

Item 2

Proposed Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
December 1, 2017

Present: Member Eraina Ortega, Chairperson
Representative of the Director of the Department of Finance
Member Richard Chivaro, Vice Chairperson
Representative of the State Controller
Member Lee Adams
County Supervisor
Member Ken Alex
Director of the Office of Planning and Research
Member Mark Hariri
Representative of the State Treasurer
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 10:02 a.m. Executive Director Heather Halsey called the roll.

APPROVAL OF MINUTES

Member Ramirez made a motion to adopt the minutes. With a second by Member Olsen, the September 22, 2017 hearing minutes were adopted by a vote of 6-0, with Member Chivaro absent.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

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

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 swore in the 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

Executive Director Halsey stated that there were no appeals to consider for this hearing.

INCORRECT REDUCTION CLAIM

Item 3 *Integrated Waste Management, 14-0007-I-05*

Public Resources Code Sections 40418, 40196.3, 42920-42928; Public Contract Code Sections 12167 and 12167.1; Statutes 1992, Chapter 1116 (AB 3521); Statutes 1999, Chapter 764 (AB 75); State Agency Model Integrated Waste Management Plan (February 2000)

Fiscal Years: 1999-2000, 2000-2001, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011

State Center Community College District, Claimant

Executive Director Heather Halsey stated that the claimant representative notified Commission staff that the District remains committed to its position, but would not be sending a representative to the hearing.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission partially approve this Incorrect Reduction Claim and request that the State Controller reinstate \$3,358 to the claimant.

Parties were represented as follows: Lisa Kurokawa, representing the State Controller's Office.

Ms. Kurokawa stated that the State Controller's Office agrees with the staff's conclusion and recommendation. Without further discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Hariri, the motion to partially approve this Incorrect Reduction Claim was adopted by a vote of 6-0 with Member Chivaro absent.

INCORRECT REDUCTION CLAIM

Item 4 *Integrated Waste Management, 14-0007-I-06*

Public Resources Code Sections 40418, 40196.3, 42920-42928; Public Contract Code Sections 12167 and 12167.1; Statutes 1992, Chapter 1116 (AB 3521); Statutes 1999, Chapter 764 (AB 75); State Agency Model Integrated Waste Management Plan (February 2000)

Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, and 2009-2010

Victor Valley Community College District, Claimant

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission partially approve this Incorrect Reduction Claim and request that the State Controller reinstate \$11,983 to the claimant.

Parties were represented as follows: Yoon-Woo Nam, representing the claimant; and Lisa Kurokawa, representing the State Controller's Office.

Mr. Nam stated that the claimant would not be providing any further comments and that it stands on the prior submissions. Ms. Kurokawa stated that the State Controller's Office agrees with the staff's conclusion and recommendation. Following additional discussion among the Commission members, staff, and Ms. Kurokawa about the offsetting savings for this program, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Adams, the motion to partially approve this Incorrect Reduction Claim was adopted by a vote of 6-0 with Member Chivaro Absent.

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 5 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

No applications were filed.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLES 7 AND 8 (action)

ADOPTION OF PROPOSED REGULATION AMENDMENTS AFTER CLOSE OF 15-DAY COMMENT PERIOD

- Item 6 General Cleanup Provisions, Proposed Amendments to California Code of Regulations, Title 2, Division 2, Chapter 2.5, Articles 1, 2, 3, 4, 5, 6, 7, 8, and 10

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the originally proposed regulation amendments with one additional clerical change, authorize staff to issue the order to adopt, and make any non-substantive technical corrections to the proposed regulatory text requested by the Office of Administrative Law or Barclays Official California Code of Regulations prior to publication.

The following representative commented on this item: Dillon Gibbons, representing the California Special Districts Association.

Mr. Gibbons thanked the Commission for considering the comments submitted regarding the proposed additional modifications to the originally noticed changes to section 1183.1(c), urged the Commission to reject any change to this section and retain its current language, and reiterated concerns regarding the requirement for joint test claimants to retain one person as sole representative, rather than one contact person as the resource for information.

Member Chivaro joined the meeting.

Following discussion among Commission members, staff, and Mr. Gibbons, Member Adams made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to adopt the originally proposed regulation amendments with one additional clerical change, authorize staff to issue the order to adopt, and make any non-substantive technical corrections to the proposed regulatory text requested by the Office of Administrative Law or

Barclays Official California Code of Regulations prior to publication was adopted by a vote of 7-0.

STAFF REPORTS

Item 7 Legislative Update (info)

Executive Director Heather Halsey stated that there was nothing new to report.

Item 8 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

Item 9 Executive Director: January 2018-December 2019 Strategic Plan, Workload Update, and Tentative Agenda Items for the January and March 2018 Meetings (info/action)

Executive Director Heather Halsey presented this item, reported on the Commission's pending caseload, and presented the January 2018-December 2019 Strategic Plan.

