Update and Tentative Agenda Items for Next Meeting	95
IX. Closed Executive Session Pursuant to Government Code Sections 11126 and 11126.2	97
A. Pending Litigation	
B. Personnel	
X. Report from Closed Executive Session	97
Adjournment	97
Reporter's Certificate	98



Commission on State Mandates – December 5, 2014

1 objections or corrections to the September 26th meeting
2 minutes?

3 MEMBER RAMIREZ: I just will say, I'm going to
4 abstain because I couldn't be there.

5 CHAIR ORTEGA: Okay.

6 MEMBER OLSEN: I'll move adoption.

7 MEMBER MORGAN: Second.

8 CHAIR ORTEGA: Okay, a motion.

9 MEMBER MORGAN: Second.

10 CHAIR ORTEGA: Second by Mr. Morgan.

11 All in favor?

12 *(A chorus of "ayes" was heard.)*

13 CHAIR ORTEGA: Any objection?

14 *(No response)*

15 CHAIR ORTEGA: And we have one abstention for
16 the minutes, Ms. Ramirez.

17 Let's see. Sorry, I'm a little frazzled this
18 morning.

19 Heather?

20 MS. HALSEY: Do you want me to call roll?

21 CHAIR ORTEGA: We did. The minutes were
22 adopted.

23 MS. HALSEY: Okay, sorry. I couldn't hear.

24 *(Brief discussion off the record)*

25 CHAIR ORTEGA: The minutes are adopted.

Commission on State Mandates – December 5, 2014

1 MS. HALSEY: Thank you.

2 Moving on then, now, we'll take up public
3 comment for matters not on the agenda.

4 Please note the Commission cannot take action
5 on items not on the agenda. However, it can schedule
6 issues raised by the public for consideration at future
7 meetings.

8 CHAIR ORTEGA: Okay, is there any public
9 comment?

10 *(No response)*

11 CHAIR ORTEGA: Okay, seeing none, we'll move on
12 to the Consent Calendar.

13 MR. HONE: I would like to announce the
14 retirement of Commission employee Sonny Leung, and would
15 like to present him with this resolution upon his
16 retirement.

17 So I'll read this:

18 *Whereas, Sonny Leung has served as a*
19 *State employee for 21 years, including almost*
20 *seven years as an associate governmental*
21 *program analyst with the Commission on State*
22 *Mandates; and*

23 *Whereas, beginning in 1993 as an office*
24 *assistant for the Department of General*
25 *Services, Mr. Leung worked his way up through*

Commission on State Mandates – December 5, 2014

1 *several state job classifications, including*
2 *word-processing technician, accountant trainee,*
3 *management services technician, and staff*
4 *services analyst; and*

5 *Whereas, Mr. Leung in his current capacity*
6 *with the Commission, for budgeting fiscal*
7 *matters, developed proposed spending plans,*
8 *tracked Commission expenditures and projection*
9 *reports; and*

10 *Whereas, for procurement and accounting,*
11 *he prepared purchase documents, year-end*
12 *reports, and maintained accounting data and*
13 *resolved disputed charges; and*

14 *Whereas, for contracts, Mr. Leung*
15 *monitored and verified contract invoices and*
16 *maintained an accounting of obligated funds*
17 *and payments; and*

18 *Whereas, Sonny Leung is being honored*
19 *by the Commission on State Mandates, in*
20 *appreciation for service to the State of*
21 *California and service to the Commission.*

22 *Now, therefore, be it resolved that*
23 *the Commission on State Mandates warmly*
24 *congratulates Sonny Leung upon his retirement*
25 *from state service.*

Commission on State Mandates – December 5, 2014

1 *Done this 5th day of December 2014,*
2 *County of Sacramento, State of California,*
3 *in witness thereof, by the Commission on*
4 *State Mandates.*

5 MS. HALSEY: Thank you.

6 *(Applause)*

7 CHAIR ORTEGA: Thank you.

8 Thank you, Mr. Leung. Congratulations on your
9 retirement.

10 MEMBER RAMIREZ: Thank you.

11 CHAIR ORTEGA: All the best to you.

12 MS. HALSEY: Moving on to the Consent Calendar.

13 The Consent Calendar consists of Items 13
14 and 14.

15 CHAIR ORTEGA: Okay, any objections to the
16 Consent Calendar?

17 MS. OLSEN: I'll move adoption.

18 CHAIR ORTEGA: Okay. Is there any public
19 comment on the Consent Calendar?

20 *(No response)*

21 CHAIR ORTEGA: We have a motion from Ms. Olsen.

22 MEMBER RIVERA: Second.

23 CHAIR ORTEGA: Second from Mr. Rivera.

24 All in favor?

25 *(A chorus of "ayes" was heard.)*

Commission on State Mandates – December 5, 2014

1 CHAIR ORTEGA: Okay, the Consent Calendar is
2 adopted.

3 MS. HALSEY: Let's move on to the Article 7
4 portion of the hearing.

5 Please note that Item 8 was withdrawn by the
6 claimant.

7 Will the parties and witnesses for Items 2
8 through 12 please rise?

9 *(Parties and witnesses stood to be sworn*
10 *or affirmed.)*

11 MS. HALSEY: Do you solemnly swear or affirm
12 that the testimony which you are about to give is true
13 and correct, based on your personal knowledge,
14 information, or belief?

15 *(A chorus of affirmative responses was*
16 *heard.)*

17 MS. HALSEY: Thank you.

18 Item 2 is reserved for appeals of Executive
19 Director decisions. There are no appeals to consider
20 under Item 2.

21 Chief Legal Counsel Camille Shelton will
22 present Item 3, a test claim on *Sheriff Court-security*
23 *Services.*

24 MS. SHELTON: Good morning.

25 CHAIR ORTEGA: Good morning.

Commission on State Mandates – December 5, 2014

1 MS. SHELTON: This test claim is filed on
2 behalf of counties seeking reimbursement for the cost of
3 retiree health benefits for sheriff employees, providing
4 security services to the trial courts.

5 Before 2009, the State had a primary
6 responsibility to administer trial court operations and
7 fund the associated costs through the Trial Court Funding
8 Program.

9 The 2009 test-claim statute excludes the cost
10 of retiree health benefits for sheriff employees,
11 providing security services from the State's funding of
12 trial court operations.

13 Staff finds that the 2009 test-claim statute
14 imposes a new program or higher level of service and
15 costs mandated by the State within the meaning of
16 Article XIII B, section 6(c), for the partial shift of
17 financial responsibility to the counties for providing
18 sheriff court-security services for the Trial Court
19 Operations Program.

20 Reimbursement is required as specified in the
21 analysis for retiree health benefit costs incurred by
22 a county from July 28th, 2009, to June 27th, 2012, for
23 employees that provided sheriff court-security services
24 in criminal and delinquency matters.

25 In addition, offsetting revenue received by a

Commission on State Mandates – December 5, 2014

1 county from the 2011 realignment for this program in
2 fiscal year 2011-12 is required to be identified and
3 deducted from any claim for reimbursement.

4 Staff recommends that the Commission adopt the
5 proposed decision to partially approve this test claim.

6 Will the parties and witnesses please state
7 your names for the record?

8 MR. JEWIK: Ed Jewik, representing Los Angeles
9 County.

10 MS. GEANACOU: Susan Geanacou, Department of
11 Finance.

12 MR. SCOTT: Lee Scott, Department of Finance.

13 MS. HASTINGS: Margaret Hastings, Judicial
14 Council.

15 CHAIR ORTEGA: Okay, Mr. Jewik?

16 MR. JEWIK: I concur with the excellent work by
17 the Commission staff, and I look forward to a "yes" vote
18 on this test claim.

19 CHAIR ORTEGA: Okay, Ms. Hastings or
20 Ms. Geanacou, which -- either one of you?

21 MS. HASTINGS: Go ahead.

22 MS. GEANACOU: I think I'll go. Thank you.

23 Good morning, Susan Geanacou, again, Department
24 of Finance.

25 To start, Finance continues to assert this test

1 claim should be denied.

2 There remains disagreement over what is the
3 alleged required program; namely, the larger provision of
4 sheriff court-security or the provision of retiree health
5 benefit -- this retiree health-care benefit to sheriff
6 court-security employees.

7 As Finance said in its written comments, we
8 believe the program focus should be on the optional
9 provision of retiree health benefits to sheriff
10 court-security employees rather than categorizing those
11 benefits as a cost component of the larger required
12 program of providing security services for trial courts.
13 Because the provision of these benefits is not and was
14 not required, Finance asserts there has been no shift
15 in financial responsibility for a required program from
16 the State to the counties.

17 The Commission staff analysis acknowledges that
18 the State does not require counties to provide retiree
19 health benefits to employees.

20 Even if one looks at the benefits as an
21 optional component of a required program, that optional
22 nature of the component cannot form the basis of a
23 reimbursable state mandate.

24 The State is not mandating counties to incur
25 these costs. Costs must be mandated by the State under

1 Government Code section 17514 to be eligible for mandate
2 reimbursement.

3 The State did not have financial responsibility
4 for the benefits, either. The State can voluntarily pay
5 for an activity such as these benefits, and later stop
6 paying for the activity without transforming the activity
7 into a State financial responsibility for purposes of
8 mandates analysis.

9 Counties were not required to incur the cost
10 of these benefits during the period of potential
11 reimbursement because, as the staff analysis points out,
12 the counties could, as a local policy decision, fund the
13 benefits on a pay-as-you-go basis after the employee
14 retires, rather than pre-funding them while the employee
15 is still employed.

16 As the staff analysis concludes, only those
17 costs that were pre-funded during an employee's
18 employment, before their retirement, are potentially
19 eligible for mandate reimbursement.

20 Finance asserts the test claim should be denied
21 because, according to the staff analysis, it is county
22 discretion to pre-fund the benefit, or not, that
23 determines whether the costs are incurred and
24 reimbursable. We believe that places the outcome of the
25 reimbursable mandate determination inappropriately within

1 the control of counties.

2 (Mr. Chivaro entered the meeting room.)

3 MS. GEANACOU: This approach of the staff
4 analysis would be even more significant if the relevant
5 potential time period for reimbursement was open-ended.

6 That all said, from reviewing the comprehensive
7 annual financial reports of the five counties mentioned
8 in the analysis, it appears most were using the
9 pay-as-you-go method for funding these costs for the
10 fiscal years at issue; and for them, no mandate
11 reimbursement will be owed based on their choice of how
12 they funded these benefits.

13 In sum, Finance asks that you deny this test
14 claim.

15 CHAIR ORTEGA: Thank you.

16 Any questions at this point?

17 Ms. Hastings?

18 MS. HASTINGS: The Judicial Council supports
19 the Department of Finance's position.

20 CHAIR ORTEGA: Okay. Mr. Jewik, can I ask a
21 question about L.A. County's position?

22 So I understand that you support the staff
23 recommendation.

24 Was L.A. County pre-funding the costs for the
25 folks in question here?

Commission on State Mandates – December 5, 2014

1 MR. JEWIK: The County was including the costs
2 for those employees who are providing court-security
3 services.

4 And previous to that, the State was paying for
5 those costs before this function was transferred. So it
6 was included.

