

## **Item 1**

### **Proposed Minutes**

#### **COMMISSION ON STATE MANDATES**

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
May 30, 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 Ken Alex  
Director of the Office of Planning and Research  
Member Richard Chivaro  
Representative of the State Controller  
Member Sarah Olsen  
Public Member  
Member Carmen Ramirez  
City Council Member  
Member Don Saylor  
County Supervisor

*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 10:05 a.m. Executive Director Heather Halsey called the roll. Member Chivaro was absent at roll call, but entered the room after adoption of the consent calendar.

#### **APPROVAL OF MINUTES**

Member Olsen made a motion to adopt the minutes. With a second by Member Ramirez, the March 28, 2014 hearing minutes were adopted by a vote of 6-0.

#### **PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA**

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

#### **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)

#### **PARAMETERS AND GUIDELINES**

Item 5\* *Race to the Top*, 10-TC-06  
Education Code Sections 48354(b)(1), 48356(d), 48357, 53202(a),  
53202(b), 53300, and 53301  
Statutes 2009-2010, 5th Extraordinary Session, Chapter 2 (SBX5 1)  
Statutes 2009-2010, 5th Extraordinary Session, Chapter 3 (SBX5 4)

California Code of Regulations, Title 5, Section 4702(a) (Register 2010, No. 32)

Twin Rivers Unified School District, Claimant

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

**STATEWIDE COST ESTIMATES**

- Item 8\*      *California Public Records Act*, 02-TC-10 and 02-TC-51  
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255  
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014)  
County of Los Angeles and Riverside Unified School District, Claimants
- Item 9\*      *Teacher Credentialing*, 03-TC-09  
California Code of Regulations, Title 5, Sections 80556(a),(c),(f) and (j) and 80556.1(e) as added and amended by Register 86, No. 40; Register 94, No. 19  
San Diego County Office of Education, Claimant

Member Saylor made a motion to adopt the Consent Calendar. With a second by Member Olsen, the Consent Calendar was adopted by a vote of 6-0.

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

Executive Director Heather Halsey swore in parties and witnesses participating in the hearing.

**APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181(c)**

- Item 2      Appeal of Executive Director Decisions

There were no appeals to consider.

**TEST CLAIMS**

- Item 3      *Post Election Manual Tally (PEMT)*, 10-TC-08  
Former California Code of Regulations, Title 2, Sections 20120, 20121, 20122, 20123, 20124, 20125, 20126 and 20127.  
Register 2008, No. 43  
County of Santa Barbara, Claimant

This test claim was postponed to July 25, 2014 at the request of the claimant.

- Item 4      *Housing Successor Agency*, 12-TC-03  
Health and Safety Code Section 34176  
Statutes 2011, First Extraordinary Session, Chapter 5 (ABX1 26); Statutes 2012, Chapter 26 (AB 1484)  
Stanton Housing Authority, Claimant

The Commission members agreed to take this item up at the end of the hearing, since the claimant representative was not yet present.

## **PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS**

- Item 6      *Sexually Violent Predators*, CSM-4509 (12-MR-01)  
Welfare and Institutions Code Sections ~~6250 and 6600~~ through ~~6608~~ 6602  
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763;  
Statutes 1996, Chapter 4  
  
As Modified by:  
Proposition 83, General Election, November 7, 2006  
  
California Department of Finance, Requestor

These amended parameters and guidelines pertain to the new test claim decision adopted for the *Sexually Violent Predators* program under the mandate redetermination process.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the proposed decision and parameters and guidelines.

Parties were represented as follows: Timothy Barry, Office of County Counsel, on behalf of the San Diego County District Attorney's Office, Probation Department, and Sheriff; Ed Jewik on behalf of County of Los Angeles; Lee Scott and Michael Byrne, representing Requestor, Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to adopt the staff recommendation was adopted by a vote of 7-0.

## **INCORRECT REDUCTION CLAIMS**

- Item 7      *Graduation Requirements*, 05-4435-I-50 and 08-4435-I-52  
Education Code Section 51225.3  
Statutes 1983, Chapter 498  
Fiscal Years: 1998-1999, 1999-2000, 2000-2001, and 2001-2002  
Clovis Unified School District, Claimant

This incorrect reduction claim (IRC) challenges reductions made by the State Controller's Office (SCO) to reimbursement claims filed by Claimant, Clovis Unified School District for the *Graduation Requirements* program for fiscal years 1998-1999, 1999-2000, 2000-2001, and 2001-2002.

Senior Commission Counsel Giny Chandler presented this item and recommended that the Commission adopt the proposed statement of decision to deny the incorrect reduction claim.

Parties were represented as follows: Arthur Palkowitz, representing the claimant; Michael Clear, Assistant Superintendent of Business Services, Clovis Unified School District; Chris Ryan and Jim Spano, representing the State Controller's Office.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Alex, the motion to adopt the staff recommendation to deny the incorrect reduction claim was adopted by a vote of 6-1, with Member Saylor dissenting.

## TEST CLAIMS

- Item 4      *Housing Successor Agency, 12-TC-03*  
Health and Safety Code Section 34176  
Statutes 2011, First Extraordinary Session, Chapter 5 (ABX1 26);  
Statutes 2012, Chapter 26 (AB 1484)  
Stanton Housing Authority, Claimant

This item was taken up at the end of the hearing, since the claimant representative was not present at the beginning of the hearing.

Chairperson Ortega confirmed that the claimant representative, Ms. Sigrid Asmundson, was present and recalled the item.

Ms. Halsey swore in Ms. Asmundson.

Parties were represented as follows: Sigrid Asmundson, representing the claimant; Michael Byrne, Kathleen Lynch, and Lee Scott, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Alex, the motion to adopt the staff recommendation to deny the test claim was adopted by a vote of 5-0, Members Ramirez and Saylor abstained from voting.

## **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 10      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 11      Legislative Update (info)

Assistant Executive Director Jason Hone presented this item.

- Item 12      Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 13      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. She also made note of the upswing in litigation and the fact that it could impact how quickly staff is able to deal with 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 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. *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]
3. *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*]
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)

## B. PERSONNEL

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

The Commission adjourned into 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 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).

**REPORT FROM CLOSED EXECUTIVE SESSION**

At 11:11 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).

Chairperson Ortega also reported an action that was taken in closed session: The Commission acted to delegate to the Personnel Subcommittee the ability to appoint an interim chief legal counsel in the event that the current legal counsel could not continue his or her duties.

**ADJOURNMENT**

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

Heather Halsey  
Executive Director

**PUBLIC MEETING**

**COMMISSION ON STATE MANDATES**



**TIME:** 10:00 a.m.

**DATE:** Friday, May 30, 2014

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



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomat Reporter, Certified Realtime Reporter

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**Commission on State Mandates – May 30, 2014**

**A P P E A R A N C E S**

**COMMISSIONERS PRESENT**

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

KEN ALEX  
Director  
Office of Planning & Research

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member

ANDRÉ RIVERA  
Representative for BILL LOCKYER  
State Treasurer

DON SAYLOR  
Yolo County Supervisor  
Local Agency Member



**COMMISSION STAFF PRESENT**

HEATHER A. HALSEY  
Executive Director  
*(Items 2, 10, and 13)*

JASON HONE  
Assistant Executive Director

CAMILLE N. SHELTON  
Chief Legal Counsel  
*(Item 12)*



A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

*continued*

GINY CHANDLER  
Senior Commission Counsel  
(Item 7)

MATTHEW B. JONES  
Commission Counsel  
(Items 4 and 6)

KERRY ORTMAN  
Program Analyst  
(Item 11)



PUBLIC TESTIMONY

**Appearing Re Item 4:**

For Claimant Stanton Housing Authority

SIGRID K. ASMUNDSON  
Best, Best & Krieger LLP  
500 Capitol Mall, Suite 1700  
Sacramento, California 95814

For Department of Finance

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

LEE SCOTT  
Department of Finance  
915 L Street  
Sacramento, California 95814

KATHLEEN LYNCH  
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 6:**

For Requestor Department of Finance

MICHAEL BYRNE  
Department of Finance

LEE SCOTT  
Department of Finance

For San Diego County Sheriff, P.D., and D.A.:

TIMOTHY BARRY  
Senior Deputy County Counsel  
County of San Diego County Counsel's Office  
1600 Pacific Highway, Room 355  
San Diego, California 92101

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

**Appearing Re Item 7:**

For Claimant Clovis Unified School District

ARTHUR PALKOWITZ  
Stutz, Artiano, Shinoff & Holtz  
2488 Historic Decatur Road, Suite 200  
San Diego, California 92106

MICHAEL CLEAR  
Assistant Superintendent  
Business Services  
Clovis Unified School District