Following discussion among Commission members and staff, Member Olsen made a motion to adopt the proposed January 2018-December 2019 Strategic Plan. With a second by Member Chivaro, the motion to adopt the January 2018-December 2019 Strategic Plan was adopted by a vote of 7-0.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (info/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):

Trial Courts:

1. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS166734
[*Handicapped and Disabled Students IRC*, 13-4282-I-06]
2. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS166735
[*Handicapped and Disabled Students II IRC*, 12-0240-I-01]
3. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS167447
[*Seriously Emotionally Disturbed Pupils IRC*, 12-9705-I-04]
4. ***On Remand from California Supreme Court, Case No. S214855, 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)
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]

Courts of Appeal:

1. *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]
2. *Coast Community College District, et al. v. Commission on State Mandates*,
Third District Court of Appeal, Case No. C080349
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).]
3. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*
Third District Court of Appeal, Case No. C081929
Sacramento County Superior Court, Case No. 34-2015-80002016

[*Water Conservation* (10-TC-12/12-TC-01, adopted December 5, 2014), 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.]

4. *California School Board Association (CSBA) v. State of California et al.*
First District Court of Appeal, Case No. A148606
Alameda County Superior Court, Case No. RG11554698
[2010-2011 Budget Trailer Bills; Education Code sections 42238.24 and 56523]

California Supreme Court:

1. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*
California Supreme Court, Case No. S239907
Fourth District Court of Appeal, Division One, Case No. D068657
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]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126(e)(2):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members or staff.

B. PERSONNEL

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

The Commission adjourned into closed executive session at 10:28 a.m., 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 published notice and agenda; and to confer with 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 10:35 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)(2) 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 to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

ADJOURNMENT

Hearing no further business, Chairperson Ortega adjourned the meeting at 10:36 a.m.

Heather Halsey
Executive Director

ORIGINAL

RECEIVED

MEETING OF THE
STATE OF CALIFORNIA

DEC 20 2017
COMMISSION ON
STATE MANDATES

COMMISSION ON STATE MANDATES



TIME: 10:00 a.m.

DATE: Friday, December 1, 2017

PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:

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

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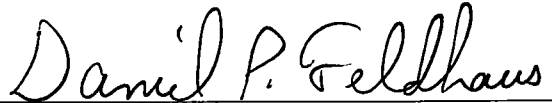
REPORTER'S CERTIFICATE

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 18th day of December 2017.



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

A P P E A R A N C E S

COMMISSIONERS PRESENT

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

RICHARD CHIVARO
Representative for BETTY T. YEE
State Controller
(*Vice Chair of the Commission*)

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

MARK HARIRI
Representative for JOHN CHIANG
State Treasurer

KEN ALEX
Director
Office of Planning & Research

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member
Local Agency Member



PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(*Item 9*)

HEIDI PALCHIK
Assistant Executive Director

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF PRESENT

(continued)

ERIC FELLER
Senior Legal Counsel
(Item 3 and Item 4)

MATTHEW B. JONES
Commission Counsel
(Item 6)

JILL MAGEE
Program Analyst

CAMILLE N. SHELTON
Chief Legal Counsel
(Item 8)



PUBLIC TESTIMONY

Appearing Re Item 3:

For the State Controller's Office:

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

Appearing Re Item 4:

For the Claimant Victor Valley Community College
District:

YOON-WOO NAM
Attorney at Law
Dannis Woliver Kelley
555 Capitol Mall, Suite 645
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4:

For the State Controller's Office:

LISA KUROKAWA
Audit Manager, Division of Audits
State Controller's Office

Appearing Re Item 6:

DILLON GIBBONS
Legislative Representative
California Special Districts Association
1112 "I" Street, Suite 200
Sacramento, California 95814



ERRATA SHEET

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<u>7</u>	<u> </u>	<u>Staff Report on Public Comment and</u>
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<u> </u>	<u> </u>	<u>of Public Comment Period</u>
<u> </u>	<u> </u>	<u>Adoption of Proposed Regulation</u>
<u> </u>	<u> </u>	<u>Amendments After Close of 15-Day</u>
<u> </u>	<u> </u>	<u>Comment Period</u>
<u>15</u>	<u> 2</u>	<u>reduction <u>in</u> <u>and</u> the amount</u>
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VI. 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 2

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VII. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8 (action)

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Commission on State Mandates – December 1, 2017

1 meeting.

2 Any corrections, comments on the minutes?

3 *(No response)*

4 CHAIR ORTEGA: Okay.

5 MEMBER RAMIREZ: Move the recommended action.

6 MEMBER OLSEN: Second it.

7 CHAIR ORTEGA: Okay, moved by Ms. Ramirez, second by
8 Ms. Olsen.

9 All in favor of adoption of the minutes, please say
10 "aye."

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

12 CHAIR ORTEGA: That item is approved.

13 MS. HALSEY: Now, we will take up public comment for
14 matters not on the agenda.

15 Please note that the Commission cannot take action
16 on items not on the agenda; however, it can schedule
17 issues raised by the public for consideration at future
18 meetings.