7 CHAIR ORTEGA: Okay, so you were -- for the
8 cases that are identified in the test claim, the criminal
9 and juvenile delinquency cases, you were incurring costs
10 in those years to --

11 MR. JEWIK: Yes.

12 CHAIR ORTEGA: -- pre-fund retiree health?

13 MR. JEWIK: Yes.

14 CHAIR ORTEGA: Okay.

15 Okay, Ms. Geanacou, can you talk a little bit
16 about the conclusion that the retiree health costs, as
17 I think narrowly identified in the test-claim decision,
18 only the actual costs incurred for pre-funding, the
19 argument that they are an optional benefit, how would
20 that be similar to other parts of the benefit package
21 that might be paid to a deputy providing court-security
22 services? So some other benefit that would have been
23 included as part of the court-security costs. Like, say,
24 the County was contributing 1 percent to a 401(k), which
25 they could take back at any time. Would those be costs

1 that would be appropriate for inclusion in the
2 court-security costs that were paid to the county?

3 MS. GEANACOU: The other benefits?

4 CHAIR ORTEGA: Yes.

5 MS. GEANACOU: What the other benefits would
6 be?

7 CHAIR ORTEGA: Yes.

8 MS. GEANACOU: Well, I'm not familiar with the
9 particulars of a benefit, whether it's required to be
10 offered or not; so I don't want to speculate. But some
11 benefits are bargained for.

12 CHAIR ORTEGA: Uh-huh.

13 MS. GEANACOU: I don't know if the others
14 you're alluding to are in that category.

15 If something typically is bargained for, it's
16 at the discretion of the parties bargaining and it's not
17 state-imposed.

18 CHAIR ORTEGA: Okay.

19 MS. GEANACOU: So I don't want to reach too far
20 on my, I'll call it, speculating.

21 CHAIR ORTEGA: Okay. And the way I read the
22 analysis is that it is very limited, so that the State
23 would not be responsible for paying for any employee who
24 had already retired; and whether the county was paying
25 the pay-go costs of retiree health, it would not be for

1 any employee -- or any deputy who might have been in a
2 civil case. It's limited to case type. It's limited to
3 the costs for paying for those particular individuals in
4 those years.

5 Does that analysis at all affect your thinking
6 about the Finance position?

7 So I just want to -- I'll preface that by
8 saying, I have a lot of concern about the notion that
9 the State is responsible for retiree health costs for a
10 county employee. The narrowness of the proposed decision
11 makes me a little more comfortable with that outcome.

12 So I want to know how you -- if you've thought about the
13 narrowing of the decision.

14 MS. GEANACOU: Well, I don't want to commit to
15 a position that hasn't been well thought out, of course.
16 But the narrowness of this decision, if the Commission
17 upholds what is recommended here, while it may, if not
18 challenged, ultimately have a smaller or more limited
19 fiscal impact on the State's obligation to pay, I don't
20 think that fundamentally alters our opposition to the
21 precepts, the reasoning behind the Commission's decision.
22 And that's what concerns us.

23 So whether the impact financially may
24 ultimately be small or large, I don't think that affects
25 our view on whether we should support or object to the

1 Commission staff's thinking.

2 CHAIR ORTEGA: Okay. And I wasn't really
3 trying to get at the narrowing having an effect on the
4 cost. It's the narrowing, having an effect on what the
5 obligation is.

6 So getting at whether the State could be
7 responsible for retiree health broadly, or the State
8 being responsible for only those costs that the county
9 actually incurred for the particular employees.

10 Camille?

11 MS. SHELTON: Once a mandated program is found,
12 under law, they're required to get reimbursed for all
13 their costs, including benefits. So under any of the
14 mandated programs that you have approved to date, they
15 are receiving reimbursement, partially for retiree health
16 benefits, to the extent that those are provided to the
17 employee. That's no different than in any other test
18 claim.

19 CHAIR ORTEGA: And paid for in that year, for
20 those employees?

21 MS. SHELTON: Right. It's authorized under
22 OMB A-87, which is expressly identified in our parameters
23 and guidelines. It's --

24 CHAIR ORTEGA: So all our -- all the mandates
25 that we are reimbursing now could potentially have this

Commission on State Mandates – December 5, 2014

1 underlying cost in them --

2 MS. SHELTON: Absolutely.

3 CHAIR ORTEGA: -- to the extent that that
4 county or district or city was paying for retiree health
5 in those years?

6 MS. SHELTON: Yes.

7 CHAIR ORTEGA: As long as they had staff costs,
8 retiree health could be part of it?

9 MS. SHELTON: Right.

10 CHAIR ORTEGA: Okay, thank you.

11 Ms. Ramirez?

12 MEMBER RAMIREZ: Thank you.

13 I have a question, I think, for the Judicial
14 Council representative, Ms. Hastings.

15 Could you comment on how many counties are
16 taking advantage of this -- who might take advantage of
17 this test claim?

18 I know I'm from Ventura County, and we do --
19 our Sheriff does provide court-security services.

20 So what would be the statewide impact? We're
21 not always concerned about impact so much as what is
22 required by law. But could you speak to that?

23 MS. HASTINGS: Well, what I can say is each
24 county has its own MOU with the sheriff, except for the
25 two counties that don't have sheriffs.

Commission on State Mandates – December 5, 2014

1 My understanding is what is already in the
2 documentation, that there are five counties that are
3 potentially involved.

4 MEMBER RAMIREZ: And do you know if the other
5 counties, if they use private security or local police
6 and not sheriff?

7 MS. HASTINGS: I think it's more likely that
8 they are not paying retiree health or not pre-funding
9 retiree health.

10 MEMBER RAMIREZ: I see.

11 MS. HASTINGS: It's not that they're not --
12 that they don't have deputies. All but two have.

13 MEMBER RAMIREZ: Okay, so all but two counties
14 have the local sheriff?

15 MS. HASTINGS: Right. Correct, two are
16 marshals and the rest are sheriffs.

17 MEMBER RAMIREZ: Thank you.

18 CHAIR ORTEGA: And just getting to the issue
19 of the application, again, it applied to specific case
20 types, so it would not apply to all of the services being
21 provided by the county.

22 Are there any other questions?

23 *(No response)*

24 CHAIR ORTEGA: Is there a motion?

25 MEMBER OLSEN: I'll move adoption.

Commission on State Mandates – December 5, 2014

1 CHAIR ORTEGA: Pardon me?

2 MEMBER OLSEN: I'll move adoption.

3 CHAIR ORTEGA: Okay.

4 MEMBER CHIVARO: Second.

5 CHAIR ORTEGA: Please call the roll.

6 MS. HALSEY: Mr. Chivaro?

7 MEMBER CHIVARO: Yes.

8 MS. HALSEY: Ms. Olsen?

9 MEMBER OLSEN: Yes.

10 MS. HALSEY: Mr. Ortega?

11 CHAIR ORTEGA: Yes.

12 MS. HALSEY: Mr. Morgan?

13 MEMBER MORGAN: Yes.

14 MS. HALSEY: Ms. Ramirez?

15 MEMBER RAMIREZ: Yes.

16 MS. HALSEY: Mr. Rivera?

17 MEMBER RIVERA: Yes.

18 MS. HALSEY: The motion carries.

19 CHAIR ORTEGA: Okay, thank you.

20 MS. HALSEY: Moving on to Item 4, Commission
21 Counselor Matt Jones will present a test claim on *Water*
22 *Conservation*.

23 MR. JONES: Good morning.

24 This consolidated test claim alleges
25 reimbursable state-mandated activities arising from the

Commission on State Mandates – December 5, 2014

1 Water Conservation Act of 2009 and implementing
2 regulations.

3 Staff finds that the test-claim statutes and
4 regulations may impose a number of new required
5 activities, but that all eligible claimants have
6 sufficient fee authority as a matter of law to cover the
7 cost of any new requirements. Staff also finds that many
8 agencies subject to the statutes and regulations are not
9 eligible claimants before the Commission because they do
10 not collect or expend proceeds of taxes. Staff therefore
11 recommends the Commission adopt the proposed decision
12 denying the test claim.

13 Will the parties and witnesses please state
14 your names for the record?

15 MR. COOPER: Good morning. Dustin Cooper,
16 representing the claimants.

17 MR. KENNER: Good morning. Spencer Kenner for
18 the Department of Water Resources.

19 MS. FEREBEE: Donna Ferebee, Department of
20 Finance.

21 MR. SCOTT: Lee Scott, Department of Finance.

22 MS. STEVENS: Alexis Stevens, for Glenn-Colusa
23 Irrigation District.

24 MR. HARMAN: Peter Harman for the claimants.

25 CHAIR ORTEGA: Okay, Mr. Cooper?

Commission on State Mandates – December 5, 2014

1 MR. COOPER: Good morning, and thank you for
2 the opportunity to present today.

3 I have a PowerPoint that I'd like to go
4 through.

5 We've also provided copies -- hard copies to
6 the Commission.

7 I have a few extra copies, if anyone in the
8 audience..

9 Well, good morning again. Dustin Cooper. I
10 represent all of the claimants, with the exception of
11 Glenn-Colusa Irrigation District and Biggs-West Gridley
12 Water District.

13 I want to begin by stating something that may
14 be obvious; but that is, the claimants are not opposed
15 to the concept of water conservation. They're not trying
16 to seek reimbursement in order to continue a practice of
17 inefficient water use or anything along those lines.
18 Indeed, on the contrary, the claimants all practice
19 efficient water use, and have done and implemented
20 programs to ensure the efficient use of water, and that
21 its application is reasonable, beneficial within the
22 district's boundaries.

23 The reason the claimants are seeking
24 reimbursement is because the Act and regulations at issue
25 in this test claim are incredibly expensive to implement.

1 And the Legislature stated that the conservation measures
2 were intended to provide a statewide benefit.

3 And it's the claimants' position that when you
4 mandate conservation activities that are intended to
5 benefit the State, that it ought to be funded by the
6 entire state -- statewide taxpayer base, as opposed to
7 the individual landowners within their respective -- the
8 claimants' boundaries.

9 So if I may, I'll just give you a very brief
10 overview of what the claimants contend are the mandates
11 at issue in the Act and regulations.

12 First, on the urban side of the Act, urban
13 retail water suppliers are required to achieve a
14 10 percent, followed by a 20 percent per capita reduction
15 in water use, by specified years. And then urban
16 suppliers are required to adopt new and expanded
17 requirements in their urban water management plans.

18 On the agricultural side, the Act requires the
19 measurement of the volume of water at each farm gate.

20 "Farm gate" may be a term that you're not
21 familiar with. In the agricultural field, a district
22 with fields -- individual fields -- may have more than
23 one turn-out per field.

24 The Act requires measurement at each turn-out.
25 And then the regulations that accompany the Act require

1 a certain accuracy standard for each measurement device,
2 and then a certification from a licensed engineer.

3 The ag. water suppliers are also required to
4 adopt a pricing structure that's based, at least in part,
5 on the quantity of water delivered, and are required to
6 prepare and adopt ag. water management plans by specified
7 dates.

8 As staff informed you, generally speaking --
9 there's some exceptions -- but generally, the proposed
10 decision before you finds that these mandates -- what we
11 contend to be mandates -- are new. Meaning, you would
12 find them reimbursable except for two legal reasons.

13 And there's not really a factual dispute in
14 this case; it's more of a legal dispute.

15 The first is what I intend to speak to. It
16 has to do with Proposition 218 and fee authority. And
17 I quote there in the PowerPoint the conclusion in the
18 proposed decision that all affected entities have fee
19 authority sufficient as a matter of law to cover the
20 costs of any mandated activities.

21 The second issue is unique to Richvale and
22 Biggs-West Gridley. It has to do with the assertion that
23 they do not receive proceeds of taxes, and as a result,
24 they're permanently ineligible for any state
25 reimbursement.