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 7:**

For State Controller's Office:

JIM L. SPANO  
Chief, Mandated Cost Audits Bureau  
Division of Audits  
State Controller's Office  
300 Capitol Mall, Suite 725  
Sacramento, California 95814

CHRIS RYAN  
Audit Manager  
Mandated Cost Audits Bureau  
Division of Audits  
State Controller's Office  
300 Capitol Mall, Suite 725  
Sacramento, California 95814



**Commission on State Mandates – May 30, 2014**

**ERRATA SHEET**

<u>Page</u>	<u>Line</u>	<u>Correction</u>
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Commission on State Mandates – May 30, 2014

I N D E X

<u>Proceedings</u>	<u>Page</u>
I. Call to Order and Roll Call . . . . .	10
II. Approval of Minutes	
Item 1 March 28, 2014 . . . . .	11
III. Public Comment for Matters Not on the Agenda . . . . .	11
IV. Proposed Consent Calendar	
Items 5, 8, and 9 . . . . .	11
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> ) . . . . .	13
B. Test Claim	
Item 3 <i>Post Election Manual Tally</i> ( <i>PEMT</i> ) 10-TC-08 County of Santa Barbara ( <i>Postponed to July 25</i> ) . . . . .	13
Item 4 <i>Housing Successor Agency</i> 12-TC-03 Stanton Housing Authority. . . . .	13, 38

Commission on State Mandates – May 30, 2014

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	
	C. Parameters and Guidelines and Parameters and Guidelines Amendments	
	Item 5* <i>Race to the Top</i> 10-TC-06 Twin Rivers Unified School District ( <i>Consent item</i> ) . . . .	11
	Item 6 <i>Sexually Violent Predators</i> CSM-4509 (12-MR-01) Department of Finance . . . . .	15
	D. Incorrect Reduction Claims	
	Item 7 <i>Graduation Requirements</i> 05-4435-I-50 and 08-4435-I-52 Clovis Unified School District .	20
VI.	Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8	
	A. Statewide Cost Estimates	
	Item 8* <i>California Public Records Act</i> 02-TC-10 and 02-TC-51 County of Los Angeles and Riverside Unified School District ( <i>Consent item</i> ) . . . .	11
	Item 9* <i>Teacher Credentialing</i> 03-TC-09 San Diego County Office of Education ( <i>Consent item</i> ) . . . .	11

Commission on State Mandates – May 30, 2014

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 10 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commissions, or to a Hearing Officer ( <i>None</i> ) . . . . .	53
VIII. Reports	
Item 11 Legislative Update . . . . .	53
Item 12 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar . . . . .	56
Item 13 Executive Director: Workload Update and Tentative Agenda Items for Next Meeting . . . . .	56
IX. Closed Executive Session Pursuant to Government Code Sections 11126 and 11126.2 . . . . .	59
A. Pending Litigation	
B. Personnel	
X. Report from Closed Executive Session . . . . .	59
Adjournment . . . . .	60
Reporter's Certificate . . . . .	61

**Commission on State Mandates – May 30, 2014**

1 BE IT REMEMBERED that on Friday, May 30, 2014,  
2 commencing at the hour of 10:05 a.m., thereof, at the  
3 State Capitol, Room 447, Sacramento, California, before  
4 me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the  
5 following proceedings were held:

6 --oOo--

7 CHAIR ORTEGA: Good morning, everyone.

8 I'd like to call the May 30<sup>th</sup> meeting of the  
9 Commission on State Mandates to order.

10 MS. HALSEY: I'll call the roll.

11 Mr. Alex?

12 MEMBER ALEX: Here.

13 MS. HALSEY: Mr. Chivaro?

14 *(No response)*

15 MS. HALSEY: Ms. Olsen?

16 MEMBER OLSEN: Here.

17 MS. HALSEY: Ms. Ortega?

18 CHAIR ORTEGA: Here.

19 MS. HALSEY: Ms. Ramirez?

20 MEMBER RAMIREZ: Here.

21 MS. HALSEY: Mr. Rivera?

22 MEMBER RIVERA: Here.

23 MS. HALSEY: Mr. Saylor?

24 MEMBER SAYLOR: Here.

25 CHAIR ORTEGA: Let's see. We have a quorum.



**Commission on State Mandates – May 30, 2014**

1           Are there any objections or corrections to the  
2     March 28<sup>th</sup> meeting minutes?

3           *(No response)*

4           CHAIR ORTEGA: Any public comment on  
5     the minutes?

6           *(No response)*

7           CHAIR ORTEGA: Okay, do we have a motion?

8           MEMBER OLSEN: I'll move adoption.

9           CHAIR ORTEGA: Moved by Ms. Olsen.

10          MEMBER RAMIREZ: Second.

11          CHAIR ORTEGA: A second.

12          All in favor of the minutes?

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

14          CHAIR ORTEGA: The minutes are approved.

15          MS. HALSEY: Now, we'll take up public comment  
16     for matters not on the agenda.

17                 Please note that the Commission cannot take  
18     action on items not on the agenda. However, it can  
19     schedule issues for consideration at future meetings.

20          CHAIR ORTEGA: Any public comment?

21          *(No response)*

22          CHAIR ORTEGA: Seeing none, we can move to the  
23     consent calendar.

24          MS. HALSEY: The next item is the proposed  
25     consent calendar which consists of Items 5, 8, and 9.

**Commission on State Mandates – May 30, 2014**

1 CHAIR ORTEGA: Okay, any objections to any of  
2 the items on the consent calendar?

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

4 MEMBER RAMIREZ: No.

5 MEMBER SAYLOR: Move approval.

6 MEMBER OLSEN: Second.

7 CHAIR ORTEGA: A motion and a second.

8 Any public comment on any of the items on the  
9 consent calendar?

10 *(No response)*

11 CHAIR ORTEGA: Okay, seeing none, all in favor?

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

13 CHAIR ORTEGA: Any opposed or abstentions?

14 *(No response)*

15 CHAIR ORTEGA: The consent calendar is adopted.

16 MS. HALSEY: Let's go ahead and move to the  
17 Article 7 portion of the hearing.

18 Item 3 has been postponed to the July 25<sup>th</sup>,  
19 2014, hearing, at the request of the claimant.

20 Will the parties and witnesses for Items 4, 6,  
21 and 7, please rise?

22 *(Parties and witnesses stood to be sworn*  
23 *or affirmed.)*

24 MS. HALSEY: Do you solemnly swear or affirm  
25 that the testimony which you are about to give is true

Commission on State Mandates – May 30, 2014

1 and correct, based on your personal knowledge,  
2 information, or belief?

3 (A chorus of affirmative responses was  
4 heard.)

5 MS. HALSEY: Thank you.

6 Item 2 is reserved for appeals of Executive  
7 Director decisions. There are no appeals to consider  
8 under Item 2.

9 As previously noted, Item 3 has been postponed  
10 to the July 25<sup>th</sup> hearing.

11 Item 4, Commission Counsel Matt Jones will  
12 present a test claim on *Housing Successor Agency*.

13 Will the parties and witnesses please come to  
14 the table?

15 Ms. Asmundson -- is Ms. Asmundson here? Or  
16 anyone for claimant?

17 (No response)

18 MS. HALSEY: No.

19 MR. JONES: Good morning.

20 This test claim alleges reimbursable state  
21 mandated activities arising from the dissolution of the  
22 former Stanton Redevelopment Agency and the transfer of  
23 that agency's assets and obligations to the Stanton  
24 Housing Authority pursuant to Health and Safety Code  
25 section 34176.

**Commission on State Mandates – May 30, 2014**

1                   Staff finds that the Stanton Housing Authority,  
2                   like other housing authorities, enjoys an exemption from  
3                   the taxing and spending restrictions of Articles XIII A  
4                   and B of the California Constitution and is, therefore,  
5                   ineligible to claim mandate reimbursement. Staff  
6                   therefore recommends that the Commission adopt the  
7                   proposed decision denying the test claim.

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

10                  MS. LYNCH: Kathy Lynch, Department of Finance.

11                  MR. BYRNE: Michael Byrne, Department of  
12                  Finance.

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

14                  CHAIR ORTEGA: Okay, Department of Finance, go  
15                  ahead.

16                  MS. LYNCH: We agree with the Commission's  
17                  analysis.

18                  MR. BYRNE: Yes, we concur with that.

19                  CHAIR ORTEGA: So seeing no representative for  
20                  the claimant, do we want to postpone action for a  
21                  few minutes? Or what is the will of the Members here?

22                  MS. HALSEY: It's up to the Members. If you'd  
23                  like to hold it to the end of the agenda.