19 CHAIR ORTEGA: Okay, anyone from the public wishing
20 to address the Commission?

21 *(No response)*

22 CHAIR ORTEGA: Seeing none, we'll move on.

23 MS. HALSEY: Since there are no items on consent
24 today, let's move to the Article 7 portion of the
25 hearing.

Commission on State Mandates – December 1, 2017

1 Will the parties and witnesses for Items 3 and 4
2 please rise?

3 *(Parties/witnesses stood to be sworn/affirmed.)*

4 MS. HALSEY: Do you solemnly swear or affirm that
5 the testimony which you are about to give is true and
6 correct, based on your personal knowledge, information,
7 or belief?

8 *(A chorus of affirmative responses was heard.)*

9 MS. HALSEY: Thank you.

10 Item 2 is reserved for appeals of Executive Director
11 decisions.

12 There are no appeals to consider for this hearing.

13 Senior Commission Counsel Eric Feller will present
14 Item 3, an incorrect reduction claim on *Integrated Waste*
15 *Management*.

16 Yesterday, the claimant representative notified
17 Commission staff that the District remains committed to
18 its position, but will not be sending a representative to
19 the hearing.

20 MR. FELLER: Good morning.

21 The Controller's audit reductions to this program
22 were taken because the claimant did not deduct offsetting
23 savings from its diversion of solid waste and the
24 associated reduction of disposal costs in accordance with
25 the test-claim statutes.

Commission on State Mandates – December 1, 2017

1 Staff finds that the Controller's reduction of costs
2 claimed for all years in the audit period except the
3 first half of 2003-04 is correct, as a matter of law;
4 is not arbitrary, capricious, or without evidentiary
5 support. However, the Controller's audit reduction for
6 the first half of fiscal year 2003-04 is incorrect as a
7 matter of law because the Controller based the cost
8 savings calculation for this period on a 50 percent
9 required diversion rate, when the law required only
10 25 percent diversion, which the claimant exceeded.

11 The Controller's failure to allocate the cost
12 savings for that first half of 2003-04 based on the
13 mandated diversion rate, as it did for all the years
14 when the claimant exceeded the mandate, was arbitrary,
15 capricious, and entirely lacking in evidentiary support.

16 The difference between the reduction and the amount
17 that should have been reduced is \$3,358, which has been
18 incorrectly offset and should be reinstated to the
19 claimant.

20 In comments on the draft proposed decision, the
21 Controller agreed with the conclusion to reinstate to the
22 claimant \$3,358 for the first half of fiscal year
23 2003-04.

24 Accordingly, staff recommends the Commission
25 partially approve this IRC and request the Controller

Commission on State Mandates – December 1, 2017

1 reinstate \$3,358 to the claimant. Staff also requests
2 the Commission authorize staff to make any technical,
3 non-substantive changes to the proposed decision
4 following the hearing.

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

7 MS. KUROKAWA: My name is Lisa Kurokawa. I am an
8 audit manager for the State Controller's Office.

9 And as Mr. Feller stated, the Controller's office
10 does agree with the Commission's proposed decision.

11 CHAIR ORTEGA: Thank you.

12 Any questions?

13 MEMBER OLSEN: I'll move adoption of the staff
14 recommendation.

15 CHAIR ORTEGA: Okay, moved by Ms. Olsen.

16 MEMBER HARIRI: Second.

17 CHAIR ORTEGA: Second by Mr. Hariri.

18 All in favor of the staff recommendation, please say
19 "aye."

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

21 CHAIR ORTEGA: Okay, that item is approved.

22 We'll move to Item 4.

23 MS. HALSEY: Senior Commission Counsel Eric Feller
24 will present Item 4, an incorrect reduction claim on
25 *Integrated Waste Management.*

Commission on State Mandates – December 1, 2017

1 MR. FELLER: Okay, again, the Controller's audit
2 reductions for this program were taken because the
3 claimant did not deduct offsetting savings from its
4 diversion of solid waste and the associated reduction of
5 disposal costs in accordance with the test-claim
6 statutes.

7 Staff finds the audit of fiscal years 1999-2000,
8 2003-2004, and 2005-2006, was timely initiated; and the
9 audit of all fiscal years in the audit period was timely
10 completed.

11 Staff also finds, the Controller's reduction of
12 costs claimed for all years in the audit period, except
13 calendar years 2002 and 2003, is correct as a matter of
14 law, and is not arbitrary, capricious, or without
15 evidentiary support. However, the Controller's audit
16 reduction for calendar years 2002 and 2003 is incorrect
17 as a matter of law because the Controller based the cost
18 savings calculation for this period on a 50 percent
19 required diversion rate, when the law required only
20 25 percent diversion.