Commission on State Mandates – December 5, 2014

1 My colleague, Peter Harman, will speak to that
2 issue after I am done.

3 Finally, Alexis Stevens will speak to the
4 repercussions of, if you were to adopt the proposed
5 decision, not just on the claimants in this proceeding,
6 but also if you carry this legal reasoning forward,
7 what's the repercussions of doing that on future mandate
8 determinations that come before this Commission.

9 So back to what I intend to speak to, and that
10 is, what is -- what are the claimants, or even more
11 broadly, what is special district's fee authority in
12 light of Proposition 218?

13 You have a statute in your enabling
14 legislation, it's Government Code section 17556(d), where
15 you are required to deny -- it's actually a "shall," it's
16 mandatory -- you shall deny reimbursement when the local
17 agency or school district has authority to levy service
18 charges, fees, or assessments sufficient to pay for the
19 mandated activity.

20 What that means is, can the claimant or the
21 district pass the costs of the mandate on to their
22 customers? Do they have the authority to do that?

23 Case law kind of defines "authority" as, does
24 the entity have the right or the power? And the key
25 issue is whether the agency may unilaterally pass the

1 costs of the mandate on to their customers without any
2 kind of legal impediment. And I want to emphasize, it
3 has to be a legal impediment; it can't be a practical
4 impediment. You can't say -- the agency cannot say, "We
5 don't think our customers can afford this." That would
6 be what I would characterize as a practical impediment.

7 It has to be a legal impediment, that
8 notwithstanding the agency's best efforts and intentions,
9 that something prevents them from implementing the -- or
10 passing through the costs of the mandate.

11 So I want to have you keep these rules in mind,
12 and then I want to kind of speak briefly to the various
13 revenue sources available to these claimants and all
14 special districts.

15 And, of course, as this Commission is well
16 aware, in the area of taxes, special agencies are
17 required to obtain a two-thirds vote. Special districts,
18 including the claimants and also school districts, do not
19 have the power to levy general taxes. They're limited to
20 special taxes.

21 Next: Assessments are available, an available
22 revenue source to special districts. The process is
23 dictated by Proposition 218. It requires the agency to
24 first prepare an engineer report that identifies the
25 parcels and then quantifies the proportionate special

1 benefit to each parcel. The agency must prepare a notice
2 to the landowners with ballots.

3 The agency must wait then a minimum period of
4 45 days, followed by a public hearing. After the close
5 of the public hearing, the agency then counts the
6 ballots. And the agency must have a minimum -- a
7 majority vote, excuse me.

8 If the agency does not have a majority vote,
9 obviously the proposed assessment cannot be imposed.
10 On the other hand, if the customers have voted -- a
11 majority of the customers have voted in favor, then the
12 assessment may be imposed.

13 The fee side of things: And this, again, is
14 Proposition 218. There's two separate processes. The
15 first is what I call kind of the "general process." The
16 agency is required to identify the parcels, notify
17 landowners of the proposed new or increased fee.

18 Again, the agency must wait 45 days, conduct
19 a public hearing; and then at that time, they tabulate
20 whether there's a majority protest.

21 A majority protest may be a foreign concept to
22 you. What it means is, if there's five parcels, for
23 example, subject to the fee, if there are three
24 protests -- three out of five -- that would be a majority
25 protest. And at that stop, the agency is out of luck.

1 They could not imposes the fee.

2 On the other hand, if there is not a majority
3 protest, there is a two-step process. And the second
4 step would be that the agency must conduct a vote similar
5 to the assessment vote, where they obtain a majority
6 vote. And again, if they don't acquire the majority
7 vote, then they're out of luck at that point as well.

8 Compare that with the process for fees or
9 charges associated with water, sewer, and refuse
10 collection. That's where we're at in this case.

11 And I want you to keep in mind, it's water,
12 sewer, and refuse collection. That's important in later
13 slides that I'll describe.

14 The process at this beginning is identical.
15 The agency identifies parcels, notifies landowners of the
16 proposed fee. Wait a minimum of 45 days. Conduct a
17 public hearing to determine if a majority protest exists.

18 So the same example: If there's five parcels,
19 three protests -- three out of five, that's a majority --
20 the agency is out of luck. They cannot implement the
21 proposed fee increase.

22 Your proposed decision, I think, uses the word
23 "exemption." And I think that there's a misunderstanding
24 there.

25 The process is slightly different, as I said,

1 for water, sewer, and refuse collection. They do not
2 have to engage in the two-step. They don't have to -- if
3 there is no majority protest, they don't have to go to
4 the added step of acquiring a majority vote.

5 So tying all these together, the Constitution
6 limits all revenue sources available to special
7 districts, whether it's an assessment, a fee or charge or
8 tax.

9 No longer may a public agency simply implement
10 or unilaterally impose a fee increase or an assessment
11 increase. They have to go through the process. And the
12 process may differ; but the thing they have in common is
13 the customers ultimately have the authority to say "yes"
14 or "no." "Yes" or "no," we're going to agree with this
15 tax or assessment or fee.

16 And I've highlighted there on the slide, the
17 customer's authority. So for a tax, it's two-thirds
18 vote. An assessment, a majority vote.

19 The general property-related fees and charges,
20 it's the two-step: No majority protest plus majority
21 vote.

22 And then the unique process for water, sewer,
23 and refuse collection, just the first step: No majority
24 protest.

25 The important thing to remember is that the

1 customers or voters may reject any proposed new
2 imposition, either at the time the agency proposed it --
3 proposes it, or later, through the initiative power.

4 Before I go to the next slide, I want to remind
5 the Commission, you have previously decided that
6 agencies, such as the claimants, do not have authority.
7 So that exception in your enabling legislation does not
8 apply because the outcome is dependent on some customer
9 process. That is, in the case of an assessment, a
10 majority vote, or in the case of water, sewer, and refuse
11 collection services, it's dependent on there not being a
12 majority protest.

13 So I'm going to go through a series of slides
14 where I show you where you've already decided this exact
15 issue.

16 Your *Discharge of Stormwater Runoff* case, it
17 concluded that that reimbursement exception does not
18 apply to street-sweeping which, by the way, you concluded
19 that street-sweeping is refuse collection. So it's
20 within that same group of services that water is as well.

21 The exception to subvention does not apply to
22 street-sweeping because the fee is contingent on the
23 outcome of a written protest by a majority of the parcel
24 owners.

25 And as I explained, that's a correct statement.

1 The outcome is in the customer's -- they have the
2 authority.

3 Compare that with your analysis in the proposed
4 decision. You find that the claimants have statutory
5 authority to establish and increase fees or assessments
6 for the provision of water services.

7 In your past decision -- and I believe it's the
8 most recent decision on this issue -- you concluded,
9 under Proposition 218: The local agency has no authority
10 to impose the fee if it is protested by a majority of
11 parcel owners.

12 Compare that past conclusion with what's stated
13 in your proposed decision, where you now contend that
14 nothing in Proposition 218 or case law, or any prior
15 Commission decision alters the analysis.

16 The last point on this slide, I actually think
17 is the most significant point. And that is, it is
18 possible that a majority of landowners in the local
19 agency may never allow the proposed fee, but the local
20 agency would still be required to comply with the state
21 mandate. That's the nightmare scenario facing the
22 claimants in special districts generally.

23 If you deny reimbursement and they go try to
24 pass the fee onto their customers and lose, whether it's
25 through an assessment or a majority protest, then they

1 are out of options.

2 Compare that with your language in the proposed
3 decision and forgive the language -- but you kind of punt
4 on this. You kind of say, "We cannot decide this as a
5 matter of law." And we would urge you to take the time,
6 decide it.

7 Obviously, our position is, you've already
8 decided this exact issue, so it's just a matter of
9 applying the reasoning that you've already applied in the
10 past consistently.

11 Even if you disagree with that, we would ask
12 that you really, thoroughly address these issues, so that
13 there is an adequate record for future proceedings --
14 possible future proceedings.

15 I want to speak to one final issue before I
16 conclude, and that is a new issue that was raised for the
17 first time in the draft of the proposed decision before
18 you today. It was not raised in any of the parties' or
19 interested parties' comments. It was not raised in the
20 first draft of the proposed decision.

21 Basically, your analysis now is the claimants,
22 in order to claim that they do not have fee authority,
23 they should have tried and failed to pass the costs of
24 the mandate on.

25 The Constitution does not say that the

Commission on State Mandates – December 5, 2014

1 Commission will be the entity of last resort. That is,
2 you have to exhaust every revenue possibility -- possible
3 way to generate revenue before coming to the Commission.

4 You have never applied this analysis to
5 tax-funded agencies. For example, a school district.
6 You don't require a school district to go try to pass
7 a special tax to implement a state mandate. You don't
8 require that of assessment-funded agencies. And to my
9 knowledge, before today, you've never required it of
10 fee-funded agencies.

11 I think there's -- well, I know there's a
12 practical problem, too, in addition to the legal issue
13 that I just explained. The practical problem is, if you
14 accept your staff's recommendation and deny the test
15 claim and the agencies then try to pass the cost of the
16 mandate on to their customers and fail -- for example,
17 there is a majority protest -- that leaves no option
18 available to the agency. They're now subject to a
19 mandate. There's repercussions in this case if the
20 agencies do not implement the mandates -- legal
21 repercussions. Yet their customers are telling them,
22 "We're not going to fund implementation of these
23 mandates."

24 So we would urge the Commission, the proper way
25 to deal with this issue is not require a try-and-fail.

Commission on State Mandates – December 5, 2014

1 Approve the test claim; and then in the parameters-and-
2 guidelines stage of the proceeding, let's identify any
3 possible new fee or new assessment, whatever it may be,
4 let's identify that as offsetting revenue.

5 And, in fact, you have dealt with -- that's
6 how you dealt with that exact issue in your *Stormwater*
7 statement of decision.

8 So in summary, I want to remind you, your
9 proposed decision finds a majority of the new
10 requirements -- excuse me, a majority of the mandates to
11 be new requirements that would be reimbursable, except
12 for a couple legal issues: The first one related to
13 Proposition 218 and fee authority.

14 We're not asking that you adopt any kind of
15 revolutionary position here. We believe that you've
16 decided this exact issue in the past. We urge you to
17 be consistent. We think that's the legally appropriate
18 route to take.

19 Recognize that Proposition 218 really takes
20 authority away from the agencies. The agencies can
21 propose a new assessment or a new fee, but they don't
22 have the authority to guarantee a successful outcome.
23 That's the customers.

24 So we'd urge you to revise the proposed
25 decision, find in favor of reimbursement; and then, as

Commission on State Mandates – December 5, 2014

1 I said, to the extent that the claimants are successful
2 in a future Proposition 218 process, then let's address
3 that issue in the parameters and guidelines and call it
4 "offsetting revenue."

5 I'm open to any questions.

6 If there aren't any, I'd like to turn it over
7 to Peter Harman, and then Alexis Stevens.

8 CHAIR ORTEGA: Thank you.

9 Are there any questions at this point?

10 MEMBER RAMIREZ: No.

11 CHAIR ORTEGA: Okay.

12 MR. COOPER: Thank you.

13 MEMBER OLSEN: Do you want to wait until the
14 end to have a response?

15 CHAIR ORTEGA: Well, you know, I think maybe
16 I might like to hear -- Matt or Camille, if you have
17 anything to say about the *Stormwater Runoff* argument.

18 I mean, I think -- I don't want to discount the
19 difficulty under Prop. 218 of passing new fees. However,
20 as your earlier slide says, you talk -- that there is a
21 need for a legal impediment, and difficulty in passing
22 doesn't seem to meet that test.