24                  CHAIR ORTEGA: Were there any questions that  
25                  folks wanted to ask?

**Commission on State Mandates – May 30, 2014**

1 MEMBER OLSEN: Yes.

2 MEMBER SAYLOR: Yes.

3 CHAIR ORTEGA: Okay, so why don't we not take  
4 action at this minute and move on to the next item; and  
5 then we will take it up if there is no one here to  
6 represent the claimant.

7 MS. HALSEY: Item 5 was on the Consent  
8 Calendar.

9 Item 6, Matt Jones will present Item 6, amended  
10 parameters and guidelines for *Sexually Violent Predators*.

11 MR. JONES: These proposed amended parameters  
12 and guidelines pertain to the *Sexually Violent Predators*  
13 test claim as modified by the Commission's new test-claim  
14 decision adopted by December 6<sup>th</sup>, 2013.

15 The proposed parameters and guidelines and  
16 proposed decision have been revised since the last  
17 hearing to incorporate new evidence submitted by eligible  
18 county claimants pertaining to the state-mandated  
19 probable-cause hearings.

20 Staff recommends that the Commission adopt the  
21 proposed decision and parameters and guidelines.

22 Will the parties and witnesses please state  
23 your names for the record?

24 MR. BARRY: Timothy Barry, Office of County  
25 Counsel, on behalf of the San Diego County District

**Commission on State Mandates – May 30, 2014**

1 Attorney's office, Public Defender, and Sheriff.

2 MR. JEWIK: Ed Jewik, L.A. County.

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

4 MR. BYRNE: Michael Byrne, Department of  
5 Finance.

6 CHAIR ORTEGA: Okay, Mr. Barry?

7 MR. BARRY: Your Honor -- excuse me. I'm used  
8 to being in court.

9 CHAIR ORTEGA: I got a promotion.

10 MR. BARRY: We appreciate the staff's  
11 consideration of the comments that we submitted. We  
12 agree with those comments. And while we disagree with  
13 the underlying decision on the test claim, we do agree  
14 with the status of the parameters and guidelines, and ask  
15 that the Commission adopt the parameters and guidelines  
16 as recommended by the staff.

17 CHAIR ORTEGA: Okay, Mr. Jewik?

18 MR. JEWIK: We appreciate the Commission, the  
19 Commission staff, and all the hard work they've put into  
20 this. And we also concur with the adoption of the  
21 parameters and guidelines.

22 CHAIR ORTEGA: Okay, Department of Finance?

23 MR. BYRNE: Michael Byrne, Department of  
24 Finance.

25 When we prepared the 2014-15 budget for the

**Commission on State Mandates – May 30, 2014**

1 SVP funding, we contacted the State Controller's Office  
2 and asked for the actual claims they received for  
3 Activities 4 and 8, the two activities that are going to  
4 continue to be funded. And they provided us details.  
5 Activity 4, which is the attendance and preparation for  
6 the hearing, had claims totaling \$3 million; and  
7 Activity 8, the transportation and housing, had claims  
8 totaling \$2.7 million.

9 So on top of the \$5.7 million, we added  
10 additional monies to the budget for indirect cost and  
11 for any possible inflation. So we put \$7 million in  
12 the budget. That \$7 million was sustained by both the  
13 Assembly and the Senate, and it's in the Conference  
14 Committee budget that will be heard next week.

15 So the budget we put together contains a  
16 housing component equal to what it was prior to the  
17 mandate redetermination.

18 So if the proposed P and G continues housing  
19 costs at that level, then we're good with it and  
20 everything else. However, if it is intended to increase  
21 the volume or the size of the housing, then we may have a  
22 problem.

23 I think we're okay there, but I thought it  
24 would be a good idea to raise the issue.

25 CHAIR ORTEGA: Okay, does staff have any

**Commission on State Mandates – May 30, 2014**

1 comments on that?

2 MS. SHELTON: Just that the housing component  
3 related specifically to the probable-cause hearing and  
4 the original set of parameters and guidelines was not,  
5 you know, specifically identified in the P's & G's.

6 I do understand that counties were claiming  
7 costs for those.

8 The proposal here limits the housing. I mean,  
9 just to the time when the court orders that the person  
10 be detained pending a probable-cause hearing, until the  
11 probable-cause hearing, and then it's done.

12 So it fits within the statutory scheme and  
13 would fit within -- based on the evidence in the record  
14 that it's reasonably necessary to comply with the mandate  
15 to hold the probable-cause hearing.

16 MS. HALSEY: And also once the probable-cause  
17 hearing is held, if the person is found to be SVP, they  
18 go to a state mental health facility, in any event. So  
19 that would end the county's responsibility to house them  
20 under normal circumstances.

21 CHAIR ORTEGA: Mr. Saylor?

22 MEMBER SAYLOR: I appreciate understanding the  
23 constraints that the state budget is facing. However,  
24 I don't believe that that's a relevant fact for us to  
25 consider here. I think our decision has to be based on



**Commission on State Mandates – May 30, 2014**

1 the merits of the case, the merits that are presented in  
2 evidence to us; and the budget aspect of this would be  
3 something for the State to work out in whatever manner  
4 appropriate, subsequent to the decision here.

5 So I appreciate hearing it, but I don't see its  
6 relevance, regardless of the facts and how the numbers  
7 play out.

8 MR. BYRNE: And we're not opposing the  
9 recommendation. I just wanted to put the facts of what  
10 we did on the budget on that, before the Commission.

11 MEMBER SAYLOR: And I wanted to state on record  
12 that I don't think that's a relevant piece of information  
13 for this Commission.

14 CHAIR ORTEGA: Okay, thank you.

15 MEMBER CHIVARO: I'll move staff  
16 recommendation.

17 MEMBER RAMIREZ: Second.

18 CHAIR ORTEGA: Okay, are there any other  
19 comments from the Commission?

20 *(No response)*

21 CHAIR ORTEGA: Are there any other public  
22 comments on this item?

23 *(No response)*

24 CHAIR ORTEGA: Okay, we have a motion and a  
25 second.

**Commission on State Mandates – May 30, 2014**

1 All those in favor -- oh, sorry.

2 Do you want to call the roll?

3 MS. HALSEY: Call the roll?

4 CHAIR ORTEGA: Sure.

5 MS. HALSEY: Mr. Alex?

6 MEMBER ALEX: Aye.

7 MS. HALSEY: Mr. Chivaro?

8 MEMBER CHIVARO: 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: Mr. Rivera?

16 MEMBER RIVERA: Aye.

17 MS. HALSEY: Mr. Saylor?

18 MEMBER SAYLOR: Aye.

19 MS. HALSEY: The motion carries.

20 MS. HALSEY: Senior Commission Counsel Giny

21 Chandler will present Item 7, an incorrect reduction

22 claim on *Graduation Requirements*.

23 MS. CHANDLER: Good morning.

24 This incorrect reduction claim addresses costs

25 reduced by the Controller on reimbursement claims filed

**Commission on State Mandates – May 30, 2014**

1 under the *Graduation Requirements* program for teachers'  
2 salaries and benefits, materials and supplies, and  
3 related indirect costs.

4 The Controller's reductions were made on the  
5 grounds that the claimant's documentation was  
6 insufficient to support all of the claimed costs.

7 Staff finds that the claimant did not file  
8 documentation to support the amounts claimed for salaries  
9 and benefits and materials and supplies.

10 Staff further finds that the Controller's use  
11 of the quarter-load method to reimburse the claimant for  
12 these costs was reasonable and not arbitrary or  
13 capricious or entirely lacking in evidentiary support.  
14 Thus, staff recommends that the Commission adopt the  
15 statement of decision to deny the incorrect reduction  
16 claim.

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

19 MR. PALKOWITZ: Good morning. Art Palkowitz  
20 on behalf of Clovis Unified School District.

21 MR. CLEAR: Michael Clear, Assistant  
22 Superintendent of Business Services, with Clovis Unified  
23 School District.

24 MR. RYAN: Chris Ryan, Audit Manager, State  
25 Controller's office.

**Commission on State Mandates – May 30, 2014**

1 MR. SPANO: Jim Spano, Audit Bureau Chief,  
2 State Controller's Office.

3 CHAIR ORTEGA: Okay, Mr. Palkowitz?

4 MR. PALKOWITZ: Yes, thank you.

5 I don't believe it was mentioned in that brief  
6 summary of one of our arguments.

7 And the claimant is contending that the audit  
8 performed by the State Controller's Office was past the  
9 statutory period of time. The applicable Government Code  
10 section 17558.5 stated that districts or claimants needed  
11 to have audits performed -- and the word is "subject to."