21 The Controller's calculation of offsetting savings
22 for 2002-03 is arbitrary, capricious, and entirely
23 lacking in evidentiary support because the Controller
24 did not allocate the costs as it had for other years in
25 the audit period when the claimant exceeded the diversion

1 mandate.

2 The difference between the reduction in the amount
3 that should have been reduced is \$11,983, which has been
4 incorrectly offset and should be reinstated to the
5 claimant.

6 In comments on the draft proposed decision, the
7 Controller agreed with the conclusion to reinstate to
8 claimant \$11,983 for calendar years 2002 and 2003.

9 So staff recommends the Commission partially approve
10 this IRC and requests the Controller reinstate \$11,983
11 to the claimant. Staff also requests the Commission
12 authorize staff to make any technical, non-substantive
13 changes to the proposed decision following the hearing.

14 Would the witnesses and parties please state your
15 names for the record?

16 MS. KUROKAWA: I'm Lisa Kurokawa, audit manager for
17 the State Controller's Office; and we agree with the
18 Commission's proposed decision.

19 MR. NAM: Good morning. Yoon-Woo Nam of Dannis
20 Woliver Kelley, on behalf of Claimant Victor Valley
21 Community College District.

22 We will not be providing any further comments, and
23 stand on our prior submissions.

24 CHAIR ORTEGA: Okay, thank you.

25 Any questions from commissioners?

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1 Ms. Ramirez.

2 MEMBER RAMIREZ: I'm just wondering if there is a
3 little bit more detail on how this came to be.

4 MS. KUROKAWA: Me?

5 MEMBER RAMIREZ: Yes, from the Controller's office.

6 MS. KUROKAWA: On how what came to be?

7 MEMBER RAMIREZ: Well, just the incorrect test being
8 applied.

9 MS. KUROKAWA: So the issue is offsetting savings.
10 And so the District's claiming reimbursement for costs
11 to -- like, direct costs to divert their waste; and they
12 reported no savings. And so they don't believe -- the
13 District did not report any savings. And so there is a
14 cost to -- the idea is, when you -- there is
15 reimbursement for recycling of costs. And so we're
16 giving them direct cost to recycle. So the issue is
17 offsetting savings.

18 So we're arguing that they have a savings because that
19 waste is not being disposed of at the landfill. And
20 there's a cost to dispose of waste at a landfill, so we
21 calculated a savings to divert the waste.

22 MEMBER RAMIREZ: Okay, thank you.

23 Did you want to say something?

24 MS. SHELTON: We've had several incorrect reduction
25 claims on this program, and we have found the staff

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1 proposed decisions and the prior decisions adopted by
2 the Commission have found that the Controller's
3 interpretation of the cost savings and the idea of it
4 is consistent with the trial court's decision on this
5 program, that found that there is a presumption that the
6 more you recycle and divert solid waste, you're also
7 likely going to have cost savings from the avoided
8 landfill costs.

9 MEMBER RAMIREZ: So a little bit of a prediction
10 problem; right?

11 MS. SHELTON: And so there's no evidence in the
12 record to show -- to overcome that presumption. And
13 that's been the problem with all of these.

14 MEMBER RAMIREZ: Okay, thank you so much.
15 Thank you.

16 MEMBER OLSEN: I'll move adoption of the staff
17 recommendation.

18 CHAIR ORTEGA: Okay, moved --

19 MEMBER ADAMS: Second.

20 CHAIR ORTEGA: Second by Mr. Adams, moved by
21 Ms. Olsen.

22 Any other comment or public comment on this item?

23 *(No response)*

24 CHAIR ORTEGA: Okay, should I call the roll?

25 We'll call the roll.

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1 MS. HALSEY: Mr. Adams.

2 MEMBER ADAMS: Aye.

3 MS. HALSEY: Mr. Alex.

4 MEMBER ALEX: Aye.

5 MS. HALSEY: Mr. Chivaro.

6 *(No response)*

7 MS. HALSEY: Mr. Hariri.

8 MEMBER HARIRI: Aye.

9 MS. HALSEY: Ms. Olsen.

10 MEMBER OLSEN: Aye.

11 MS. HALSEY: Ms. Ortega.

12 CHAIR ORTEGA: Aye.

13 MS. HALSEY: Ms. Ramirez.

14 MEMBER RAMIREZ: Aye.

15 MS. HALSEY: Thank you.

16 Item 5 is reserved for county applications for a
17 finding of significant financial distress. There are --
18 or SB 1033 applications.

19 No SB 1033 applications have been filed.

20 Commission Counsel Matt Jones will present Item 6,
21 adoption of proposed regulation amendments after a close
22 of 15-day comment period.