23 So, again, not discounting the difficulty of
24 passing fees, I think the only issue that was raised that
25 kind of raises a question for me, is the *Stormwater*. So

1 I'd just like to hear Matt's response to that.

2 MR. JONES: Sure.

3 Well, in terms of the value of that precedent,
4 of course, you know that your decisions aren't
5 necessarily precedential in the first place. And that
6 decision is currently pending in two courts of appeal.
7 And so far, the superior courts have disagreed with the
8 Commission in its interpretation of Article XIII D and
9 the effect on fee authority.

10 So as of right now, I wouldn't say that that's
11 something that's terribly important to hold to in terms
12 of guiding precedent, just that the value of it isn't
13 quite what has been stated.

14 MS. HALSEY: Matt, could you talk about the
15 distinction between stormwater fees and water-service
16 fees under the law and the case law? I think that would
17 be helpful.

18 MR. JONES: Well, so part of the analysis that
19 we have here does -- part of it turns on the fact that
20 stormwater fees are harder to peg to an individual parcel
21 or individual property owner than something like water
22 service, which is a closed system.

23 And, in fact, this whole Water Conservation Act
24 is intended to measure how much water is being provided
25 to a particular parcel owner, which in theory, would make

1 it considerably easier to apportion fees to individual
2 properties than it was before.

3 And so a big part of the decision in
4 *Stormwater*, in the analysis in *Stormwater*, and the
5 distinction, is the fact that you can't really apportion
6 a stormwater sewer system to particular properties quite
7 so easily as you can water service provided to particular
8 properties.

9 And so that's one reason that *Stormwater* -- the
10 *Stormwater* claim wasn't exempt from the voter-approval
11 requirement, where the water services in this claim,
12 the claimants have conceded, are exempt from the
13 voter-approval requirement. And the PowerPoint supports
14 that as well.

15 As far as the majority-protest provision
16 constituting a legal impediment, that's harder to say
17 because for one thing, we don't know how many parcel
18 owners are going to be affected by any particular fee.
19 So we're not really in a position to make a legal finding
20 on how difficult that is, what kind of impediment that
21 constitutes.

22 But more importantly, the PowerPoint -- I
23 wouldn't say it is quite misleading, but it doesn't
24 note -- it says "majority protest," but it doesn't note
25 that it's actually a majority written protest. So you're

1 counting on voters and property owners to write a letter
2 to their district, objecting to the fee. This isn't a
3 town-hall meeting and raising-hands kind of situation.
4 So a majority protest is sort of more of a -- it's more
5 of a negative limitation versus a voter-approval
6 requirement, which is more of an affirmative limitation
7 on the fee authority.

8 Does that make sense?

9 So staff's position is that the majority-
10 protest provision, it's going to, unfortunately, operate
11 more of a mixed question of fact and law. We're going
12 to have to see what that looks like. We don't know.
13 And as far as the practical question, the practical
14 impediment that was raised, the last point that districts
15 would go and try to raise fees and then fail and then be
16 out of luck, it's hard to say exactly what would happen
17 in that hypothetical, and so staff didn't address it in
18 the decision. But we do have a redetermination process.

19 MS. SHELTON: The question is one of law at
20 this point, whether the claimant has incurred increased
21 costs mandated by the State. And the staff
22 recommendation is that they have not because they have
23 fee authority. And that's based on *Connell* and based on
24 the *Clovis versus Chiang* case, saying that once the
25 statute gives you authority, you have the authority and

1 if you can't collect it, then that burden should not be
2 shifted to the State.

3 I think what Matt was trying to indicate is
4 that certainly there's some issues with the protest
5 situation. The facts here don't suggest that they've
6 even tried to assess a fee. But based on this record,
7 our recommendation is that there are no costs mandated by
8 the State.

9 If these entities were to go out and they were
10 unable to collect the fee because of a voter approval,
11 voter-protest situation, that may change the facts, which
12 may change the legal analysis at that point, possibly.
13 They could argue that they have just now incurred --
14 first incurred costs mandated by the State, and a new
15 test claim can be filed under Government Code section
16 17551. So there is a remedy.

17 CHAIR ORTEGA: Okay, should we --

18 MR. COOPER: May I speak to that, just very
19 briefly?

20 CHAIR ORTEGA: Yes, quickly, sure.

21 MR. COOPER: I think your staff has a
22 misunderstanding of the difference between "assessments"
23 and "fees" under Proposition 218.

24 In the back of the handout -- I went ahead and
25 printed out the analysis of your *Stormwater* case.

1 Your staff is correct that there is problems of
2 assessing kind of the proportional special benefit for
3 refuse collection. But that's an assessment, that's not
4 a fee. You don't have to find out what each parcel's
5 exact fee is.

6 All you have to do as an agency, agency-wide,
7 your cost of service, you cannot -- your fees cannot
8 exceed the cost of service. So you don't have to be
9 quite as exact as an assessment with a fee.

10 And you concluded -- so this is at page 115 of
11 your *Discharge of Stormwater Runoff* statement of
12 decision.

13 The first highlight there, that paragraph, you
14 find that solid-waste handling is refuse collection under
15 Proposition 218. So it subjects it to that same category
16 of services: Water, sewer, refuse collection. The same,
17 exact process. No majority protest. You don't have to
18 go through the two-step.

19 You know, I would add that if you're saying
20 that it's simply easier not to get a majority protest
21 than it is to perhaps get a two-thirds vote, you're
22 relying on statistics or maybe a gut reaction. There's
23 no legal difference.

24 If an agency fails to get a two-thirds vote to
25 pass a tax or an agency fails with a majority protest,

1 the outcome is the same: The customers answer. And it's
2 a reality.

3 I considered trying to come today with, you
4 know, Google searches of agencies that have obtained a
5 majority protest. It happens.

6 So I don't want you to think that this is just
7 some impossibility.

8 MS. SHELTON: Can I just end on -- just to say,
9 obviously, the state of this law is in flux, and it is
10 pending in the California Supreme Court, number one.
11 But the case law that we have right now says, "If the
12 agency has authority, then there are no costs mandated by
13 the State."

14 In the written comments filed by Mr. Cooper and
15 his associates, they have admitted, they have authority
16 to assess a fee for these services. And so he is -- at
17 this point, based on the law that we currently have, I
18 don't feel comfortable recommending a finding that there
19 are costs mandated by the State, when that would be
20 conflicting with the existing -- potentially conflicting
21 with the existing authority.

22 No case yet has really delved into Prop. 218
23 and gotten that deep yet.

24 MEMBER OLSEN: So that being said, I'm
25 wondering why we're even pursuing this at this point?

1 I mean, you're saying that a case that could
2 be determinative on this issue is pending before the
3 California Supreme Court.

4 Matt -- Mr. Jones is saying, our former
5 findings, prior findings are not determinative, we can go
6 in a different direction.

7 Why wouldn't we wait for that conclusion?

8 MS. HALSEY: Well, it's not exactly the same
9 issue, because one is water service and one is
10 stormwater. They're actually treated differently.
11 Stormwater is subject to a voter requirement. Water
12 service is not, for example.

13 Also, if they make a determination and the
14 *Stormwater* case is just based on MEP, they'll never get
15 to this fee authority issue.

16 So that there's a good chance they could never
17 reach that issue, and so we won't get any decision from
18 the Supreme Court on it at all.

19 MS. SHELTON: That is a possibility.

20 What Heather is suggesting is that the main
21 issue in the Supreme Court case is whether or not there
22 is a federal mandate.

23 MS. HALSEY: If there is a federal mandate,
24 then they won't go to the --

25 MS. SHELTON: All of the --

Commission on State Mandates – December 5, 2014

1 MS. HALSEY: -- on this issue.

2 MS. SHELTON: All of the briefing, though, from
3 the amicus parties is raising this Prop. 218 issue.

4 MS. HALSEY: Right.

5 MS. SHELTON: And to date, we don't have a
6 published decision on how Prop. 218 affects Article XIII
7 B, section 6, at all.

8 MS. HALSEY: There is no law.

9 MR. COOPER: But you, as a Commission, are
10 authorized --

11 MEMBER OLSEN: Understood. I understand that.

12 Here's my problem here: I think there's a
13 Catch-22, regardless of which way we go on this case.
14 Okay, it really is. We're either adopting a Catch-22 in
15 relation to our former decisions, or we're adopting a
16 Catch-22 -- at least as I'm hearing things today -- in
17 relation to what locals can and cannot do.

18 And, you know, I'm uncomfortable in that
19 situation. I understand that a lot of what we do has a
20 sort of Catch-22 element; but there's usually one path
21 that we can take that is the non-Catch-22 element. And
22 this one doesn't seem to have that, to me.

23 MS. HALSEY: I don't think it was clearly
24 enough stated, the difference between stormwater and
25 water service.

Commission on State Mandates – December 5, 2014

1 This actually is not the same case that was
2 decided before.

3 In that case, they were subject to voter
4 approval to pass it. I mean, they had to go and get a
5 vote of -- approval of the voters for a stormwater fee.
6 Here, they do not.

7 MEMBER OLSEN: But I'm kind of with Mr. Cooper
8 on this one.

9 I don't see the practical difference between
10 having to get a vote -- majority vote or two-thirds vote,
11 or whatever it is of the public, I don't see that as
12 appreciably different from a majority protest.

13 MS. HALSEY: Well, isn't it more in the nature
14 of a referendum as opposed to taking something to a vote
15 of the people and --

16 MEMBER OLSEN: But it's still -- it's still
17 essentially a vote of the parties that are affected.

18 MS. HALSEY: But they don't --

19 MEMBER OLSEN: Whether they're writing a letter
20 or coming to a town meeting or going into a polling
21 booth, from my perspective, at least -- and I haven't
22 heard anything today that convinces me otherwise -- the
23 people speak.

24 MS. HALSEY: But under -- let's pretend
25 Prop. 218 doesn't exist. Under fee authority in the

1 *Connell* case, you could always bring a referendum to
2 invalidate a fee that was imposed. That's the right of
3 the people of California. It always has been.

4 So that means -- I mean, in that case, the
5 *Connell* case would be incorrect because people could
6 bring a referendum to invalidate any fee under that fee
7 authority.

8 MEMBER OLSEN: I guess I'm not understanding
9 the connection.

10 CHAIR ORTEGA: Well, that the voters can
11 always --

12 MEMBER OLSEN: Right.

13 CHAIR ORTEGA: The overlay of the voter role is
14 always there to invalidate the fee.

15 MS. HALSEY: It's always been -- they always
16 have had that.

17 CHAIR ORTEGA: I think we need to come back a
18 little bit to Camille's point about, are there mandated
19 costs now. And if the districts chose to pursue the fee
20 authority and did not -- were not successful, in the same
21 way that it if there was a stormwater fee and there was
22 a referendum to undo it and new costs were incurred, then
23 they could always come again with new facts before the
24 Commission.

25 MS. SHELTON: Let me just give you a little

1 background on my thinking, too. And I believe it was the
2 *School Site Councils* case. I tried to argue before the
3 California Supreme Court, just the same argument that
4 Mr. Cooper is making, kind of, on the costs mandated by
5 the State, that "Look, they've got this revenue stream
6 for this program. You should approve this program as a
7 reimbursable state-mandated program and identify the
8 revenue stream as an offset."

9 And the Court said, "No, this is an issue of
10 law first. You need to determine whether there are costs
11 mandated by the State first," whether it's an approve or
12 deny of a program.