12 The District has interpreted the words "subject  
13 to," meaning, that that is the period of time they're  
14 subject to the initiation and completion of the audit.

15 The facts in this case are that the District  
16 filed audit reimbursement claims for 1998-99 and  
17 1999-2000 fiscal years. The two-year period of time for  
18 those claims to be audited would be 12/31/2003 for the  
19 1998-99 claim, and the 1999-00 fiscal claim audit period  
20 would be 12/31/02.

21 The State Controller had an entrance conference  
22 with the District on November 18<sup>th</sup>, 2002; and the audit  
23 was completed nearly two years later.

24 So, in effect, both fiscal reimbursement claims  
25 were completed -- the audit -- beyond the two-year

**Commission on State Mandates – May 30, 2014**

1 period.

2 The interpretation by staff and State  
3 Controller is that the words "subject to" should be  
4 interpreted that that period of time when the audit must  
5 be commenced.

6 Such an interpretation as stated in staff  
7 comments does not require their completion of the audit.

8 This proposed interpretation creates several  
9 problems for the District. And Mr. Clear will comment on  
10 that for that type of interpretation.

11 We believe that interpretation is not supported  
12 by law. To the contrary, the Supreme Court case that we  
13 cite in our papers, *California Department of Corrections*  
14 *and Rehab versus Personnel Board*, 147 Cal.App.4<sup>th</sup> 797,  
15 discusses what is the purpose of these time limitations.

16 If we follow the course of interpretation of  
17 "subject to" recommended by staff and the Controller,  
18 that results in the District having an unlimited period  
19 of time to defend an audit. It puts them in a position  
20 of maintaining documents for unlimited periods of time;  
21 it creates a hardship as people move on, and history for  
22 the claims are lost due to various reasons.

23 As a result, we don't believe that's a fair  
24 interpretation. And this is further reinforced by the  
25 statute that was passed by the Legislature in 2002. That

**Commission on State Mandates – May 30, 2014**

1 statute says that the language is -- I just don't want to  
2 misquote the language -- "subject to the initiation of  
3 the audit."

4 Now, why would the Legislature have a statute  
5 passed after that, to add in their language "initiate,"  
6 if the interpretation, as we're led to believe here, is  
7 that "subject to" means "initiate?"

8 There is case law that says legislators don't  
9 pass bills unless they're meaning to make a change or an  
10 attempt to resolve it. So to interpret -- and that new  
11 legislation further goes on, and then clarifies that  
12 completion should be within two years.

13 So it's the claimant's contention that to  
14 interpret "subject to" would create an undue hardship for  
15 the District, and leaving open the door for a lengthy  
16 period of time to complete an audit. As a result,  
17 coupled with the subsequent legislation, that says  
18 "subject to the initiation of the audit," it's just not  
19 a fair interpretation.

20 In staff's comments, they cite several cases  
21 in an attempt to show the retroactive application. We  
22 believe that not only is "subject to" an incorrect  
23 interpretation; also, the new statute of 2002 can also  
24 be applied to this case.

25 Nowhere does the 2002 statute say that it's not

**Commission on State Mandates – May 30, 2014**

1 applicable to claims that were previously filed or audits  
2 that were already started.

3 The plain language of that statute goes on to  
4 say that audits must be completed within two years. We  
5 don't see why that statute could be also applied in this  
6 case, based on the plain language.

7 So for two reasons, we believe those two fiscal  
8 years -- for 1999-00 -- should be barred by these two  
9 statutes; and, therefore, the Commission -- I'm sorry,  
10 the Controller's reduction of those claims should be  
11 disallowed.

12 Mr. Clear would like to make some comments.

13 MR. CLEAR: Yes, the interpretation of the  
14 audit period is such that whenever districts receive  
15 reimbursement -- mandate reimbursements from the State,  
16 typically, we reserve those funds for a two- or  
17 three-year period to wait for an audit period to lapse,  
18 therefore, spend the money, just in case there's an audit  
19 finding where the District would have to return funds to  
20 the State.

21 This interpretation is such that that could be  
22 an indefinite period of time.

23 So when can we release these funds and actually  
24 use them in our operational budget? So obviously we  
25 would like to release those funds and use them versus

**Commission on State Mandates – May 30, 2014**

1 holding them for an indefinite period of time.

2 MR. PALKOWITZ: We'd just like an opportunity  
3 to respond to any comments by the State Controller or any  
4 the Commissioners might have.

5 CHAIR ORTEGA: Mr. Ryan or Mr. Spano, do you  
6 have any comments?

7 MR. RYAN: Basically, we agree with the  
8 conclusions and recommendations in the staff's final  
9 analysis.

10 CHAIR ORTEGA: Okay, any questions or comments  
11 from the Commissioners?

12 MR. SPANO: And also we believe that the  
13 decision made relating to the statute of limitations is  
14 consistent with the previous statement of decision  
15 determined by the Commission in the IRC statement of  
16 decision relating to San Diego Unified School District  
17 for the *Emergency Procedures, Earthquake and Disaster*,  
18 Case Number 01-4241-IO3.

19 CHAIR ORTEGA: Thank you.

20 Ms. Ramirez?

21 MEMBER RAMIREZ: I'd like to ask staff to  
22 comment on the discussion about the two-year limit and  
23 the fairness argument, which I -- it strikes me.

24 MS. CHANDLER: I can comment on the legality of  
25 it.



**Commission on State Mandates – May 30, 2014**

1 I think to read into the previous statute, the  
2 statute that we believe covers these first two fiscal  
3 years claimed here, would be to add a word into that  
4 statute that is not presently there, which is to complete  
5 an audit. The statute says "subject to audit," it does  
6 not say "subject to completion of an audit." And I think  
7 that that is an overreading of the statute to require  
8 that completion be read into that statute, when it's not  
9 there.

10 I think that the change in the statute in 2002  
11 was a clarification. It was not an intention to address  
12 completion of an audit. There are other changes in the  
13 statute. It also adds a three-year period, you know, for  
14 the initiation of the audit. But I think in terms of  
15 fairness, the districts are on notice that an audit can  
16 take place. And they're very aware of the State's audit  
17 process. So to suddenly say that the District is  
18 importuned because the audit is not completed within  
19 two years, I think is unfair to the process.

20 There is a lot of back and forth that goes on  
21 between the District and the auditor once the audit  
22 begins. And I think that that may not take place if it's  
23 a complicated audit within a two-year period. But I  
24 think, fundamentally, the legality here is that the  
25 statute doesn't say "audit must be completed within two

**Commission on State Mandates – May 30, 2014**

1 years.”

2 MEMBER RAMIREZ: But would it allow audit to  
3 take place at a very indefinite period in the future?  
4 Five years, ten years? Is there a limit? A reasonable  
5 limit?

6 MS. CHANDLER: I can only speak to the language  
7 in the statute. The statute does not address the issue  
8 of when an audit is to be completed. It does, in the  
9 newer version of the statute. That may be one of the  
10 reasons why the statute was changed, was to try to  
11 compress that period.

12 MS. SHELTON: Could I just mention the facts,  
13 too?

14 I mean, the initial statute -- everything is  
15 on page 15, if you want to refer back to your proposed  
16 decision. But the initial statute did require them to  
17 initiate the audit -- you know, or the audit was subject  
18 to initiation. And in this particular case, the audit  
19 concluded in October 2004. So I think that there  
20 probably is common law, when there's not a completion  
21 requirement in statute, that you complete ministerial  
22 duties within a reasonable period of time. And here,  
23 you know, this audit started in 2002 and was completed  
24 in 2004.

25 CHAIR ORTEGA: Mr. Saylor?

**Commission on State Mandates – May 30, 2014**

1 MEMBER SAYLOR: Thank you, Camille. That's  
2 helpful.

3 So it started in 2002; and the years in  
4 question are 1998-99 and 1999-2000?

5 MS. SHELTON: Correct.

6 MEMBER SAYLOR: So the audit didn't begin until  
7 more than two years after the completion?

8 MS. SHELTON: It depends on if funds are  
9 appropriated for the program.

10 They can -- the Controller can hold off on any  
11 commencement of an audit until funds are appropriated.  
12 So in this particular case, they didn't start until funds  
13 were appropriated, if I'm correct.

14 MR. PALKOWITZ: Funds were appropriated, and  
15 that was why it started within two years.

16 MS. CHANDLER: It started --

17 MR. PALKOWITZ: What practically happened was,  
18 I believe that there was an attempt by the State  
19 Controller to audit several districts. So they sent out  
20 this letter within the two-year period, in an attempt to  
21 say, "We're now timely starting this." But, in effect,  
22 the audit was completed four years after it was  
23 submitted.