23 MR. JONES: Good morning.

24 On May 26th, 2017, the Commission adopted an order
25 to initiate a rulemaking package, initiate the proposed

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1 changes for comment.

2 A public hearing was held on July 28th, 2017; and
3 CSDA, CSAC, and the League of Cities each presented oral
4 comments in addition to written comments filed during the
5 notice and comment period.

6 In response to those comments, staff recommended an
7 additional modification to section 1183.1(c) pertaining
8 to the period of limitation for a test-claim filing,
9 which was issued for public comment following the
10 September 22, 2017, hearing.

11 Additional comments received on that proposed
12 modification revealed a potential issue; and staff now
13 recommends that the Commission adopt the originally
14 proposed amendment to section 1183.1(c), which simply
15 identifies when costs are first incurred, consistent with
16 the Government Code, section 17551.

17 Staff recommends that the Commission adopt the
18 proposed amendments and one additional clerical change
19 as described in the executive summary and final statement
20 of reasons, and authorize staff to issue the order to
21 adopt, which is Exhibit M; and make any non-substantive
22 technical corrections to the proposed regulatory text
23 requested by the Office of Administrative Law or Barclays
24 Official California Code of Regulations prior to
25 publication.

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1 CHAIR ORTEGA: Thank you, Mr. Jones.

2 Mr. Gibbons?

3 MR. GIBBONS: Hi. Dillon Gibbons with the
4 California Special Districts Association.

5 And I thank you, Chair and Members, for allowing me
6 to testify today.

7 So I want to start with, we appreciate the work of
8 the Commission staff and that the comments we submitted
9 were heard and the proposal was modified to reflect
10 those comments with regard to section 1183.1, which have
11 put the regulation out of alignment with the Government
12 Code -- or would have put the regulation out of alignment
13 with the Government Code. But now, with the
14 modifications, it is directly in line with the Government
15 Code. So I want to start with appreciating that.

16 However, we, nonetheless, continue to urge the
17 Commission to reject the proposed modifications, as they
18 would make it particularly difficult for local agencies
19 to file timely and accurate test claims, representative
20 of the effect and cost of the claim that they are
21 pursuing.

22 While we did concede that June 30th is routinely
23 used by local governments as a fiscal deadline and would
24 prove ideal as the test-claim deadline, we cannot confirm
25 that it is almost exclusively used as the claim-filing

1 deadline as the Commission argues.

2 Perhaps the Commission staff can provide data as to
3 when test claims are being filed by local agencies.

4 Moreover, as Commissioner Olsen noted at the last
5 hearing, the proposed change might make more sense if the
6 Commission had a lot of illegitimate claims or spurious
7 claims; but that doesn't seem to be the case.

8 Finally, with regard to this particular item, the
9 Commission should note that the text proposed to be
10 stricken from the regulation, 1183.1, was added one year
11 after the governing statute was revised to reduce the
12 test-claim filing period from three years to one. And
13 although there is no analysis regarding the change from
14 that time, it is reasonable to assume that the Commission
15 did so in order to provide a practical time-line to test
16 claimants in light of the restrictions on the period of
17 limitations.

18 In light of this, we ask that the Commission not
19 adopt the staff recommendation that would make a finding
20 that no alternative would be as effective or less
21 burdensome to affected persons.

22 So I'd like to now move on to the joint test claim
23 portion of the regulatory changes.

24 And we simply want to restate our position of
25 opposition to the proposed change. This would

1 fundamentally alter the function of section 1181.3(g)(3)
2 regarding just joint test claims by revising the need for
3 one contact person to serve as the resource for
4 information, to one person to act as the sole
5 representative. These are vastly different functions
6 that may ultimately deter the joining of test claims by
7 multiple parties as a concerted, ongoing effort. This
8 may ultimately result in dissension between test
9 claimants and potentially more work for the Commission
10 staff.

11 So with that, that concludes my remarks. I'm happy
12 to take any questions regarding these comments.

13 And thank you for your consideration of our
14 position.

15 CHAIR ORTEGA: Thank you, Mr. Gibbons.

16 Should we discuss the issues separately? Does
17 anybody have any questions or comments on the first point
18 raised? Or on the second, around the joint test claim?

19 Ms. Ramirez?

20 MEMBER RAMIREZ: I'd like to have Commission staff
21 respond to these issues.

22 CHAIR ORTEGA: Sure.

23 Mr. Jones.

24 MR. JONES: So the executive summary for this
25 hearing really only addresses the test-claim filing

1 period issue.

2 The issue of the joint test claim single
3 representative issue, that was dealt with in the prior
4 hearing. I think the July hearing item. But we can go
5 back to that. It's in our exhibits, if you want to
6 explore --

7 MS. SHELTON: It's also in the final statement of
8 reasons, so...

9 MR. JONES: Right, right. But there's nothing new
10 there, was my point. There hasn't really been any new
11 analysis on that issue; but we can go back to that if
12 you'd like.