13 And so I believe that is the issue here.

14 There are certainly good arguments and
15 reasonable arguments on both sides. And I'm not
16 suggesting otherwise. I mean, certainly Prop. 218 does
17 limit their -- you could argue that it limits their
18 authority, practically speaking, for sure.

19 Whether it's enough of a legal limit, whether
20 it's a legal limit to their authority, I do not believe
21 that is the case, especially when we don't have the facts
22 in the record to suggest that they've even tried.

23 So right now, based on the case law that we
24 have, they do have authority to charge a fee for these
25 activities.

Commission on State Mandates – December 5, 2014

1 MEMBER OLSEN: So would their -- oh, go ahead,
2 Mr. Rivera.

3 MEMBER RIVERA: Just for clarification.

4 So if they go and try -- say they try and fail.
5 If it fails, are you saying then they can come back and
6 now say there is costs?

7 MS. SHELTON: Well, no, there, I'm agreeing
8 with Mr. Cooper, we're dodging that right now, because I
9 don't know. Then it would have to be -- it would be an
10 issue.

11 Here, they're just saying flat out, they don't
12 have authority. And I think it is a question of mixed
13 law and fact. Not just a pure -- I mean, the conclusion
14 is a question of law, yes.

15 MS. HALSEY: There is an argument to be made
16 that then they might first be incurring costs and could
17 arguably submit a test claim. And what the result of
18 that would be, I can't project. I mean, that --

19 MR. JONES: Heather, that would also satisfy
20 probably the requirement for a subsequent change in law
21 under the redetermination process. So it could go either
22 way, most likely.

23 MEMBER OLSEN: Okay, and that was my question
24 is, would it be a new test claim or would it be a
25 redetermination?

Commission on State Mandates – December 5, 2014

1 MR. JONES: It probably doesn't matter, but
2 it --

3 MS. HALSEY: New test claim. I think a new
4 one.

5 MR. JONES: -- yes, but it could go either way,
6 most likely.

7 MEMBER RIVERA: So then the customers are
8 actually affecting then when costs gets incurred; right?
9 So if they put up a protest, right, now all of a sudden
10 that cost would shift back to the State, and if they're
11 not willing -- right?

12 MS. HALSEY: That's the argument.

13 MEMBER RIVERA: If we then brought that new
14 case -- to us.

15 MEMBER OLSEN: It might shift back.

16 MEMBER RIVERA: It might shift back, if that
17 was approved.

18 MS. SHELTON: It might, yes.

19 MEMBER RIVERA: But if we're saying if it
20 fails, and then they're bringing back another claim to
21 us, and now maybe new costs are now borne...

22 MS. SHELTON: You know, this is a difficult
23 issue. And I will say, even in the *Clovis* case, which
24 we've talked about, that was slightly different, where
25 they were arguing they didn't have the ability to collect

1 the fee revenue based on their authority. And, you know,
2 the Court was saying, "Well, but you have the authority.
3 And because you can't collect all of it, it's not the
4 State's problem; it's yours."

5 Now, Mr. Cooper is trying to suggest, well, it
6 is now the State's problem because of the voter adoption
7 of Prop. 218, there are legal limits to their authority.

8 It is a question of law.

9 And at this point, I'm being -- our
10 recommendation is conservative based on the case law that
11 we currently have.

12 CHAIR ORTEGA: Ms. Ramirez?

13 MEMBER RAMIREZ: I realize that things are in
14 flux, complicated. But I wonder, is there any benefit --
15 would the staff comment on a benefit to waiting to make
16 a decision, based on the *Stormwater* case?

17 MS. SHELTON: You know, that's going to be over
18 a year, probably.

19 MS. HALSEY: And it may never reach it.

20 MS. SHELTON: And it may never reach it.

21 There's another case pending in the Third DCA
22 which might reach the issue, but again that's kind of on
23 hold, too. It's going to be a while.

24 MS. HALSEY: Also, if the Supreme Court were to
25 hand down a case that was in conflict with this decision,

1 that would be a change -- a subsequent change in law,
2 that would trigger a mandate redetermination of this
3 claim.

4 MR. COOPER: May I offer one last thing on "try
5 and fail"?

6 CHAIR ORTEGA: Sure.

7 MR. COOPER: And that is, remember, whether
8 you're on the assessment side or the fee side, the agency
9 provides a notice to the landowners. If you adopt a
10 position that requires the agency to try and fail, the
11 agency is going to have to put in that notice that if
12 you go ahead and protest this or you don't vote in favor,
13 then you may stand a better chance of getting state
14 reimbursement.

15 CHAIR ORTEGA: Well, but that would be quite a
16 stretch for the district to say that. Because I think
17 the -- I mean, that would be a risky position, I think,
18 for the district to put before its voters, that you're
19 setting up the possibility, "Oh, reject this fee because
20 the State will pay it," because there is going to be a
21 process to get to that.

22 MR. COOPER: I don't -- no, I'm not -- I'm
23 sorry to interrupt you. I'm not suggesting the District
24 advocate for a position. All I'm suggesting is that part
25 of the notification, that may be a required element, to

Commission on State Mandates – December 5, 2014

1 notify the customers as an item of full disclosure.

2 CHAIR ORTEGA: Okay. Okay, should we move on
3 to the additional speakers on behalf of the claimants?

4 MR. COOPER: Thank you for your time.

5 CHAIR ORTEGA: Thank you.

6 I don't know -- Mr. Harman or Ms. Stevens? I'm
7 not sure who is...

8 MR. HARMAN: Good morning.

9 Peter Harman. I represent the same group of
10 claimants as Mr. Cooper.

11 I'm just going to speak briefly on the issue of
12 claimants that do not collect and expend tax revenue.

13 The proposed decision, as it's written, would
14 deem ineligible for subvention all entities that don't
15 collect or expend tax revenue; but excluding those
16 entities from subvention would work directly against the
17 provision's intent.

18 The Supreme Court said that the subvention
19 provision was intended to preclude the State from
20 shifting financial responsibility for carrying out
21 governmental functions on to local entities that were
22 ill-equipped to handle the task.

23 In other words, it was intended to provide the
24 local agencies with assurance that the state mandates
25 wouldn't place additional burdens on their increasingly

1 limited revenue resources.

2 But the proposed decision argues that this
3 wasn't the intent; rather, the intent of subvention was
4 only to protect revenue classified as tax revenue; and
5 then only that tax revenue that is subject to the
6 Article XIII B appropriations limitations.

7 So the proposed decision argues that the State
8 is free to shift the financial burdens to local agencies,
9 regardless of their ability to pay for the costs.

10 Claimant's position and the proposed decision's
11 position both boil down to one paragraph from the *Fresno*
12 case, which was decided in 1991, five years before
13 Proposition 218 was passed. *Fresno* said that the
14 intention of the subvention provision was to prevent the
15 State from shifting the financial responsibility to the
16 local agencies that were ill-equipped to handle the
17 task. At that point, the reason they were ill-equipped
18 was because Articles XIII A and B had been passed,
19 restricting their tax revenue.

20 The Commission -- the proposed decision, on the
21 other hand, focuses more on how that was implemented in
22 1991, regardless of whether that 1991 interpretation
23 still serves the purpose of subvention today.

24 Once local governments' abilities to raise
25 assessment and fee revenue were restricted by Prop. 218,

1 the purpose of subvention was no longer served by only
2 protecting the revenue classified as tax revenue, and
3 further limited by Article XIII B.

4 With Prop. 218 in place, local entities that
5 used to be able to rely on simply increasing assessment
6 and fee revenue, based on plenary authority to do so,
7 to pay for the new mandates, can now, as Mr. Cooper
8 explained, only propose the increases and hope that the
9 voters don't reject them. They're no longer equipped to
10 simply absorb the costs.

11 If the purpose of the subvention provision was
12 to prevent the State from shifting costs onto local
13 entities that were ill-equipped to afford them -- and no
14 one really disputes that -- that purpose isn't served by
15 the proposed decision's interpretation.

16 We ask that the Commission look to the intent
17 of the subvention provision and find that entities that
18 do not collect or expend tax revenue are eligible for
19 subvention, in that they are probably more limited in
20 raising revenue than those entities that do have tax
21 revenue to fall back on.

22 CHAIR ORTEGA: Thank you, Mr. Harman.

23 Any questions?

24 *(No response)*

25 CHAIR ORTEGA: Okay.

Commission on State Mandates – December 5, 2014

1 MR. HARMAN: Thank you.

2 CHAIR ORTEGA: Sure.

3 Public comment?

4 MR. NEILL: Can I speak on this issue also,
5 just because it's relevant now?

6 On the issue of the --

7 MEMBER RAMIREZ: Can you say who you are,
8 please?

9 MR. NEILL: I'm sorry. Yes. Geoff Neill.
10 Geoff Neill, California State Association of Counties.

11 Very briefly. This old court case, 1991, the
12 *Fresno* case, was fine at the time. And as noted, the
13 Prop. 218, we think, changed that. But what changed it
14 more is that that was talking about Article XIII B,
15 section 6, that existed in 1991. But that's not --
16 it's not the same Article XIII B, section 6, anymore.
17 It was re- -- it was amended and reenacted, as amended,
18 by voters in 2004. And the language is different now.

19 And the plain language of the Constitution now
20 makes it, I think, plainly clear that the tax-and-spend
21 authority is not relevant.

22 The Constitution says, whenever the Legislature
23 of any state agency mandates a new program or higher
24 level of service on any local government, the State shall
25 provide a subvention of funds to reimburse the costs of

1 the program. Later, it does restrict which local
2 governments. And this is brand-new language in the
3 Constitution that did not exist in 1991.

4 The restriction it places on any local
5 government is that it says that it only applies to a
6 city, county -- city and county, or special district.
7 It does not say, subject to the tax-and-spend authority
8 elsewhere in the Constitution.

9 The court case that the Commission staff
10 analysis relies on, is that -- I mean -- yes, the court
11 case that they're relying on, the analysis said that the
12 original mandate provision, the original Article XIII B,
13 Section 6, was of a part with Gann limit -- with the rest
14 of Proposition 4, which was a tax-and-spend limitation.
15 And in that context, the mandates were only for those
16 agencies that were restricted by that same ballot
17 measure. But that is no longer the context of
18 Article XIII B, section 6.

19 The new context, the ballot measure,
20 Proposition 1A in 2004, that reenacted, as amended, this
21 language, the context of that was entirely different.
22 The new context is protecting local agencies -- all local
23 agencies -- cities, counties, and special districts --
24 from financial burdens of the State, including shifting
25 property taxes directly to the State, including shifting

1 property taxes to other local agencies, and including
2 using other local agencies' property taxes to pay for
3 mandates.

4 And so while in the nineties that could very
5 well have been the context of the mandate provisions of
6 the Constitution, that's no longer the case. And it's
7 explicitly not the case in the plain language of the
8 Constitution. So I wanted to make that point while we
9 were still on the subject.

10 CHAIR ORTEGA: Thank you, Mr. Neill.

11 Camille?

12 MS. SHELTON: Just to clarify. You know,
13 Article XIII B, section 6, was intended to protect the
14 limitations imposed on the proceeds of taxes which are
15 specifically defined in Article XIII B, section 9, and
16 specifically exclude from the definition, fees. That has
17 not changed.

18 Prop. 1A has not touched those requirements.
19 Prop. 1A talks about other things. It changed the
20 definition of a "new program, higher level of service."
21 It also required the Legislature to pay or suspend those
22 programs for local agencies only. It did not change the
23 definitions of what a "proceeds of tax" is.