24 And I think the fairness is exactly the issue  
25 here, and that's the purpose of statutes of limitations.

**Commission on State Mandates – May 30, 2014**

1 It's not only to create fairness and not to make it an  
2 undue burden on the claimant, it also is to force the  
3 agency to diligently pursue the claims and to timely  
4 complete them.

5 And I still haven't heard why the new statute  
6 would not apply. The plain language of that statute does  
7 not say that it doesn't apply to reimbursement claims  
8 that might have been filed or to audits that were filed.  
9 And so, therefore, even if we apply that rule, that said  
10 a two-year period must be completed.

11 CHAIR ORTEGA: Camille?

12 MS. SHELTON: Can I address that last point?

13 CHAIR ORTEGA: Yes.

14 MS. SHELTON: That amendment to 17558.5 did not  
15 become effective until January 1<sup>st</sup>, 2003, after these  
16 audits had started, after these claims had been filed.  
17 We cannot presume that that statute was intended to be  
18 retroactive unless the Legislature says you need to apply  
19 this statute going back to an earlier fiscal year. So  
20 there is no basis in law to apply it retroactively. You  
21 have to apply the law that exists when the claims were  
22 filed. And in this case, that law is the original  
23 17558.5.

24 And I'll just read it to you so you can hear  
25 the language. It says, "A reimbursement claim for actual

**Commission on State Mandates – May 30, 2014**

1 costs filed by a local agency or school district pursuant  
2 to this chapter is subject to audit by the Controller no  
3 later than two years after the end of the calendar year  
4 in which reimbursement claim was filed or last amended.  
5 However, if no funds are appropriated for the program for  
6 the fiscal year for which the claim is made, the time for  
7 the Controller to initiate an audit shall commence to run  
8 from the date of initial payment of the claim."

9 MEMBER OLSEN: So let me see if I've got this,  
10 because on its face, I'm actually very sympathetic to the  
11 claimant's position. But in 2002, the Legislature looked  
12 at the world out there and said, "Oh, there's a problem.  
13 We're going to correct it," and they prospectively  
14 corrected it, knowing that the problem existed in the  
15 past, and they did not retroactively apply it.

16 Is that...?

17 MS. SHELTON: That's a presumption. I don't  
18 have the leg. history right here.

19 And I believe we looked at the leg. history,  
20 and it was just -- I don't think there's a lot of leg.  
21 history on this statute.

22 MS. CHANDLER: The leg. history was really  
23 silent on this issue.

24 MS. SHELTON: We're basing it on plain language  
25 and laws interpreting how to read statutes.

**Commission on State Mandates – May 30, 2014**

1 MEMBER OLSEN: Okay.

2 MS. SHELTON: So there aren't any committee  
3 analyses saying, "Yes, we know there's a problem for  
4 the -- there's no completion date for these audits in  
5 statute right now. Let's put one in." I mean, that  
6 completion date is new, as of January 1<sup>st</sup>, 2003.

7 MEMBER OLSEN: Okay.

8 MR. SPANO: Could I just clarify that the 2002  
9 change in the statutory provision basically indicated  
10 that you had to complete an audit two years from the time  
11 in which you started it.

12 In this case here, we actually started the  
13 audit -- which does now apply -- but we started the audit  
14 in November 2002. We issued the final report on  
15 October 22<sup>nd</sup>, 2004, which is one year and 11 months after  
16 we started the audit.

17 So the current statute or provision is not two  
18 years from when you file a claim, it's two years of when  
19 you actually initiate an audit from a claim subject to  
20 audit.

21 CHAIR ORTEGA: Ken?

22 MEMBER ALEX: So a couple of legal  
23 observations.

24 First, it is standard legal interpretation that  
25 retroactive application is only when it's explicit in the

**Commission on State Mandates – May 30, 2014**

1 law. And here, it is not.

2 Second, the Legislature could have used wording  
3 other than "subject to." It could have said "completed"  
4 or "started." It could have -- "initiated." It did not.

5 And then the third point for me, is that  
6 this -- because the Legislature has corrected this issue  
7 and put an end date on it, this applies only to a very  
8 narrow set of claims.

9 So I share some of the sympathy of the other  
10 members, but I think it's a very narrow issue with a  
11 legal solution.

12 CHAIR ORTEGA: Yes?

13 MEMBER SAYLOR: So when I read the language  
14 that existed prior to the amendment in 2002, just as a  
15 layperson, I would conclude that that means that the  
16 audit would be done. It says, "Subject to an audit no  
17 later than two years." I would, as a -- if I was in the  
18 shoes of the business manager from the school district,  
19 I would interpret that, that the audit would be  
20 completed, frankly, without going into detailed language  
21 when it says "subject to an audit no later than two  
22 years." That seems, to me, as a layperson, that that  
23 says it's going to be done.

24 So I'm wondering about other precedent. The  
25 Controller's Office made mention to "precedent." Are

**Commission on State Mandates – May 30, 2014**

1       there other precedents on this kind of language that we  
2       can draw meaning from, that suggests that when it says  
3       “no later than two years after,” that that actually  
4       doesn’t mean that it has to be done?

5               MS. SHELTON: Well, we’ve done a lot of  
6       research. I mean, we didn’t find any other case  
7       interpreting that precise language. You know, the  
8       Commission has adopted this analysis before in several  
9       IRCs. We did it in *Health Fee Elimination*, and I think  
10      there’s nine of those *Emergency Procedures*.

11              We have viewed it this way, applying rules of  
12      interpretation.

13              MEMBER SAYLOR: Okay.

14              MS. SHELTON: We absolutely see the other side,  
15      and have made a legal call and recommendation based on  
16      the plain language of the statute.

17              MEMBER SAYLOR: Okay, so this recommended  
18      finding, this recommended action, is consistent with  
19      prior actions by this Commission?

20              MS. SHELTON: By the Commission, correct, yes.

21              MEMBER ALEX: I would actually say that the  
22      later provision that says “subject to initiation”  
23      actually supports staff’s interpretation because the  
24      Legislature could have used different words. I think  
25      “subject to” is actually broader than “subject to



**Commission on State Mandates – May 30, 2014**

1 initiation," for what it's worth.

2 MEMBER SAYLOR: I agree. I think that the  
3 amended language is more confining than the prior  
4 language.

5 MEMBER ALEX: I agree.

6 MEMBER SAYLOR: Which makes me feel like the  
7 prior language -- if we're applying the prior language to  
8 the case at hand, that I would support the claimant's  
9 position.

10 MEMBER OLSEN: Although I do think it's -- go  
11 ahead.

12 MS. SHELTON: Well, I was just going to say,  
13 when you look at that old statute, and there are two  
14 sentences --

15 MEMBER OLSEN: Right. That's what I was going  
16 to...

17 MS. SHELTON: -- right?

18 And the second sentence says "however." The  
19 "however" portion is just talking about the situation  
20 where no funds have been appropriated. And there, the  
21 Legislature clearly says it's subject to the initiation  
22 of an audit.

23 So when applying rules of construction, you are  
24 reading those two sentences consistently. One, meaning,  
25 the first sentence, when no funds are appropriated --

**Commission on State Mandates – May 30, 2014**

1 or excuse me, when funds are appropriated; the second  
2 sentence, "When no funds are appropriated."

3 MR. PALKOWITZ: But the facts in this case, the  
4 funds were appropriated. So to me, that entire sentence  
5 is not relevant to what we're here for today.

6 MS. SHELTON: It's relevant when you're doing  
7 interpretation because you can't read a sentence in  
8 isolation. You've got to read it in light of the whole.

9 CHAIR ORTEGA: Ms. Olsen?

10 MEMBER OLSEN: I was going to talk about the  
11 same thing.

12 CHAIR ORTEGA: Are there any other questions or  
13 comments?

14 *(No response)*

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

17 MR. PALKOWITZ: I would --

18 CHAIR ORTEGA: Go ahead.

19 MR. PALKOWITZ: If I may say, the question  
20 about precedent on other Commission decisions, I wonder  
21 if staff could point that out to me in their analysis of  
22 referencing these other rulings.

23 MS. SHELTON: It's not referenced because our  
24 decisions are not precedential. But there is law saying  
25 that that a body making judicial -- quasi-judicial

**Commission on State Mandates – May 30, 2014**

1 decisions needs to remain reasonable and not arbitrary.  
2 They're all public records on our Web site.

3 MR. PALKOWITZ: But I think the key is, it is  
4 not precedent.

5 MS. SHELTON: No, it's not precedent.

6 MR. PALKOWITZ: Thank you.

7 MS. SHELTON: But it is the same analysis.

8 CHAIR ORTEGA: Okay, any other comments or  
9 questions?

10 *(No response)*

11 CHAIR ORTEGA: Do we have a motion?

12 MEMBER CHIVARO: I'll move the staff  
13 recommendation.

14 CHAIR ORTEGA: Moved by Mr. Chivaro.

15 Is there a second?

16 MEMBER ALEX: Second.

17 CHAIR ORTEGA: Seconded by Mr. Alex.

18 Please call the roll.

19 MS. HALSEY: Ms. Ortega?

20 CHAIR ORTEGA: Aye.

21 MS. HALSEY: Mr. Rivera?

22 MEMBER RIVERA: Aye.

23 MS. HALSEY: Mr. Chivaro?

24 MEMBER CHIVARO: Aye.

25 MS. HALSEY: Mr. Alex?

**Commission on State Mandates – May 30, 2014**

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MEMBER ALEX: Aye.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: No.

MS. HALSEY: Mr. Ramirez?

MEMBER RAMIREZ: Unfortunately, aye.

MR. PALKOWITZ: Thank you very much.

CHAIR ORTEGA: Thank you. The motion has passed.

MS. HALSEY: We'll be going back to Item 4.

If the parties are here -- Ms. Asmundson, Finance?

And also, I need to swear in.

CHAIR ORTEGA: Is she here?

MS. HALSEY: If I could swear you in.

Do you solemnly swear or affirm that the testimony which you are about to give is true and correct, based on your personal knowledge, information, or belief?

MS. ASMUNDSON: I do.

MS. HALSEY: Thank you.

CHAIR ORTEGA: Okay, so we have heard from staff on this item.

So, Ms. Asmundson, it's to you.

**Commission on State Mandates – May 30, 2014**

1 MS. ASMUNDSON: Great. Thank you so much for  
2 having me, and thank you for moving this to the end.  
3 I'm, unfortunately, not moving very quickly at the  
4 moment.

5 Thank you for the opportunity to discuss the  
6 proposed statement of decision.

7 The Stanton Housing Authority respectfully  
8 disagrees with the proposed Statement of Decision on  
9 multiple points.

10 To start out with, under the "introduction"  
11 section, the analysis of the dissolution law is  
12 incorrect.

13 On page 15 of the statement of decision, it  
14 states that the dissolution law created two new entities.  
15 This is incorrect. The dissolution law created a  
16 successor agency to the redevelopment agency, pursuant to  
17 Health and Safety Code section 34173.

18 What we're arguing is that the Stanton Housing  
19 Authority, which was already a public agency pursuant to  
20 the Housing Authority law, was already in existence, and  
21 Health and Safety Code section 34176 mandated that  
22 certain duties and responsibilities be transferred to an  
23 existing public agency.

24 So I did want to clarify that point on page 15,  
25 that that statement that there are two new public

**Commission on State Mandates – May 30, 2014**

1 entities is an incorrect statement.

2 Second, I wanted to clarify that when the  
3 redevelopment agency dissolved as of February 1<sup>st</sup> of  
4 2012, the assets that were transferred -- non-housing  
5 assets were transferred to the successor agency. Housing  
6 assets were transferred to the housing authority.

7 Upon the dissolution of the redevelopment  
8 agency, and upon this transfer, these are no longer  
9 considered pursuant to the dissolution law to be  
10 redevelopment agency assets, using our housing authority  
11 assets. So they are not governed by redevelopment agency  
12 law.

13 In going through the statement of decision,  
14 there were three arguments. And I'll address each one  
15 separately.

16 Under the first argument, we respectfully  
17 disagreed because the housing authority is, in fact,  
18 subject to the tax and spend limitations of Article XIII  
19 A and XIII B.

20 ABX 126, which formed the Dissolution Act, has  
21 two provisions which specifically state that the revenue  
22 granted to the housing authority -- or that is now  
23 granted to the housing authority is actually deemed to be  
24 property taxes. This is set forth in the uncodified  
25 language of ABX 126, which provides that upon the

**Commission on State Mandates – May 30, 2014**

1 redevelopment agency's dissolution, any property taxes  
2 that were formally deemed to be tax increments are now  
3 deemed to be property taxes. This is additionally stated  
4 in Health and Safety Code section 34182(c)(1), which  
5 states that this revenue is now property taxes within the  
6 meaning of subdivision (a) of section 1 of Article XIII A  
7 of the California Constitution.

8 So clearly, this revenue is now considered to  
9 be property taxes subject to Article XIII A.

10 Section A of the statement of decision also  
11 goes on in depth to talk about redevelopment agencies.  
12 Specifically, that redevelopment agency tax increment is  
13 allocated pursuant to Article XVI, section 16 of the  
14 California Constitution.

15 As I stated before, the housing authority -- or  
16 I'm not sure if I did state it before -- but the housing  
17 authority is not the redevelopment agency. They are two  
18 completely separate entities.

19 The redevelopment agency was created pursuant  
20 to the Community Redevelopment law. The housing  
21 authority was created pursuant to the Housing Authority  
22 law.

23 So to apply Article XVI, section 16 of the  
24 California Constitution to the housing authority is  
25 incorrect, because it only applies to redevelopment

**Commission on State Mandates – May 30, 2014**

1 agencies; it does not apply to housing authorities.

2           Additionally, the statement of decision  
3 references Health and Safety Code section 33678, to  
4 provide that tax increments of a redevelopment agency  
5 are not deemed to be the proceeds of taxes pursuant to  
6 Article XIII A.

7           That's correct, but we're not talking about a  
8 redevelopment agency here. So section 33678, which is  
9 contained in the Community Redevelopment Law, is again  
10 inapplicable to the housing authority.

11           Under section B of the statement of decision,  
12 we again respectfully disagree. The housing authority  
13 has as much statutory authority to levy taxes as other  
14 eligible claimants.

15           Under the basis of the statement of decision,  
16 no claimants are eligible other than the county to submit  
17 a test claim to the Commission on State Mandates.  
18 Article XIII A, section 1(a), provides that the 1 percent  
19 tax -- i.e., property taxes -- are collected by the  
20 counties and apportioned according to law to the  
21 districts within the counties.

22           Furthermore, Revenue and Taxation Code  
23 section 2602 provides that the tax collector shall  
24 collect all property taxes.

25           Under both of these provisions and the reading



**Commission on State Mandates – May 30, 2014**

1 of the statement of decision, that means that by denying  
2 the housing authority as an eligible claimant, you're  
3 denying the cities, you're denying community college  
4 districts, you're denying school districts, and you're  
5 denying special districts that receive special property  
6 taxes.

7 Section B also addresses how the housing  
8 authority does have the authority to issue bonds and  
9 compares them to redevelopment agencies. Again, the way  
10 that redevelopment agencies raised revenue is completely  
11 different than a housing authority.

12 A housing authority's ability to issue bonds is  
13 very similar to other public agencies such as a city, a  
14 school district, a community college district.

15 A redevelopment agency could generate tax  
16 increments to pay for its bonds. And that's what the  
17 *Bell Community Redevelopment Agency* case was discussing.

18 In this instance, the housing authority cannot  
19 receive tax increments. It has a very limited source of  
20 revenue; it has a very limited amount of proceeds of  
21 taxes that it can receive.

22 Argument C, again, we disagree with this  
23 analysis.

24 Based on what I have previously stated, this  
25 one, I believe, sums up, again, a lot of what was stated

**Commission on State Mandates – May 30, 2014**

1 in section A and section B.

2 The thing that I did want to note is that I  
3 disagree on page 30 it states that "The activities and  
4 statutes pled in this test claim, the acceptance by the  
5 housing authority, or the mandate of -- that the housing  
6 assets be transferred to the housing authority, are the  
7 very activities that the proceeds of taxes do go towards.  
8 And that's stated in section 34171(p), which allocates  
9 the proceeds of taxes to a housing authority that is  
10 serving as a housing successor.

11 The other thing that I did want to clarify  
12 under section C, is that the successor -- references to  
13 the successor agency and the dissolution law, and  
14 particularly in ABX 126, don't actually reference the  
15 housing authority. Nowhere in the dissolution law, as it  
16 was created under ABX 126, or as subsequently amended, is  
17 the housing authority ever actually referred to as a  
18 housing successor agency.

19 The Legislative Analyst's Office refers to it  
20 as a housing successor agency just for, you know,  
21 purposes of clarification. And a lot of housing  
22 authorities, when they refer to the housing assets that  
23 they receive, they refer to it as, themselves, as a  
24 housing successor agency. But the statute itself never  
25 refers to a housing authority as the housing successor

**Commission on State Mandates – May 30, 2014**

1 agency. So any references in the dissolution law to  
2 restrictions on the successor agency's funding is  
3 inapplicable to the housing authority because the  
4 dissolution law does not consider them to be a successor  
5 agency.

6 The successor agency, it's only the successor  
7 agency that was created by the dissolution law.

8 So when it says in section 34171(p) that the  
9 administrative costs -- or that the proceeds of taxes  
10 allocated to the housing authority to pay administrative  
11 costs, you can't use the same definition as is done in  
12 the statement of decision for administrative costs  
13 allowance of a successor agency, because a successor  
14 agency is a completely different beast.

15 Regarding a successor agency, their  
16 administrative cost allowance is limited. It says that  
17 the successor agency will receive administrative costs,  
18 but that those administrative costs do not include  
19 certain things such as litigation costs or other costs.

20 The reason why the dissolution law created it  
21 that way is because the successor agency can receive  
22 additional funding for those; whereas the housing  
23 authority, under section 34171(p), can only receive a  
24 very set amount of the proceeds of taxes. And those  
25 proceeds of taxes are put into the housing authority's

**Commission on State Mandates – May 30, 2014**

1 general fund, and are used for the general revenue of the  
2 housing authority.

3 And this is actually made clear in the staff --  
4 or in the statement of decision, specifically that  
5 references to the successor agency in ABX 126 cannot be  
6 applied to the housing authority, and any restrictions  
7 on taxes allocated to a successor agency or allocated  
8 pursuant to the Dissolution Act cannot apply to a  
9 successor agency because the proceeds of taxes allocated  
10 to a housing authority were not in place when ABX 126 was  
11 adopted. Those were adopted in 2013, under AB 471.

12 Additionally, just to note one last thing for  
13 clarification. Perhaps we weren't clear enough in our  
14 comments.

15 The authority can also receive revenue through  
16 charges and fees for its services. And when we said that  
17 in order to pay the expenses that were mandated on the  
18 housing authority pursuant to 34176(b), we would have to  
19 increase these charges and fees above the reasonable  
20 cost, we were referring to the fact that in order to pay  
21 these expenses, we would have to create a tax. And this  
22 tax would have to pay for these funds. And perhaps that  
23 position wasn't properly conveyed in our comments.  
24 Because the end of section C addresses these fees and  
25 charges and states that Article XIII C and XIII D

**Commission on State Mandates – May 30, 2014**

1 prohibit the housing authority from increasing fees and  
2 charges above the reasonable costs.

3 We agree with that. We absolutely agree with  
4 that. But what we're saying is the only way for us to  
5 raise funds is for us to impose a tax to pay for these  
6 mandated costs. And in that instance, we would be using  
7 proceeds of taxes to pay for these costs.

8 And as it's our only source of revenue, under  
9 the *County of Fresno* case, it would constitute the  
10 proceeds of taxes.

11 So in conclusion, we do disagree with the  
12 statement of decision for multiple reasons: First, that  
13 the housing authority does receive property taxes subject  
14 to Article XIII A and XIII B as stated in the dissolution  
15 law, very clearly.

16 The housing authority is a separate entity from  
17 the RDA; and so any references to the RDA in the  
18 statement of decision are irrelevant.

19 It is also a separate entity from the successor  
20 agency, and is not deemed to be a successor agency. So  
21 any restrictions on a successor agency in the dissolution  
22 law do not apply to housing authority.

23 And finally, the housing authority has as much  
24 ability to levy taxes as other eligible claimants other  
25 than the county, because the law and the California

**Commission on State Mandates – May 30, 2014**

1 Constitution prohibits any public agency other than the  
2 county from collecting property taxes.

3 And I'm happy to answer any questions.

4 CHAIR ORTEGA: Thank you.

5 MS. HALSEY: I just wanted to add one thing.  
6 I forgot to mention at the beginning of the item, and  
7 that is, you may or may not know that Ms. Asmundson is  
8 the wife of one of our staff counsel, Tyler Asmundson.  
9 And I just wanted it on the record that we have walled  
10 him off from this matter and excluded him from access to  
11 documents and also meetings on this matter to create an  
12 ethical wall. So I wanted to let everyone know.

13 CHAIR ORTEGA: Thank you.

14 Any questions or comments from the  
15 Commissioners?

16 Ms. Ramirez?

17 MEMBER RAMIREZ: I just want to say that I'm a  
18 city councilperson in the City of Oxnard. We've had to  
19 deal with some of these issues related to redevelopment  
20 agency and successor agency. And there has been some  
21 litigation; and based on that, I'm going to abstain, now  
22 that I see the depth of your arguments on both sides. So  
23 I'll be abstaining from this.

24 CHAIR ORTEGA: Yes?

25 MEMBER ALEX: Was Stanton obligated to have a

**Commission on State Mandates – May 30, 2014**

1 redevelopment agency?

2 MS. ASMUNDSON: No, no one is obligated to have  
3 a redevelopment agency.

4 MEMBER ALEX: Okay, so the dissolution of this  
5 entity, what you're saying was mandated by the state,  
6 even though you created it voluntarily?

7 MS. ASMUNDSON: No. The dissolution of the  
8 redevelopment agency was discretionary.

9 What I'm saying is that under 34176(b), it  
10 provides that when the redevelopment agency is dissolved,  
11 the housing assets and obligations of the redevelopment  
12 agency are mandated on the housing authority. The  
13 housing authority and the redevelopment agency are two  
14 completely separate entities.

15 And one other thing I should clarify, is that  
16 if the housing authority did not exist, then  
17 section 34176(b) also provides that when no housing  
18 authority exists, then these housing assets and  
19 obligations are transferred to the state housing --  
20 Department of Housing and Community Development. So this  
21 would be a state obligation but for the existence of the  
22 housing authority.

23 CHAIR ORTEGA: Mr. Jones, can you answer in  
24 that regard?

25 MR. JONES: I'll be happy to respond to any

**Commission on State Mandates – May 30, 2014**

1 questions that the Members have. But, you know, what  
2 you've heard is a fairly complicated argument about how  
3 assets that would have been collected by a former  
4 redevelopment agency but are now -- are somehow now  
5 transferred -- or transmuted into taxes; and I don't  
6 see that the law supports that.

7 And in addition, nowhere in the dissolution  
8 statutes is there any mention of Article XIII B.

9 There is one or -- there is one reference, and  
10 then there's another reference in the uncodified section  
11 to the idea that the revenues that were formerly tax  
12 increment and formerly belonged to the RDA are deemed  
13 property taxes under XIII A. But there is no mention at  
14 all of XIII B.

15 And it's staff's position that the reason those  
16 revenues are deemed property taxes under XIII A, is that  
17 whatever is left over after the RDA winds down its  
18 operations, and that being done by the housing agency --  
19 the housing authority in this case, and also the city as  
20 the successor agency -- which isn't relevant at all your  
21 to your decision because the city isn't before you -- but  
22 whatever revenues are left over after those activities of  
23 the former RDA are wound down, are meant to be  
24 distributed back to counties and cities, and reclaimed  
25 specifically by school districts, which was the whole



**Commission on State Mandates – May 30, 2014**

1 purpose of the redevelopment dissolution, in the first  
2 place.

3 Because of Prop. 98, the State was being  
4 compelled in a lot of these communities that had RDAs,  
5 to make up for the difference in funding that was being  
6 taken by -- it was being captured, if you will, by the  
7 RDA under a tax increment scheme. And so the whole  
8 purpose of this redevelopment dissolution, that you can  
9 see in the leg. history and in the LAO report that's part  
10 of your record, is to recapture that revenue for the  
11 school districts.

12 And so it's staff's position that the only  
13 reason XIII A is mentioned is so that those revenues will  
14 be correctly distributed back to cities, counties, and  
15 school districts and special districts with whatever is  
16 left over.

17 And then aside from that, I'd be happy to  
18 answer any other questions. But staff feels pretty  
19 confident we've wrapped this up in the analysis before  
20 you.

21 MS. HALSEY: And just one thing. Housing  
22 authorities are entities of limited powers. And we  
23 didn't find in their statutes any authority to impose  
24 taxes. Although Ms. Asmundson asserts that they have  
25 that power, she has not cited to any authority for that.

**Commission on State Mandates – May 30, 2014**

1 MS. ASMUNDSON: We receive the proceeds of  
2 taxes pursuant to 34171(p) on all the property taxes.  
3 And then additionally, we are a local government entity  
4 as defined in Article XIII C and XIII D, and, therefore,  
5 have the right to propose measures to the electorate to  
6 increase fees and charges above the reasonable level of  
7 service.

8 CHAIR ORTEGA: Has the housing authority ever  
9 proposed such a fee or levy to the voters?

10 MS. ASMUNDSON: No. They're very difficult to  
11 pass.

12 CHAIR ORTEGA: Any other questions or comments?

13 *(No response)*

14 CHAIR ORTEGA: Is there a motion on this item?

15 MEMBER CHIVARO: I'll move the staff  
16 recommendation.

17 CHAIR ORTEGA: Motion by Mr. Chivaro.

18 MEMBER ALEX: Second.

19 CHAIR ORTEGA: Second by Mr. Alex.

20 Please call the roll.

21 MS. HALSEY: Mr. Alex?

22 MEMBER ALEX: Aye.

23 MS. HALSEY: Mr. Chivaro?

24 MEMBER CHIVARO: Aye.

25 MS. HALSEY: Ms. Olsen?

**Commission on State Mandates – May 30, 2014**

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MEMBER OLSEN: Aye.

MS. HALSEY: Ms. Ortega?

CHAIR ORTEGA: Aye.

MS. HALSEY: Ms. Ramirez is abstaining.

MEMBER RAMIREZ: Abstain.

MS. HALSEY: Mr. Rivera?

MEMBER RIVERA: Aye.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Abstain.

MS. HALSEY: Thank you.

CHAIR ORTEGA: The motion carries.

Thank you, everyone.

MS. HALSEY: Item 10 is reserved for county applications for a finding of significant financial distress, or SB 1033 applications. No SB 1033 applications have been filed.

Commission Staff Kerry Ortman will present Item 11, the Legislative Update.

MS. ORTMAN: Good morning. This one is a little longer than usual.

As you know, staff monitors legislation for bills related to the mandate process. New to this report is AB 2343, which would have amended underlying statutes of the program known as *Animal Adoption* and would have provided block-grant funding for the mandate.

**Commission on State Mandates – May 30, 2014**

1           As of yesterday, that bill was still in the  
2           Assembly Local Government Committee awaiting hearing.  
3           Today is the deadline for bills to pass out of their  
4           house of origin. Therefore, it's likely that that bill  
5           is now dead.

6           And then I'm also reporting to you on the  
7           Budget Committee hearings. The Commission's 2014-15  
8           budget was first heard in the Assembly and Senate Budget  
9           subcommittees on state administration in late March.  
10          Contrary to the Governor's proposal, the Assembly  
11          Subcommittee voted to fund two new mandates: The *Local*  
12          *Agency Ethics* and *Tuberculosis Control* programs.  
13          The Assembly Subcommittee also took action on May 20<sup>th</sup> to  
14          continue suspension of all currently suspended local  
15          government mandates.

16          In March, the Senate Budget Subcommittee  
17          approved the funded mandates as proposed, but rejected  
18          suspension of eight *Election* mandates.

19          Additionally, the Senate Subcommittee approved  
20          suspension of *Local Agency Ethics* and placeholder trailer  
21          bill language to revise the underlying statutes.

22          The Senate Subcommittee referred *Tuberculosis*  
23          *Control* to the Subcommittee on Health and Human Services  
24          and approved conformity with action in that subcommittee.

25          On April 24<sup>th</sup>, the Senate Subcommittee on

**Commission on State Mandates – May 30, 2014**

1 Health and Human Services decided to hold open the issue  
2 of suspending the *Tuberculosis Control* mandate because  
3 the LAO, administration, and local health officers are  
4 discussing potential alternatives.

5 As of yesterday, the Senate Subcommittee on  
6 Health and Human Services has not voted on funding or  
7 suspending the *Tuberculosis Control* program.

8 Budget May Revise. On May 13<sup>th</sup>, 2014, the  
9 Governor issued the May revision to this budget that  
10 included changes to state-mandated local programs as they  
11 were initially proposed in January.

12 For local government, the revised budget allots  
13 an additional \$100 million to repay a portion of existing  
14 mandate reimbursement claims that have been owed since at  
15 least 2004.

16 Proposed trailer bill language would allow  
17 appropriation of funds in the 2014-15 to accelerate that  
18 repayment.

19 For school districts: The Revision increases  
20 Prop. 98 General funds by \$1.6 million to align mandate  
21 block funding with revised ADA estimates. The May Revise  
22 also increases funding to reflect the addition of five  
23 new K-12 mandate programs.

24 And finally, regarding community college  
25 districts: The revised budget decreases block-grant

**Commission on State Mandates – May 30, 2014**

1 funding consistent with revised student enrollment.

2 That's it.

3 CHAIR ORTEGA: Are there any questions on that  
4 report?

5 Yes?

6 MEMBER RAMIREZ: I do.

7 As to that last point, is that a reflection  
8 that enrollment is decreasing in community college? Is  
9 that what that means?

10 MS. ORTMAN: You know, I would assume so.

11 MEMBER RAMIREZ: That's unfortunate.

12 MS. ORTMAN: But I don't know for sure. I'm  
13 sorry.

14 MEMBER RAMIREZ: Okay, thank you.

15 MS. HALSEY: Thank you, Kerry.

16 Item 12, Chief Legal Counsel Camille Shelton  
17 will present the Chief Legal Counsel Report.

18 MS. SHELTON: Since our last meeting, on  
19 April 3<sup>rd</sup>, Commission was served with a new petition and  
20 complaint from Santa Clarita Valley Sanitation District  
21 on the Commission's decision on the *Upper Santa Clara*  
22 *River Chloride Requirements* test claim.

23 CHAIR ORTEGA: Any questions?

24 MS. HALSEY: Item 13, the Executive Director's  
25 Report.

**Commission on State Mandates – May 30, 2014**

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After today's hearing, the Commission has 14 test claims, one parameters and guidelines, four parameters and guidelines amendments, seven statewide cost estimates, 73 incorrect reduction claims, and two mandate redeterminations remaining to be heard.

Ten of the test claims and the pending P's & G's are on inactive status pending a decision from the California Supreme Court on the *NPDES Permit* mandate.

Commission staff expects to complete all of the currently pending test claims, parameters and guidelines amendments, and mandate redeterminations, except for those on inactive, by the December hearing. Staff also has tentatively set all of the currently pending IRCs for hearing, with the last one tentatively set for May 2016.

Thus, assuming current staffing and few new filings of test claims, parameters and guidelines, and mandate redeterminations, and no other significant increases in workload, the backlog will be completed by the end of fiscal year 2015-2016.

That said, there has been a significant increase in litigation recently, as identified on the notice and agenda. And this will take attorney time away from preparation of hearing items from time to time, and so it may slightly delay the completion of the backlog.

Commission staff is updating pending caseload

**Commission on State Mandates – May 30, 2014**

1 on the Commission's Web site on a monthly basis, so that  
2 all parties -- interested parties and interested persons  
3 can see when the pending items are currently projected to  
4 be heard.

5 Please check the tentative agenda items to see  
6 if your item is coming up over the next few hearings.

7 And we have several IRCs tentatively set for  
8 July and September. And in particular, we're going to be  
9 focusing on *Emergency Procedures, Earthquake Procedures,*  
10 *and Disasters Program, Health Fee Elimination,* and  
11 *Collective Bargaining* over the next few hearings. So if  
12 you are a representative on any of those matters, you  
13 might want to take a look at the file.

14 And that's all I have.

15 CHAIR ORTEGA: Okay. Any questions?

16 MEMBER RAMIREZ: Madam Chair?

17 CHAIR ORTEGA: Yes.

18 MEMBER RAMIREZ: I'd just like to commend the  
19 staff on reducing the backlog. I think it's been --  
20 since I have been here, which has been a couple of  
21 years, just a tremendous amount of effort. We see it  
22 every time we meet. And I thank you for that. Thank  
23 you.

24 CHAIR ORTEGA: Anyone else?

25 Okay, so we're ready to recess into closed



**Commission on State Mandates – May 30, 2014**

1 session.

2 The Commission will meet in closed executive  
3 session pursuant to Government Code section 11126(e) to  
4 confer 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  
10 matters pursuant to Government Code section 11126(a)(1).

11 We will reconvene in open session in  
12 approximately 15 minutes.

13 Thank you.

14 *(The Commission met in closed executive*  
15 *session from 11:04 a.m. to 11:11 a.m.)*

16 CHAIR ORTEGA: We are now going to return to  
17 open session.

18 I have one item to report, an action item that  
19 was taken in closed session.

20 The Commission acted to delegate to the  
21 Personnel Subcommittee the ability to appoint an interim  
22 chief legal counsel in the event that the current legal  
23 counsel could not continue his or her duties.

24 And that is all I have to report.

25 If there are no other matters to come before

**Commission on State Mandates – May 30, 2014**

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the Commission, we will be adjourned.

MEMBER SAYLOR: Thank you.

CHAIR ORTEGA: Thank you.

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

--oOo--

**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 20<sup>th</sup> of June 2014.



---

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