13 As far as the timing for the test-claim filing, the
14 recommendation before you is simply to eliminate the
15 June 30th deadline because there is not really any clear
16 authority for that to be in the regulations under the
17 Government Code. It's arguably inconsistent with the
18 Government Code.

19 So to the extent we accept test claims, June 29th,
20 you know, as much as 18 months after the effective date
21 of a test claim -- or the effective date of a test-claim
22 statute or regulation, it's not clear that the
23 Commission's decision wouldn't be held null and void
24 because it would be in excess of jurisdiction.

25 So that's the -- it's the simplest reason for why

1 that change was made.

2 MEMBER RAMIREZ: Thank you.

3 MR. GIBBONS: If I may?

4 CHAIR ORTEGA: Go ahead.

5 MR. GIBBONS: Yes, it is a hundred percent accurate
6 that it now matches the Government Code section word for
7 word by removing those dates. However, we believe that
8 there is nothing that would prevent this commission from
9 putting those dates into regulation to allow the
10 test-claim process to work most efficiently. It would
11 maintain the one-year guidelines, but it would be given a
12 date, you know, by the Commission to enact the provisions
13 of the Government Code.

14 So we believe that it is fully within the power of
15 this commission to set those dates by regulation; and it
16 would be the most effective and efficient way for our
17 local agencies to be able to comply.

18 CHAIR ORTEGA: Ms. Shelton?

19 MS. SHELTON: Just giving you a little bit of
20 background of why we started to introduce this as a
21 proposed regulatory change.

22 The test claims that were coming in were all based
23 on first incurring costs. And when you look at the time
24 period of when their costs were incurred, they were
25 pushing outwards of three years, which was what the

1 old law stated in 17551, which was changed to one year.
2 And so we were concerned that the regulation was not
3 completely consistent with the plain language of 17551.

4 In addition, the June 30th date comes from old law.
5 It's not in the statutes anymore that way. It is
6 defining the period of reimbursement; but it is not
7 defining when a test claim can be filed.

8 So when the initial regulation was adopted, there
9 was no analysis to it, unfortunately; and I think there
10 is a confusion at that time between the period of
11 reimbursement and the statute of limitations.

12 I will also note that the written comments that we
13 received, which were joint comments, I thought, from
14 CSDA, CSAC, and the League, all recommended that we go
15 back to what was originally proposed in March.

16 MR. GIBBONS: Right.

17 MS. SHELTON: So this is a little bit new.

18 MR. GIBBONS: Well, I apologize.

19 And that's why I said, I think our comments were
20 trying to be nuanced, in that if your goal is to match
21 the Government Code section, there was a particular line
22 that was left out that has been added back in, to where
23 I want to say, "Yes, thank you again," and what is in the
24 regulation -- the proposed regulation does exactly match
25 the Government Code.

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1 And so our comments were, if that's the goal and
2 that's the intent, the previous version did not match
3 that. It does now. However, we would still greatly
4 prefer that June 30th deadline, if that --

5 MS. SHELTON: And we understand the position; but
6 you can see that the Government Code 17551, the language
7 is subject to many different interpretations. We've seen
8 three now in this record. So we believe that the current
9 recommended proposal is the most consistent with the
10 plain language of 17551.

11 Maybe soon, the Legislature will see to maybe
12 clarify what they really intended in 17551, and make it
13 more clear. And that would be helpful for everybody.

14 CHAIR ORTEGA: Mr. Alex.

15 MEMBER ALEX: Do you see any legal risk in your
16 position? Let me just ask it that way.

17 MR. GIBBONS: I don't have the ability to advise
18 on -- that's not really my --

19 MEMBER ALEX: Fair enough.

20 MR. GIBBONS: Yes. What I'd like to say, and what
21 I can and should say, I cannot. So I understand if you
22 need to take your legal representative, so...

23 MEMBER ALEX: Okay.

24 MR. GIBBONS: And as staff pointed out, there is an
25 option for us to seek a legislative fix on this. And if

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1 that's what needs to be done, we would appreciate the
2 support of the Commission to add that clarity in the law,
3 that would allow our local agencies to work with the
4 Commission to have the test-claim process smoother and
5 more efficient.

6 CHAIR ORTEGA: And I think the Commission would
7 certainly reflect, in future process and regulation,
8 any change that the Legislature might be willing or
9 interested in making on that point. But I think the
10 issue we have here, is that the statute -- that what's
11 being proposed is the most close to the statute. And I
12 think for me going beyond that, by putting the June 30th
13 back in, seems to me to be an untenable position for the
14 Commission to take.