24 To date, the voters have not adopted an
25 initiative requiring reimbursement for those entities who

1 charge a fee. And even if there are limitations on fees,
2 it's not within the definition of "proceeds of taxes."

3 MR. NEILL: That's true. The voters have not
4 changed the definition of "proceeds of taxes." What
5 they did do, is they amended -- that's the tax-and-spend
6 limitation. It is not the mandate section.

7 And so while the two were included together in
8 Proposition 4, the two were not included together in
9 Proposition 1A.

10 And in Proposition 1A, to protect local
11 agencies, explicitly including special districts, from
12 financial burdens placed on them by the State, it
13 redefined -- I mean, it reenacted -- wholly reenacted,
14 as amended, as this Commission has stated amendments do,
15 the mandate provisions. And I think that it's -- I mean,
16 it's plain language.

17 So relying on a court case from before the
18 voters changed the language seems inappropriate, or
19 incorrect.

20 CHAIR ORTEGA: Camille, before you respond --
21 Mr. Neill, were you here for the swearing-in portion?

22 MR. NEILL: Yes, I was.

23 CHAIR ORTEGA: Okay, thank you.

24 MR. NEILL: I was kind of behind some people.
25 But, yes.

Commission on State Mandates – December 5, 2014

1 CHAIR ORTEGA: I just wanted to make sure.
2 Thank you.

3 MS. SHELTON: Just to make clear, the decision
4 here not only cites to the *County of Fresno* case, but
5 also cites to the current provisions of the California
6 Constitution and is an analysis of the current provisions
7 of the California Constitution.

8 CHAIR ORTEGA: Okay, thank you.
9 Are there any other questions on this point?

10 *(No response)*

11 CHAIR ORTEGA: Okay, seeing none.

12 MR. NEILL: Thank you.

13 CHAIR ORTEGA: Thank you.

14 Mr. Harman, you've concluded your remarks?

15 MR. HARMAN: Yes. Thank you.

16 CHAIR ORTEGA: Ms. Stevens?

17 MS. STEVENS: Good morning.

18 Alexis Stevens. I'm here on behalf of
19 Glenn-Colusa Irrigation District and Biggs-West.

20 I'm just going to be really brief because
21 I think Dustin covered a lot of what I was planning on
22 saying.

23 I'm going to speak specifically about some of
24 the practical repercussions that the proposed decision,
25 if adopted, will have on not only the claimants and other

1 districts subject to the mandate, but also on other
2 public agencies throughout the state.

3 GCID's situation, which I'm going to
4 specifically talk about, is not unique. And I think it's
5 important to mention that.

6 As Dustin discussed, all of the claimants and
7 everyone subject to these mandates are looking at
8 millions of dollars in costs to implement then.

9 GCID's current estimate for compliance is
10 \$46 million. And it's also looking at over \$2 million
11 each year to maintain and operate the program, once it's
12 completely installed.

13 Just to put that in perspective, GCID's annual
14 budget is generally in the range of \$13 million to
15 \$14 million. So they're being required to implement a
16 program that's going to cost more than they spend -- you
17 know, three to four times what they spend in a single
18 year.

19 This is because of GCID's system, it's large
20 and very complicated. And I can show you.

21 All of -- this is a map of the District; and
22 each of these red dots shows a location that needs to
23 have a measurement device installed.

24 And the reason the cost is so great is that
25 each location, the cost is going to be in the range --

1 the average cost is about \$10,000 per location. So this
2 is the task that they have been given by the State. And
3 the cost is, it's no small feat.

4 The District fully intends to attempt to pass
5 the cost on through fees or assessments and go through
6 that process. It is included in its current cost
7 estimate for complying with the mandate.

8 But there is a very real probability that even
9 though they attempt to pass these costs on, their
10 landowners and ratepayers will say, "No, we don't want
11 to do that."

12 Well, what are they going to do then?

13 The Prop. 218 -- I'm sorry, even though the
14 decision -- the proposed decision focuses on the
15 fee-and-charge aspect of Prop. 218 and the fact that it's
16 just a majority protest, there is a very real possibility
17 that the District may have to impose an assessment,
18 instead, because it provides a more reliable, steady
19 stream of income.

20 And then you're talking about basically a
21 ballot proceeding, just like you would have for the
22 *Stormwater* case, where you would have to have a majority
23 approval.

24 The second impact that I really want to talk
25 about is the decision's reasoning and conclusion with

1 respect to the Proposition 218 issue and also the
2 proceeds-of-taxes issue, and how that could affect other
3 public agencies throughout the state.

4 The proposed decision creates this very large
5 class of public agencies that would essentially be,
6 per se, ineligible for reimbursement; and hundreds of
7 public agencies throughout the state would be affected.
8 And some of them, especially those that don't receive the
9 proceeds of taxes and fail at a Prop. 218 process, they
10 could very well be left without any means to pay for
11 state-imposed mandates.

12 So this is precisely, I think, the situation
13 that the subvention requirement was intended to resolve.
14 And the reasoning of the proposed decision just directly
15 conflicts with that.

16 And that's all that I have.

17 I'm available if you have questions.

18 CHAIR ORTEGA: Thank you, Ms. Stevens.

19 Are there any questions at this time?

20 *(No response)*

21 CHAIR ORTEGA: No?

22 Thank you.

23 MS. STEVENS: Thanks.

24 CHAIR ORTEGA: Let's see, we'll move on to
25 either the Department or Department of Finance.

Commission on State Mandates – December 5, 2014

1 I'm not sure.

2 MR. KENNER: Go ahead.

3 CHAIR ORTEGA: Ms. Ferebee?

4 MS. FEREBEE: Thank you.

5 Donna Ferebee, Department of Finance.

6 The Department of Finance agrees with the
7 proposed test-claim decision on the issue of claimant
8 eligibility and on the matter of fee authority, as it
9 cannot be said that the claimant's fee authority is
10 insufficient. There are no costs mandated by the State
11 as a matter of law. So we urge you to adopt the proposed
12 decision and deny the test claim.

13 Thank you.

14 CHAIR ORTEGA: Thank you.

15 Okay, is there any other -- Ms. Holzem.

16 MS. HOLZEM: Good morning. Dorothy Holzem with
17 the California Special Districts Association.

18 I just want to echo the comments of the
19 claimants, and say we support their position and do
20 disagree with the Commission's proposed recommendation.

21 Thank you.

22 CHAIR ORTEGA: Thank you.

23 Any other public comment?

24 Yes, go ahead.

25 MR. KENNER: The Department of Water Resources

Commission on State Mandates – December 5, 2014

1 concurs with the staff recommendation as well as with the
2 Department of Finance's just recently made comments.

3 If you have any questions for us, I'm happy to
4 answer those as well.

5 CHAIR ORTEGA: Thank you.

6 Any other comments or questions from the board?

7 Okay, Ms. Ramirez.

8 MEMBER RAMIREZ: I'd like to ask Mr. Jones to
9 comment on the last two or three presentations by their
10 counsel.

11 MR. JONES: Certainly.

12 Well, working backward, the last thing I heard
13 that was interesting was that the proposed decision
14 creates a class of claimants that would be, per se,
15 ineligible.

16 And I believe that's addressed at least in the
17 executive summary of this decision, though it may not
18 be stated in quite the same language in the analysis.
19 But essentially, staff's position is that this analysis
20 doesn't create a class so much as identify a class of
21 special districts that are, per se, ineligible. Because
22 as you've seen in the discussion of whether Biggs and
23 Richvale are eligible in the first place, they report to
24 the Controller that they don't collect property taxes --
25 or taxes at all, I suppose.

Commission on State Mandates – December 5, 2014

1 And, you know, we've gone through this
2 ad nauseum now, that Section 6 is really only meant to
3 protect tax revenues. So an agency that doesn't have tax
4 revenue doesn't get reimbursement under Section 6.

5 And it doesn't seem like a revolutionary
6 position. It's kind of similar to the analysis we did in
7 CPRA back in April or May of this year, when the Special
8 Districts Association asked for reconsideration. But we
9 didn't have a claimant before us at that time that wasn't
10 eligible, and so we haven't really fleshed it out quite
11 to this degree, because this is the first time we have
12 had a claimant actually standing before you that wasn't
13 eligible. And that's why this is being identified here.

14 But it doesn't seem like a surprising position.
15 And staff's position is that we didn't create this class,
16 but identified it for the first time.

17 CHAIR ORTEGA: Thank you.

18 Ms. Olsen?

19 MEMBER OLSEN: Well, I'm going to grudgingly
20 move adoption of the staff recommendation. And I'm doing
21 that because it seems to me that Mr. Cooper raised a
22 great point about the notice that would have to be given
23 to the potential assesses in any water district.

24 And if we took his approach, which is to adopt
25 the claim -- to go against the staff and adopt the

1 claim -- then when they go out for parameters and
2 guidelines and say any fees are going to be used to
3 offset it, that notice is also going to go to his voters
4 in the district. And the notice is going to say, "If you
5 don't approve this, the State is going to pay it."

6 So I think, either way, we're in a Catch-22
7 situation. I think in that situation, that we should go
8 with the staff recommendation and let the courts figure
9 it out for us.

10 CHAIR ORTEGA: Okay, motion by Ms. Olsen.

11 MEMBER RAMIREZ: I'll second it.

12 And I do want to say that I think that I really
13 commend the counsel for claimants, because they did an
14 excellent job. However, I think we have more of a
15 problem at the legislative level in having the State
16 properly fund things. But that's not our role here to
17 decide those things. So I support this -- I support the
18 staff recommendation.

19 CHAIR ORTEGA: Okay, thank you.

20 Please call the roll.

21 MS. HALSEY: Mr. Chivaro?

22 MEMBER CHIVARO: Yes.

23 MS. HALSEY: Ms. Olsen?

24 MEMBER OLSEN: Aye.

25 MS. HALSEY: Ms. Ortega?

Commission on State Mandates – December 5, 2014

1 CHAIR ORTEGA: Aye.

2 MS. HALSEY: Mr. Morgan?

3 MEMBER MORGAN: Yes.

4 MS. HALSEY: Ms. Ramirez?

5 MEMBER RAMIREZ: Aye.

6 MS. HALSEY: Mr. Rivera?

7 MEMBER RIVERA: Yes.

8 MS. HALSEY: Thank you.

9 CHAIR ORTEGA: The motion carries. The
10 recommendation is adopted.

11 And, let's see, we'll move on to -- thank you.
12 Thank you, everyone.

13 MS. HALSEY: Commission Counsel Matt Jones will
14 present Item 5, a mandate redetermination on *Open*
15 *Meetings Act/Brown Act Reform*.

16 MR. JONES: This is the first hearing on this
17 redetermination request seeking a finding from the
18 Commission that the activities previously determined to
19 be reimbursable state mandates are no longer reimbursable
20 pursuant to Proposition 30 adopted at the November 6th,
21 2012, general election.

22 At this hearing, the analysis and discussion
23 are limited to whether the requester has made an adequate
24 showing which identifies the subsequent change in law
25 that may modify the State's liability for the

Commission on State Mandates – December 5, 2014

1 test-claim statutes.

2 If the Commission finds that the requester has
3 made such a showing, the Commission shall direct staff to
4 notice the second hearing.