15 Ms. Olsen, did you have a comment? Or, Mr. Alex, I
16 didn't mean to cut you off.

17 MEMBER ALEX: Yes, just a quick comment.

18 I mean, I don't have any issue with the June date
19 in terms of policy. I don't think that causes this
20 Commission onerous impact. But I do see the potential
21 for legal risk here that would put our decisions in
22 jeopardy; and I'd prefer not to do that. So I'm
23 supportive of the staff recommendation.

24 CHAIR ORTEGA: Thank you.

25 Ms. Olsen -- oh, sorry, Camille.

1 MS. SHELTON: On the second issue, I think that
2 Ms. Ramirez was commenting on the joint test claims and
3 wanted clarification of that.

4 If you go to Exhibit L, which is the final statement
5 of reasons, that is where the analysis is on that
6 proposed regulatory change; and it's to
7 section 1183.1(g).

8 MS. HALSEY: This is page 289 on your PDF, if you're
9 going on the electronic document.

10 MS. SHELTON: Thank you, yes.

11 So the reg in section G itself requires it to be
12 filed as a joint effort. And there's been no proposed
13 change to that; and that's been in reg for a long time.
14 So there has been no change to that regulation. So the
15 scope of those comments are beyond this reg package.

16 CHAIR ORTEGA: Did you have anything to add?

17 Heather, did you?

18 MS. HALSEY: I was just going to say that this is
19 really a clarification. This is what we already require;
20 and it's been unclear. Some parties just do this
21 automatically and others do not. So it's really to help
22 parties so they don't have to refile claims that get
23 rejected.

24 CHAIR ORTEGA: Okay. Any other comments from
25 commissioners?

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1 Mr. Gibbons, did you have anything else?

2 MR. GIBBONS: No. Thank you.

3 *(Mr. Chivaro entered the meeting room.)*

4 CHAIR ORTEGA: Thank you.

5 Any other public comment on this item?

6 *(No response)*

7 CHAIR ORTEGA: All right, before I ask for a motion,
8 I'll have the record reflect that Mr. Chivaro joined us,
9 before we vote.

10 Is there a motion on this item?

11 MEMBER ADAMS: Moved.

12 MEMBER RAMIREZ: So moved.

13 CHAIR ORTEGA: Moved by Mr. Adams.

14 MEMBER RAMIREZ: Second.

15 CHAIR ORTEGA: Second by Ms. Ramirez.

16 All in favor of adoption of the staff
17 recommendation, please say "aye."

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

19 CHAIR ORTEGA: Okay, that passes unanimously.

20 MS. HALSEY: Item 7 is the legislative update; and
21 there's nothing new to report in legislation.

22 Chief Legal Counsel Camille Shelton will present
23 Item 8, the Chief Legal Counsel Report.

24 MS. SHELTON: Good morning.

25 There have been no new filings and no recent

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1 decisions; but the hearing calendar is getting lengthy.

2 A couple of weeks ago, the Third District Court of
3 Appeal did hear the matter of the *Department of Finance*
4 *versus the Commission on State Mandates*, with regard to
5 the San Diego *Stormwater Permit*. So we do expect a
6 decision to be issued on that case pretty quickly.

7 On December 14th, the First District Court of Appeal
8 will hear the *California School Board Association versus*
9 *the State of California and the Commission on State*
10 *Mandates*.

11 On January 31st, the Los Angeles County Superior
12 Court will hear the remand of the LA *Stormwater Permit*
13 case, dealing with the issues of new program, higher
14 level of service, and fee authority.

15 And then turning the page, in April, there are
16 two cases set for hearing in Los Angeles County Superior
17 Court, dealing with the incorrect reduction claims on
18 *Handicapped and Disabled Students* and *Seriously*
19 *Emotionally Disturbed Students*.

20 CHAIR ORTEGA: Okay.

21 MS. HALSEY: Thank you.

22 Next is the Executive Director's report.

23 And I have an action item on this report. We
24 have our January 2018 through December 2019 Strategic
25 Plan for your action.

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1 On January 23rd, 2015, the Commission adopted a
2 strategic plan for January 2015 through December 2017.
3 Commission staff has developed and updated a proposed
4 strategic plan for January 2018 to December 2019.

5 The majority of the goals in the current plan were
6 met or else required updating. Therefore, the Commission
7 staff have expanded on and updated the Strategic Plan
8 proposed for adoption by the Commission. And that's at
9 Exhibit A of the Executive Director's report.

10 Staff recommends the Commission adopt the attached
11 Strategic Plan.

12 CHAIR ORTEGA: Okay, any questions or comments on
13 the Strategic Plan?

14 MEMBER RAMIREZ: I have a question.

15 CHAIR ORTEGA: Ms. Ramirez.

16 MEMBER RAMIREZ: Could we have Commission staff
17 comment on the capacity to fulfill all these wonderful
18 goals in terms of staffing?

19 MS. HALSEY: Sure. Well, we did set them based on
20 our staffing. So these are goals that we think are
21 realistic, they're ambitious; but we think we can do them
22 with current staffing, unless something changes, if
23 everything works as it should.