5 Will the parties and witnesses please state
6 your names for the record?

7 MR. BYRNE: Michael Byrne, Department of
8 Finance.

9 MS. FEREBEE: Donna Ferebee, Department of
10 Finance.

11 CHAIR ORTEGA: Mr. Byrne?

12 MR. BYRNE: Michael Byrne. We concur with the
13 staff recommendation.

14 CHAIR ORTEGA: Is there any public comment on
15 this item?

16 *(No response)*

17 CHAIR ORTEGA: Any comments or questions from
18 the Commission?

19 MEMBER CHIVARO: I'll move staff
20 recommendation.

21 MEMBER OLSEN: Second.

22 CHAIR ORTEGA: Moved by Mr. Chivaro; seconded
23 by Ms. Olsen.

24 CHAIR ORTEGA: I will call one more time, is
25 there any public comment on this item?

Commission on State Mandates – December 5, 2014

1 (No response)

2 CHAIR ORTEGA: Seeing none, please call the
3 roll.

4 MS. HALSEY: Mr. Chivaro?

5 MEMBER CHIVARO: Aye.

6 MS. HALSEY: Ms. Olsen?

7 MEMBER OLSEN: Aye.

8 MS. HALSEY: Ms. Ortega?

9 CHAIR ORTEGA: Aye.

10 MS. HALSEY: Mr. Morgan?

11 MEMBER MORGAN: Aye.

12 MS. HALSEY: Ms. Ramirez?

13 MEMBER RAMIREZ: Aye.

14 MS. HALSEY: Mr. Rivera?

15 MEMBER RIVERA: Aye.

16 CHAIR ORTEGA: The motion is adopted.

17 Thank you.

18 Item 6?

19 MS. HALSEY: Matt Jones will present an
20 incorrect reduction claim on *Health Fee Elimination*.

21 MR. JONES: This IRC presents the following
22 issues: The statutory deadlines for audits, reduction of
23 costs claimed for athletic insurance premiums, reduction
24 of indirect costs based on failure to obtain federal
25 approval for costs rates prepared pursuant to the federal

Commission on State Mandates – December 5, 2014

1 method, and reductions based on the application of the
2 health fee rule to calculate offsetting revenues.

3 Staff finds that the audit is not time-barred
4 and that the Controller's reductions are correct as a
5 matter of law and not arbitrary, capricious, or entirely
6 lacking in evidentiary support and, therefore, recommends
7 that the Commission adopt the proposed decision denying
8 the IRC.

9 Will the parties and witnesses please state
10 your names for the record?

11 MR. PETERSEN: Keith Petersen, representing the
12 claimant.

13 MR. SPANO: Jim Spano, State Controller's
14 Office, Division of Audits.

15 MR. VENNEMAN: Jim Venneman, State Controller's
16 Office, Division of Audits.

17 CHAIR ORTEGA: Okay.

18 MR. PETERSEN: I thought he retired?

19 CHAIR ORTEGA: Mr. Petersen?

20 MR. PETERSEN: Yes. The claimant will stand on
21 the written submissions.

22 CHAIR ORTEGA: Okay, Mr. Spano or Mr. Venneman?

23 MR. VENNEMAN: The State Controller's office
24 supports staff's finding and recommendation.

25 CHAIR ORTEGA: Okay. Any questions or comments

Commission on State Mandates – December 5, 2014

1 from the members?

2 MEMBER CHIVARO: Move the staff recommendation.

3 CHAIR ORTEGA: Motion by Mr. Chivaro.

4 MEMBER OLSEN: Second.

5 CHAIR ORTEGA: Second by Ms. Olsen.

6 Is there any public comment on this item?

7 *(No response)*

8 CHAIR ORTEGA: Okay, please call the roll.

9 MS. HALSEY: Mr. Chivaro?

10 MEMBER CHIVARO: Aye.

11 MS. HALSEY: Ms. Olsen?

12 MEMBER OLSEN: Aye.

13 MS. HALSEY: Ms. Ortega?

14 CHAIR ORTEGA: Aye.

15 MS. HALSEY: Mr. Morgan?

16 MEMBER MORGAN: Aye.

17 MS. HALSEY: Ms. Ramirez?

18 MEMBER RAMIREZ: Aye.

19 MS. HALSEY: Mr. Rivera?

20 MEMBER RIVERA: Aye.

21 MS. HALSEY: Thank you.

22 Commission Counsel Tyler Asmundson will present

23 Item 9, an incorrect reduction claim on *Health Fee*

24 *Elimination*.

25 MR. PETERSEN: Item 7.

Commission on State Mandates – December 5, 2014

1 MS. HALSEY: Oh, sorry, Item 7.

2 CHAIR ORTEGA: 7. We're on Item 7.

3 MS. HALSEY: We're moving too fast. Okay,
4 sorry.

5 MR. PETERSEN: They all look the same, don't
6 they?

7 MS. HALSEY: They do.

8 I'm sorry, Matt, that would be you.

9 Matt Jones will present Item 7, incorrect
10 reduction claim on *Health Fee Elimination*.

11 MR. JONES: I knew I wasn't going to get off
12 that easy.

13 This IRC presents the following issues: The
14 statutory deadlines for audits, reduction of indirect
15 costs based on failure to obtain a federal approval for
16 cost rates prepared pursuant to the federal method, and
17 reductions based on the application of the health fee
18 rule to calculate offsetting revenues.

19 Staff finds that the audit is not time-barred
20 and that the Controller's reductions are correct as a
21 matter of law and not arbitrary, capricious, or entirely
22 lacking in evidentiary support and therefore recommends
23 that the Commission adopt the proposed decision denying
24 this IRC.

25 CHAIR ORTEGA: Okay, Mr. Petersen?

Commission on State Mandates – December 5, 2014

1 MR. PETERSEN: Keith Petersen, representing the
2 claimant.

3 MR. SPANO: Jim Spano, State Controller's
4 Office, Division of Audits.

5 MR. VENNEMAN: Jim Venneman, State Controller's
6 Office, Division of Audits.

7 CHAIR ORTEGA: Mr. Petersen, anything to add?

8 MR. PETERSEN: The claimant will stand on the
9 written submissions.

10 CHAIR ORTEGA: Okay, thank you.

11 MR. VENNEMAN: The State Controller's Office
12 supports staff's finding and recommendation.

13 CHAIR ORTEGA: Thank you.

14 Any public comment on this item?

15 *(No response)*

16 CHAIR ORTEGA: Seeing none, is there a motion?

17 MEMBER OLSEN: I'll move.

18 MEMBER RAMIREZ: Second.

19 CHAIR ORTEGA: Moved by Ms. Olsen and seconded
20 by Ms. Ramirez.

21 MS. HALSEY: Mr. Chivaro?

22 MEMBER CHIVARO: Aye.

23 MS. HALSEY: Ms. Olsen?

24 MEMBER OLSEN: Aye.

25 MS. HALSEY: Ms. Ortega?

Commission on State Mandates – December 5, 2014

1 CHAIR ORTEGA: Aye.

2 MS. HALSEY: Mr. Morgan?

3 MEMBER MORGAN: Aye.

4 MS. HALSEY: Ms. Ramirez?

5 MEMBER RAMIREZ: Aye.

6 MS. HALSEY: Mr. Rivera?

7 MEMBER RIVERA: Aye.

8 MS. HALSEY: Now, Tyler Asmundson will present
9 Item 9, an incorrect reduction claim on *Health Fee*
10 *Elimination*.

11 MR. ASMUNDSON: Good morning.

12 This incorrect reduction claim challenges
13 reductions made by the State Controller's Office to
14 reimbursement claims filed by El Camino Community College
15 District for the *Health Fee Elimination* program for
16 fiscal years 2000 through 2002.

17 The SCO reduced indirect costs claimed by
18 claimant using the indirect cost rate methodology
19 identified in the OMB Circular A-21, and did not obtain
20 federal approval of its indirect cost rate as required by
21 the OMB guidelines.

22 The SCO also found that the claimant
23 understated offsetting revenue because of the full fee
24 amount authorized to be charged should have been deducted
25 as offsetting revenue.

Commission on State Mandates – December 5, 2014

1 Staff recommends that the Commission adopt the
2 analysis to deny the IRC.

3 Would the parties and witnesses please state
4 your names for the record?

5 MR. PETERSEN: Keith Petersen, representing the
6 claimant.

7 MR. SPANO: Jim Spano, State Controller's
8 Office, Division of Audits.

9 MR. VENNEMAN: Jim Venneman, State Controller's
10 Office, Division of Audits.

11 CHAIR ORTEGA: Mr. Petersen?

12 MR. PETERSEN: The claimant will stand on the
13 written submissions.

14 MR. VENNEMAN: The State Controller's Office
15 supports staff's finding and recommendation.

16 CHAIR ORTEGA: Is there any public comment on
17 this item?

18 *(No response)*

19 CHAIR ORTEGA: Anything from the commissioners?

20 MEMBER CHIVARO: I move.

21 MEMBER RIVERA: Second.

22 CHAIR ORTEGA: Okay, moved by Mr. Chivaro,
23 seconded by Mr. Rivera.

24 Please call the roll.

25 MS. HALSEY: Mr. Chivaro?

Commission on State Mandates – December 5, 2014

1 MEMBER CHIVARO: Aye.

2 MS. HALSEY: Ms. Olsen?

3 MEMBER OLSEN: Aye.

4 MS. HALSEY: Ms. Ortega?

5 CHAIR ORTEGA: Aye.

6 MS. HALSEY: Mr. Morgan?

7 MEMBER MORGAN: Aye.

8 MS. HALSEY: Ms. Ramirez?

9 MEMBER RAMIREZ: Aye.

10 MS. HALSEY: Mr. Rivera?

11 MEMBER RIVERA: Aye.

12 MS. HALSEY: Senior Commission Counsel Eric

13 Feller will present Item 10, an incorrect reduction claim

14 on *Health Fee Elimination*.

15 Mr. Feller?

16 MR. FELLER: This IRC challenges reductions

17 made by the Controller to the Santa Monica Community

18 College District for fiscal years 2001 to 2003.

19 The Controller found that the entire amount was

20 unallowable because claimant overreported indirect costs

21 using a federally indirect cost rate without obtaining

22 federal approval as required by OMB guidelines. Claimant

23 also underreported offsetting revenues by reporting the

24 health fee revenue collected rather than the full amount

25 of its health fee authority.

Commission on State Mandates – December 5, 2014

1 Staff recommends that the Commission adopt the
2 analysis to deny the IRC.

3 Will the parties and witnesses please state
4 your names for the record?

5 MR. PETERSEN: Keith Petersen, representing the
6 claimant.

7 MR. SPANO: Jim Spano, State Controller's
8 Office, Division of Audits.

9 MR. VENNEMAN: Jim Venneman, State Controller's
10 Office, Division of Audits.

11 CHAIR ORTEGA: Mr. Petersen?

12 MR. PETERSEN: Claimant will stand on the
13 written submissions.

14 MR. VENNEMAN: The State Controller's Office
15 supports staff's finding and recommendation.

16 CHAIR ORTEGA: Is there any public comment on
17 this item?

18 *(No response)*

19 CHAIR ORTEGA: Seeing none, Commissioners?

20 MEMBER RIVERA: Move for adoption.

21 CHAIR ORTEGA: Moved by Mr. Rivera.

22 MEMBER CHIVARO: Second.

23 CHAIR ORTEGA: Second by Mr. Chivaro.

24 Call the roll.

25 MS. HALSEY: Mr. Chivaro?

Commission on State Mandates – December 5, 2014

1 MEMBER CHIVARO: Aye.

2 MS. HALSEY: Ms. Olsen?

3 MEMBER OLSEN: Aye.

4 MS. HALSEY: Ms. Ortega?

5 CHAIR ORTEGA: Aye.

6 MS. HALSEY: Mr. Morgan?

7 MEMBER MORGAN: Aye.

8 MS. HALSEY: Ms. Ramirez?

9 MEMBER RAMIREZ: Aye.

10 MS. HALSEY: Mr. Rivera?

11 MEMBER RIVERA: Aye.

12 CHAIR ORTEGA: The motion carries.

13 Item 11.

14 MS. HALSEY: We're going to take Item 12 out of
15 order -- I mean, and put it up in front of Item 11.

16 CHAIR ORTEGA: Okay.

17 MS. HALSEY: Commission Counsel Matt Jones will
18 present Item 12, an incorrect reduction claim on
19 *Collective Bargaining*.