24 MEMBER RAMIREZ: Yes, if everything stabilizes?

25 MS. HALSEY: Yes.

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1 MEMBER RAMIREZ: Okay, thank you.

2 CHAIR ORTEGA: Any other questions or comments?

3 MEMBER OLSEN: I'll move adoption of the Strategic
4 Plan.

5 VICE CHAIR CHIVARO: Second.

6 CHAIR ORTEGA: Okay, moved by Ms. Olsen; seconded by
7 Mr. Chivaro.

8 CHAIR ORTEGA: Any public comment on this item?

9 *(No response)*

10 CHAIR ORTEGA: Okay, seeing none, all in favor of
11 adoption of the Strategic Plan, please say "aye."

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

13 CHAIR ORTEGA: It passes unanimously.

14 And that's it for open session; right?

15 Any other public comment to come before the
16 Commission?

17 *(No response)*

18 CHAIR ORTEGA: Seeing none --

19 MS. HALSEY: Oh, I got ahead of myself. I didn't
20 finish my report.

21 CHAIR ORTEGA: Okay, we will return to Heather's
22 report.

23 MS. HALSEY: Just our workload update.

24 After this hearing, there are 17 pending test
25 claims, including three newly filed test claims that were

1 filed at the end of fiscal year 2016-17; all but two of
2 which are regarding the *National Pollutant Discharge*
3 *Elimination System*, or NPDES permits.

4 Of the two non-NPDES test claims, one is set for
5 hearing on January 26th, 2018; and the other is
6 tentatively set for the May 2018 meeting.

7 We also have one parameters and guidelines and one
8 statewide cost estimate regarding the *NPDES Permits*, and
9 those are on inactive status pending outcome of
10 litigation on the relevant permits in those matters.

11 In addition, there is one parameters-and-guidelines
12 amendment on inactive status pending the outcome of
13 litigation in the *CSBA* case, which is on the same issue
14 as a case pending in the First District Court of Appeal.

15 Finally, we have 13 IRCs pending, including three
16 newly filed claims.

17 As of today, Commission staff expects to complete
18 all currently pending test claims and IRCs by
19 approximately the March 2019 Commission meeting,
20 depending on staffing and other workload.

21 And, now, I'm finished with my report.

22 CHAIR ORTEGA: All right.

23 Any questions?

24 *(No response)*

25 CHAIR ORTEGA: No? Okay, then we will move to

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1 closed session.

2 The Commission will meet in closed executive session
3 pursuant to Government Code section 11126(e) to confer
4 with and receive advice from legal counsel for
5 consideration and action, as necessary and appropriate,
6 upon the pending litigation listed on the published
7 notice and agenda; and to confer with and receive advice
8 from legal counsel regarding potential litigation.

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

11 And we will reconvene in open session in
12 approximately 15 minutes.

13 Thank you everyone.

14 *(The Commission met in closed executive session*
15 *from 10:28 a.m. to 10:35 a.m.)*

16 CHAIR ORTEGA: Okay, we will reconvene in open
17 session.

18 The Commission met in closed executive session
19 pursuant to Government Code section 11126(e)(2), to
20 confer with and receive advice from legal counsel for
21 consideration and action, as necessary and appropriate,
22 upon the pending litigation listed on the published
23 notice and agenda; and to confer with and receive advice
24 from legal counsel regarding potential litigation; and
25 pursuant to Government Code section 11126(a)(1) to confer

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1 on personnel matters.

2 There is no other public comment; so we will be
3 adjourned.

4 Oh, Ms. Ramirez.

5 MEMBER RAMIREZ: I just want to wish everybody a
6 very wonderful end of the year. It's been an interesting
7 year. Interesting.

8 MEMBER OLSEN: Interesting times.

9 MEMBER HARIRI: From sexual harassment -- you name
10 it.

11 MEMBER RAMIREZ: And also congratulate Ms. Ortega on
12 her new, exciting position.

13 CHAIR ORTEGA: Thank you.

14 MEMBER RAMIREZ: I hope it's exciting.

15 CHAIR ORTEGA: Yes. It's new. New, different.

16 MEMBER RAMIREZ: I wish everybody well.

17 CHAIR ORTEGA: Thank you.

18 Happy holidays to everybody.

19 MEMBER OLSEN: Happy holidays.

20 MEMBER HARIRI: Happy holidays.

21 CHAIR ORTEGA: And with that, we will be adjourned.

22 *(The Commission meeting concluded at 10:36 a.m.)*

23 --oOo--

24

25

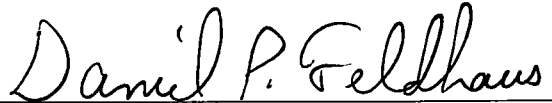
REPORTER'S CERTIFICATE

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 18th day of December 2017.



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