20 MR. PETERSEN: That's Jay, isn't it?

21 MR. JONES: This IRC asserts that the
22 Controller failed to specify any reason for its
23 reductions other than a lack of supporting documentation.
24 However, the threshold issue is whether the IRC was
25 timely filed. Because staff finds that it was not, the

Commission on State Mandates – December 5, 2014

1 analysis does not reach the issue of documentation or
2 whether the Controller's notice of adjustment is
3 arbitrary, capricious, or entirely lacking in evidentiary
4 support. Staff therefore recommends that the Commission
5 adopt the proposed decision denying the IRC.

6 Will the parties and witnesses please state
7 your names for the record?

8 MR. PETERSEN: Keith Petersen, representing the
9 claimant.

10 MR. LAL: Jay Lal, State Controller's Office.

11 CHAIR ORTEGA: Thank you.

12 Mr. Petersen?

13 MR. PETERSEN: Claimant will stand on the
14 written submission.

15 MR. LAL: The State Controller's Office concurs
16 with staff recommendation.

17 Thank you.

18 CHAIR ORTEGA: I had a question about this one
19 from Mr. Petersen or the State Controller's Office.

20 Just that the length of time that has gone on
21 in this particular claim, can you say a little bit about
22 what is going on during that time, in terms of, is there
23 an ongoing communication about the dispute or -- I don't
24 know, this one -- this one just is different than the
25 others that we've seen in terms of how -- the length of

Commission on State Mandates – December 5, 2014

1 time that there's kind of a -- just sitting there.

2 MR. PETERSEN: Well, yes, the other cases today
3 were statute of limitations to audit. This was a desk
4 review. It wasn't an audit.

5 The desk review -- and, of course, Mr. Lal can
6 speak to this better than I can. The desk review process
7 takes several years -- not the review itself, but the
8 payment process takes several years and generates several
9 computer-generated notices.

10 And this particular incorrect reduction claim
11 was all about what constitutes notice. And this was
12 filed eight or nine years ago, and just to find out,
13 what's the starting point for the three-year clock. We
14 didn't have anything in -- we didn't have any precedent
15 on that, now we do.

16 CHAIR ORTEGA: Okay.

17 Mr. Lal, do you have anything to add?

18 MR. LAL: No. I think he stated everything.

19 CHAIR ORTEGA: Okay. Any public comment on
20 this item?

21 MEMBER RAMIREZ: I'll move.

22 MEMBER RIVERA: Second.

23 CHAIR ORTEGA: Okay, moved by Ms. Ramirez,
24 seconded by Mr. Rivera.

25 MS. HALSEY: Mr. Chivaro?

Commission on State Mandates – December 5, 2014

1 MEMBER CHIVARO: Aye.

2 MS. HALSEY: Ms. Olsen?

3 MEMBER OLSEN: Aye.

4 MS. HALSEY: Ms. Ortega?

5 CHAIR ORTEGA: Aye.

6 MS. HALSEY: Mr. Morgan?

7 MEMBER MORGAN: Aye.

8 MS. HALSEY: Ms. Ramirez?

9 MEMBER RAMIREZ: Aye.

10 MS. HALSEY: Mr. Rivera?

11 MEMBER RIVERA: Aye.

12 CHAIR ORTEGA: The motion carries.

13 Back to Item 11.

14 MS. HALSEY: Senior Commission Counsel Eric

15 Feller will present Item 11, an incorrect reduction claim

16 *on Emergency Procedures, Earthquakes and Disasters.*

17 Claimant has decided not to appear and stand on

18 the record.

19 CHAIR ORTEGA: Okay.

20 MR. FELLER: So this IRC challenges reductions

21 by the Controller to reimbursement from the San Diego

22 Unified School District for fiscal years 2001 to 2003 for

23 salaries, benefits, and related indirect costs.

24 Claimant claimed an average time spent on the

25 program based on time logs submitted by a limited number

Commission on State Mandates – December 5, 2014

1 of employees from other schools within the district.
2 The Controller approved the actual time claimed that was
3 supported with time logs but reduced claims for which
4 there were no time logs submitted.

5 Staff finds the Controller's reduction for the
6 employees that did not submit time logs or other
7 supporting documentation is correct as a matter of law.
8 The governing parameters and guidelines require a
9 claimant to list each employee, their function, hourly
10 rate of pay, and the actual number of hours devoted to
11 the mandate, and requires claimants to provide source
12 documents or work sheets as evidence of the cost claimed.
13 Claimant did not comply with these requirements with
14 respect to the reductions, so the staff recommends that
15 the Commission adopt the analysis to deny the IRC.

16 Will the parties and witnesses please state
17 your names for the record?

18 MR. SPANO: Jim Spano, State Controller's
19 Office, Division of Audits.

20 MR. HOWELL: Ken Howell, State Controller's
21 Office, Division of Audits.

22 CHAIR ORTEGA: Okay.

23 MR. HOWELL: The State Controller's Office
24 agrees with the staff finding and recommendation.

25 CHAIR ORTEGA: Thank you.

Commission on State Mandates – December 5, 2014

1 Is there public comment on this item?

2 *(No response)*

3 CHAIR ORTEGA: Okay, anything from the members?

4 MEMBER CHIVARO: Move staff recommendation.

5 CHAIR ORTEGA: Moved by Mr. Chivaro.

6 MEMBER OLSEN: I'll second.

7 CHAIR ORTEGA: Seconded by Ms. Olsen.

8 MS. HALSEY: Mr. Chivaro?

9 MEMBER CHIVARO: Aye.

10 MS. HALSEY: Ms. Olsen?

11 MEMBER CHIVARO: Aye.

12 MS. HALSEY: Ms. Ortega?

13 CHAIR ORTEGA: Aye.

14 MS. HALSEY: Mr. Morgan?

15 MEMBER MORGAN: Aye.

16 MS. HALSEY: Ms. Ramirez?

17 MEMBER RAMIREZ: Aye.

18 MS. HALSEY: Mr. Rivera?

19 MEMBER RIVERA: Aye.

20 MS. HALSEY: Thank you.

21 CHAIR ORTEGA: The motion carries.

22 MS. HALSEY: Items 13 and 14 are on the consent
23 calendar.

24 Item 15 is reserved for County applications for
25 a finding of significant financial distress, or SB 1033

1 applications. No SB 1033 applications have been filed.

2 Item 16, Chief Legal Counsel Camille Shelton
3 will present the Chief Legal Counsel report.

4 MS. SHELTON: Good morning.

5 Since our last hearing, there have been some
6 amicus filings in the Supreme Court matter of the *Water*
7 *Permit* case. And there's about 25 applications in amicus
8 briefs that have been filed. And we will hear from the
9 Supreme Court whether they're going to accept them all or
10 not. So that case is going to remain pending for a
11 while.

12 The second update is with respect to the
13 *California School Board Association* matter. The Court
14 has adopted an order upon a motion of the petitioner to
15 bifurcate the case. So to be set in the future, there
16 will be two separate hearings: One on the first two
17 causes of action dealing with the constitutionality of
18 offset provisions directing school districts to use their
19 existing funding to pay for mandates first; and then the
20 second hearing will be dealing with the redetermination
21 process.

22 So that should be interesting.

23 And then I have listed here our litigation
24 calendar, we are busy starting next week, all the way
25 through June, with superior court hearings.

Commission on State Mandates – December 5, 2014

1 CHAIR ORTEGA: Any questions?

2 (No response)

3 MS. HALSEY: Item 17 is the Executive
4 Director's report.

5 After this hearing, the test-claim backlog is
6 completed. This is a major milestone for the Commission,
7 and it means that new test claims will be able to be set
8 for the hearing within a hearing or two within the close
9 of the comment and rebuttal periods. So that will be
10 something new to have the evidence right shortly after
11 it's been filed.

12 And then the only remaining test claims are
13 the NPDES test claims that are on inactive, pending the
14 outcome of the *Stormwater* litigation.

15 There are currently two parameters and
16 guidelines pending, one of which is on inactive, pending
17 the *NPDES* litigation, and two parameters and guidelines
18 amendments, one of which is on inactive, pending the
19 outcome of litigation of *CSBA*.

20 And then we also have three statewide cost
21 estimates pending, one of which is on inactive, pending
22 the outcome of the *NPDES* litigation, and two mandate
23 redetermination requests.

24 Finally, there are six IRCs remaining -- or
25 what did I say?

Commission on State Mandates – December 5, 2014

1 MR. CHIVARO?: Six.

2 MS. HALSEY: Six? Wouldn't that be nice?

3 69. Yes.

4 Tentative agenda items: Please check the
5 tentative agenda item list to see if your item is coming
6 up over the course of the next few hearings.

7 And that is all.

8 CHAIR ORTEGA: Great. Thank you.

9 Great news on the --

10 MEMBER RAMIREZ: I would like to congratulate
11 you on your success. This farm show was a lot of hard
12 work to get there, by all staff. Thank you.

13 CHAIR ORTEGA: And that's it for open session.

14 We do have closed session, right?

15 Okay, so we will now adjourn into closed
16 session.

17 *(Brief discussion off record at*
18 *11:32 a.m. to 11:33 a.m.)*

19 CHAIR ORTEGA: The Commission will meet in
20 closed executive session pursuant to Government Code
21 section 11126(e) to confer with and receive advice from
22 legal counsel for consideration and action, as necessary
23 and appropriate, upon the pending litigation listed on
24 the published notice and agenda; and to confer with and
25 receive advice from legal counsel regarding potential

Commission on State Mandates – December 5, 2014

1 litigation.

2 The Commission will also confer on personnel
3 matters pursuant to Government Code section 11126(a)(1).

4 We will convene in open session in
5 approximately 15 minutes.

6 *(The Commission met in closed executive*
7 *session from 11:33 a.m. to 11:50 a.m.)*

8 CHAIR ORTEGA: The Commission met in
9 closed-session pursuant to Government Code section
10 11126(e)(2) to confer with and receive advice from legal
11 counsel for consideration and action, as necessary and
12 appropriate, upon the pending litigation listed on the
13 published notice and agenda; and to confer with and
14 receive advice from legal counsel regarding potential
15 litigation; and pursuant to Government Code section
16 11126(a)(1), to confer on personnel matters.

17 No action was taken.

18 If there is no other further public comment, we
19 will be adjourned.

20 Thank you.

21 *(The meeting concluded at 11:51 a.m.)*

22 --oOo--

23

24

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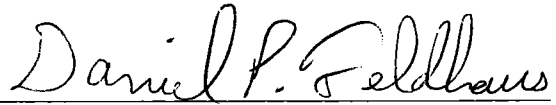
REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 29th December 2014.



Daniel P. Feldhaus
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter