

Item 1

Proposed Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Park Tower, 980 9th Street, Suite 300,
Sacramento, CA, 95814 and via Zoom
September 27, 2024

Present: Member Michele Perrault, Chairperson
Representative of the Director of the Department of Finance
Member William Pahland
Representative of the State Treasurer, Vice Chairperson
Member Lee Adams
County Supervisor
Member Shannon Clark
Representative of the Director of the Office of Planning and Research
Member Deborah Gallegos
Representative of the State Controller
Member Karen Greene Ross
Public Member
Member Renee Nash
School District Board 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 Perrault called the meeting to order at 10:13 a.m., apologized for the late start due to technical difficulties, introduced the new Public Member, Karen Greene Ross, and welcomed her to the Commission on State Mandates (Commission).

Executive Director Halsey called the roll. Members Adams, Clark, Gallegos, Greene Ross, Nash, Pahland, and Perrault all indicated that they were present.

APPROVAL OF MINUTES

Chairperson Perrault asked if there were any objections or corrections of the July 26, 2024, minutes. There was no response. Chairperson Perrault asked if there were any comments online and Assistant Executive Director Supachana stated that there were no comments online. Chairperson Perrault asked if there was any public comment on this item. There was no response. Chairperson Perrault asked if there was any further discussion or if there was a motion. Member Nash made the motion to adopt the minutes. Member Gallegos seconded the motion. Executive Director Halsey called the roll. The Commission voted to adopt the July 26, 2024 hearing minutes by a vote of 7-0.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

Chairperson Perrault asked if there was any public comment. There was no response. Chairperson Perrault asked if there was any public comment online. Assistant Executive Director Supachana stated that there were none online.

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

Executive Director Halsey swore in the parties and witnesses participating in the Article 7 portion of the hearing.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS

- Item 2 *Rejection of Duplicate Test Claim Filing, 23-AEDD-01*
California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018
City of San Jose, Appellant

Senior Commission Counsel Juliana Gmur presented this item and recommended that the Commission adopt the Proposed Decision to deny this Appeal of Executive Director Decision.

Colleen Winchester and Rajani Nair appeared on behalf of the appellant.

Following statements by Ms. Winchester, Chairperson Perrault asked if there was any public comment. There was no response. Assistant Executive Director Supachana stated that there was none online. Chairperson Perrault asked if there was any discussion or questions from the members. Following discussion between Member Gallegos, Chief Legal Counsel Shelton, Ms. Winchester, Senior Commission Counsel Gmur, Member Adams, Vice Chairperson Pahland, and Member Greene Ross, Chairperson Perrault asked if there were any other comments or questions. There was no response. Chairperson Perrault asked if there was a motion. Member Pahland made the motion to adopt the staff recommendation. Member Nash seconded the motion. Executive Director Halsey called the roll. The Commission voted to adopt the Proposed Decision by a vote of 7-0.

PARAMETERS AND GUIDELINES

- Item 3 *Disclosure Requirements and Deferral of Property Taxation, 22-TC-06*
Statutes 2022, Chapter 712 (SB 989); Revenue and Taxation Code Sections 2610.8 and 2636.1
County of Los Angeles, Claimant

Executive Director Halsey stated that the Controller informed Commission staff that they do not intend to speak on this item and the claimant did not provide any information about whether they would be participating in this matter.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt the Proposed Decision and Parameters and Guidelines.

Kaily Yap appeared on behalf of the Department of Finance.

Following a statement by Ms. Yap, Chairperson Perrault asked if there was any public comment. There was no response. Assistant Executive Director Supachana stated that there was no public comment online. Chairperson Perrault asked if there were any comments or questions from the members either in the room or online. There was no response. Chairperson Perrault asked if there was a motion. Member Adams made the motion to adopt the staff recommendation. Vice Chairperson Pahland seconded the motion. Executive Director Halsey called the roll. The Commission voted to adopt the Proposed Decision and Parameters and Guidelines by a vote of 7-0.

INCORRECT REDUCTION CLAIMS

Item 4 *California Assessment of Student Performance and Progress (CAASPP), 22-1401-I-01*

Education Code Section 60640, as amended by Statutes 2013, Chapter 489 (AB 484) and Statutes 2014, Chapter 32 (SB 858); California Code of Regulations, Title 5, Sections 850, 852, 853, 853.5, 857, 861(b)(5), 864 (Register 2014, Nos. 6, 30, and 35)

Fiscal Years: 2015-2016 and 2016-2017

Fresno Unified School District, Claimant

Commission Counsel Anna Barich presented this item and recommended that the Commission adopt the Proposed Decision to deny the Incorrect Reduction Claim.

Arthur Palkowitz and Kim Kelstrom appeared on behalf of the claimant. Hugo Solis Galeana and Amber Alexander appeared on behalf of the Department of Finance. Ken Howell appeared on behalf of the State Controller's Office.

Following statements by Mr. Palkowitz, Mr. Solis Galeana, and Mr. Howell, Chairperson Perrault asked if there was any public comment. There was no response. Assistant Executive Director Supachana stated that there were no online public comments. Chairperson Perrault asked if there were any questions from the members. Following discussion between Vice Chairperson Pahland, Mr. Palkowitz, Member Clark, Commission Counsel Barich, Mr. Howell, Chief Legal Counsel Shelton, and Chairperson Perrault, Chairperson Perrault asked if there were any other questions and if there was a motion. Vice Chairperson Pahland made the motion to adopt the staff recommendation. Chairperson Perrault seconded the motion. Executive Director Halsey called the roll. The Commission voted to adopt the Proposed Decision by a vote of 7-0.

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

Executive Director Halsey presented this item, stating that Item 5 is reserved for county applications for a finding of significant financial distress, or SB 1033 applications, and that no SB 1033 applications have been filed.

INFORMATIONAL HEARINGS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 8 (info/action)

REPORTS

Item 6 Legislative Update (info)

Program Analyst Jill Magee presented this item.

Item 7 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Shelton presented this item.

Item 8 Executive Director: Proposed 2025 Hearing Calendar, Workload Update, and Tentative Agenda Items for the November 2024 and January 2025 Meetings (info/action)

Executive Director Halsey presented and recommended that the Commission adopt the Proposed 2025 Hearing Calendar. Chairperson Perrault asked if there were any questions or comments from the members or if there were any online. There was no response. Chairperson Perrault asked if there was a motion. Member Adams made the motion to adopt the staff recommendation. Member Nash seconded the motion. Chairperson Perrault asked if there was any public comment on the calendar. There was no response. Executive Director Halsey called the roll. The Commission voted to adopt the Proposed 2025 Hearing Calendar by a vote of 7-0.

Executive Director Halsey continued presenting this item and described the Commission's workload. Chairperson Perrault asked if there were any questions. There was no response. Chairperson Perrault stated that it was the Executive Director's last hearing. In honor of her departure, Chairperson Perrault read a resolution to be presented to Executive Director Halsey after the meeting, thanked her for her service, and wished her the best of luck and relaxation in retirement. Chairperson Perrault asked if there were any other comments from the members. Following statements by Member Adams, Chief Legal Counsel Shelton, and Vice Chairperson Pahland, Executive Director Halsey thanked the Commission Members and Staff.

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

The Commission adjourned into closed executive session at 11:32 a.m., pursuant to Government Code section 11126(e). The Commission met in closed session 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; 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).

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):

B. POTENTIAL LITIGATION

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):

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.

C. PERSONNEL

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

RECONVENE IN PUBLIC SESSION

At 11:53 a.m., the Commission reconvened in open session.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Perrault reported that the Commission met in closed executive session pursuant to Government Code section 11126(e). The Commission conferred with and received advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and conferred with and received advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

ADJOURNMENT

Chairperson Perrault asked for a motion to adjourn. Member Nash made the motion to adjourn the meeting. Member Adams seconded the motion. The September 27, 2024, meeting was adjourned at 11:54 a.m., by a vote of 7-0.

Heather Halsey
Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

PUBLIC MEETING

FRIDAY, SEPTEMBER 27, 2024

10:00 A.M.

MEETING HELD

AT 980 9TH STREET

SUITE 300

SACRAMENTO, CALIFORNIA

AND

VIA ZOOM

ORIGINAL

VIDEO COMMUNICATIONS PLATFORM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

RECEIVED

OCT 25 2024

COMMISSION ON
STATE MANDATES

STENOGRAPHICALLY REPORTED BY:

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A P P E A R A N C E S

COMMISSIONERS PRESENT

MICHELE PERRAULT
Representative for Joe Stephenshaw
Department of Finance
(Chairperson of the Commission)

WILLIAM PAHLAND
Representative for FIONA MA
State Treasurer
(Vice Chairperson of the Commission)

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

SHANNON CLARK
Representative for SAMUEL ASSEFA, Director
Office of Planning & Research
(Via Zoom)

DEBORAH GALLEGOS
Representative for MALIA COHEN
State Controller

KAREN GREENE ROSS
Public Member
(Via Zoom)

RENEE NASH
Eureka Union School District
School District Board Member

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COMMISSION STAFF

HEATHER HALSEY
Executive Director
(Via Zoom)

DENNIS SUPACHANA
Assistant Executive Director
(Via Zoom)

1 **A P P E A R A N C E S C O N T I N U E D**

2 **COMMISSION STAFF**

3 CAMILLE N. SHELTON
4 Chief Legal Counsel

5 JILL MAGEE
6 Program Analyst

7 ANNA BARICH
8 Commission Counsel

9 ERIC FELLER
10 Senior Commission Counsel

11 JULIANA GMUR
12 Senior Commission Counsel
13 (Via Zoom)

14 ---o0o---

1 **A P P E A R A N C E S C O N T I N U E D**

2 ***PUBLIC PARTICIPANTS***

3 AMBER ALEXANDER
4 Department of Finance
5 (Item 4)
6 (Via Zoom)

7 KEN HOWELL
8 State Controller's Office
9 (Item 4)
10 (Via Zoom)

11 KIM KELSTROM
12 Claimant Fresno Unified School District
13 (Item 4)
14 (Via Zoom)

15 RAJANI NAIR
16 Appellant City of San Jose
17 (Item 2)
18 (Via Zoom)

19 ARTHUR PALKOWITZ
20 Law Offices of Arthur M. Palkowitz
21 (Item 4)
22 (Via Zoom)

23 HUGO SOLIS GALEANA
24 Department of Finance
25 (Item 4)
 (Via Zoom)

 COLLEEN WINCHESTER
 Appellant City of San Jose
 (Item 2)
 (Via Zoom)

 KAILY YAP
 Department of Finance
 (Item 3)
 (Via Zoom)

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1 **I N D E X C O N T I N U E D**

2 ITEM NO. PAGE

3 C. Incorrect Reduction Claims

4 Item 4 California Assessment of Student 48
5 Performance and Progress
6 (CAASPP), 22-1401-I-01

7 Education Code Section 60640,
8 as amended by Statutes 2013,
9 Chapter 489 (AB 484) and
10 Statutes 2014, Chapter 32
11 (SB 858); California Code of
12 Regulations, Title 5, Sections
13 850, 852, 853, 853.5, 857,
14 861(b)(5), 864 (Register 2014,
15 Nos. 6, 30, and 35)

16 Fiscal Years: 2015-2016 and
17 2016-2017

18 Fresno Unified School District,
19 Claimant

20 VI. Hearings on County Applications for
21 Findings of Significant Financial Distress
22 Pursuant to Welfare and Institutions Code
23 Section 17000.6 and California Code of
24 Regulations, Title 2, Article 2

25 Item 5 Assignment of County Application 64
to Commission, a Hearing Panel
of One or More Members of the
Commission, or to a Hearing
Officer (none)

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1 FRIDAY, SEPTEMBER 27, 2024, 10:13 A.M.

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3 CHAIRPERSON PERRAULT: All right. Excellent. Good
4 morning. Apologies for those of you who were waiting
5 behind the scenes. And we are -- we are having some
6 technical difficulties, but I think we are ready to go.

7 So I'm going to go ahead and call the meeting of
8 the Commission on State Mandates to order at 10:13.

9 Welcome to our hybrid meeting. For those of you
10 participating in person, I do have some housekeeping
11 information. On the table near the wall are paper
12 copies of the meeting notice and agenda, new filings,
13 and witness list. The electronic public hearing binder
14 is also located there on a laptop.

15 When called up for an item, the parties and
16 witnesses will sit at the witness tables which will --
17 yeah.

18 The restrooms are located out the door, down the
19 hall to the right; women's room across the open atrium.
20 The key for both are on the table as you exit the
21 conference room.

22 Finally, please take note of the emergency exits in
23 the room.

24 For those participating remotely, the materials for
25 today's meeting, including the notice, agenda, and

1 witness list, are all available on the Commission's
2 website at www.csm.ca.gov under the "Hearings" tab.

3 When being sworn in at the beginning of the hearing
4 and when called for an item, the parties and witnesses
5 will please turn on their video and unmute their
6 microphone.

7 At the conclusion -- excuse me -- of the item,
8 please turn off the video and then mute your microphone
9 once again.

10 In the event we do experience technical
11 difficulties, or the meeting is bumped offline, we will
12 restart and allow time for people to rejoin before
13 recommencing the meeting.

14 Finally, please remember to speak slowly and
15 accurately for the benefit of the court reporter and an
16 accurate transcript of the hearing.

17 Okay. So before we begin this morning, I would
18 like to introduce -- and it is my pleasure to
19 introduce -- our new public member, who comes to us with
20 some experience in public finance. Ms. Karen Greene
21 Ross is joining us online today. Karen, thank you for
22 joining. Just a little bit about Ms. Greene Ross:
23 Before her retirement from the State, she did serve as
24 the chief of staff to the State Controller Betty Yee
25 from 2015 to 2022. Prior to that, she was assistant

1 chief counsel at the California High Speed Rail
2 Authority from 2012 to 14, where she was deputy director
3 of Legislation from 2011 to 2012. And then finally, she
4 also served as the deputy controller at the State
5 Controller's Office from 2005 to 2007.

6 Member Greene Ross earned her Juris Doctorate [sic]
7 degree from Loyola Law School and a Bachelor's of
8 Science degree in Finance from the University of
9 Florida. And we welcome you to the Commission.

10 Okay. With that, if staff could please -- Heather,
11 please call the roll.

12 MS. HALSEY: Sure.

13 Mr. Adams.

14 MEMBER ADAMS: Here.

15 MS. HALSEY: Ms. Clark.

16 MEMBER CLARK: Here.

17 MS. HALSEY: Ms. Gallegos.

18 MEMBER GALLEGOS: Here.

19 MS. HALSEY: Ms. Greene Ross.

20 MEMBER GREENE ROSS: Here.

21 MS. HALSEY: Ms. Nash.

22 MEMBER NASH: Here.

23 MS. HALSEY: Mr. Pahlant.

24 MEMBER PAHLANT: Here.

25 MS. HALSEY: Ms. Perrault.

1 MEMBER PERRAULT: Here.

2 CHAIRPERSON PERRAULT: Great. Thank you so much.

3 So our next item is Item 1.

4 Are there any objections to or additional

5 corrections of the July 26, 2024, minutes?

6 (No response.)

7 CHAIRPERSON PERRAULT: Seeing none in the room,

8 either -- and online?

9 Seeing none.

10 (No response.)

11 MR. SUPACHANA: Madam Chair, I do not see any

12 comments online.

13 CHAIRPERSON PERRAULT: Thank you.

14 Also, just -- is there a way to pin our two

15 commissioners who are online so that we can see them?

16 I'm not sure if that's possible.

17 Okay. IT is working on that.

18 Okay. In the meantime, while we wait on that, are

19 there any public comments on this item?

20 (No response.)

21 CHAIRPERSON PERRAULT: Seeing none in the room.

22 MR. SUPACHANA: I don't see any public comments

23 on -- online, Madam Chair.

24 CHAIRPERSON PERRAULT: Okay. Unless there's any

25 further discussion, is there a motion?

1 MEMBER NASH: So moved.

2 CHAIRPERSON PERRAULT: Moved by Ms. Nash.

3 Is there a second?

4 MEMBER GALLEGOS: I will second.

5 CHAIRPERSON PERRAULT: Second by Ms. Gallegos.

6 Could we please have a roll call.

7 MS. HALSEY: Mr. Adams.

8 MEMBER ADAMS: Aye.

9 MS. HALSEY: Ms. Clark.

10 MEMBER CLARK: Aye.

11 MS. HALSEY: Ms. Gallegos.

12 MEMBER GALLEGOS: Aye.

13 MS. HALSEY: Ms. Karen -- Ms. Greene Ross.

14 (No response.)

15 CHAIRPERSON PERRAULT: Ms. Greene Ross.

16 MEMBER GREENE ROSS: Abstain.

17 MS. HALSEY: Thank you.

18 Ms. Nash.

19 MEMBER NASH: Aye.

20 MS. HALSEY: Mr. Pahland.

21 MEMBER PAHLAND: Aye.

22 MS. HALSEY: Ms. Perrault.

23 CHAIRPERSON PERRAULT: Aye.

24 Thank you. So that motion carries.

25 And now I think we are moving on to public comment.

1 MS. HALSEY: Now we will take up public comment on
2 matters not on the agenda. Please note, the Commission
3 may not take action on items not on the agenda.
4 However, it may schedule issues raised by the public for
5 consideration at future meetings. We invite the public
6 to comment on matters that are on the agenda as they are
7 taken up.

8 CHAIRPERSON PERRAULT: Great. Thank you.

9 Are there any public comments on items not on the
10 agenda?

11 (No response.)

12 CHAIRPERSON PERRAULT: Seeing none in the room.
13 Are there any online?

14 MR. SUPACHANA: Madam Chair, I do not see any
15 online.

16 CHAIRPERSON PERRAULT: Okay. Thank you.

17 Hearing no further public comment, we will go ahead
18 and move on to the next item, which is our swearing in.
19 So Heather.

20 MS. HALSEY: Mr. Adams.

21 Oh, sorry. Let's move to the swearing in. Will
22 the parties and witnesses for Items 2, 3, and 4
23 participating remotely please be sure that both your
24 first and last names are listed on your Zoom window for
25 the benefit of the court reporter. Turn on your

1 video -- turn on your video and unmute your microphone.

2 Will the parties and witnesses please rise.

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

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

9 (Affirmative responses.)

10 MS. HALSEY: Thank you.

11 For those participating remotely for Items 3 and 4,
12 please turn off your video and mute your microphones.

13 Next is Item 2. Senior Commission Counsel Juliana
14 Gmur will please turn on her video and unmute her
15 microphone and present a proposed decision on appeal of
16 Executive Director Decision on Rejection of Duplicate
17 Test Claim Filing, 23-AEDD-01.

18 MS. GMUR: Good morning.

19 This matter is an appeal of the Executive
20 Director's decision to reject a test claim filing by the
21 City of San Jose on a permit issued by the San Francisco
22 Bay Regional Water Quality Control Board.

23 The rejection was based on the fact that the City
24 of San Jose's filing duplicated the test claim first
25 filed by Union City. The test claim process provides

1 for the filing of a single test claim applicable to all
2 eligible claimants in order to avoid multiple
3 proceedings addressing the same claim that a
4 reimbursable state mandate has been created.

5 The appellant contends, however, that its filing
6 should be accepted and consolidated with Union City's
7 test claim because Union City did not plead a provision
8 requiring permittees to implement best management
9 practices related to the unsheltered and homeless, and
10 its homeless population and costs to comply with the
11 provision are much higher.

12 Union City's test claim pleads all of the provision
13 relating to the unsheltered and homeless population, as
14 noted on the test claim form, the narrative, and in the
15 declarations supporting the claim. Thus, the
16 appellant's claim duplicates that of Union City's, and
17 its legal rights and interests are protected by Union
18 City's test claim, even if its costs to comply with the
19 provision are higher.

20 The determination whether the provision at issue is
21 reimbursable under Article XIII B, section 6, is a
22 question of law and not a question of fact.

23 Finally, the Commission's regulations provide ample
24 opportunity for the appellant, as a permittee under the
25 test claim permit, to participate in the Commission's

1 determination of Union City's test claim by providing
2 written comments, evidence, and testimony of its larger
3 homeless population and the higher costs that it has
4 incurred, which can inform the Commission's decision
5 through the test claim hearing process.

6 Staff recommends that the Commission adopt the
7 proposed decision to uphold the Executive Director's
8 decision to reject the appellant's test claim filing as
9 duplicative and to deny the appeal.

10 CHAIRPERSON PERRAULT: Thank you.

11 All right. Parties and witnesses, please state
12 your name for the record.

13 Ms. Winchester and Mr. Nair, for the appellant,
14 would you like to begin.

15 MS. WINCHESTER: Yes, ma'am. My name is Colleen
16 Winchester. I'm a senior deputy city attorney for the
17 City of San Jose. I'm pleased to be joined with Rajani
18 Nair, who is a deputy director for the City's
19 Environmental Services Department.

20 So if I may, I appreciate the time to respond.
21 First off, the City is not disputing that -- let me get
22 to the point.

23 If this Commission's decision is that the City of
24 San Jose's interests are adequately protected by Union
25 City's, that is certainly something we're not going to

1 challenge. If we are adequately protected, we want to
2 move forward. Then why are we here? Why am I appearing
3 before the Commission and why am I taking your valuable
4 time?

5 A couple of things.

6 This issue involves the City of San Jose's regional
7 stormwater permit. They are issued across the state.
8 This -- I can't tell which slide I'm on in the
9 presentation.

10 CHAIRPERSON PERRAULT: We don't have a slide up
11 yet, Ms. Winchester. Hold on one second, please.

12 MS. WINCHESTER: Oh.

13 CHAIRPERSON PERRAULT: And I think you had
14 indicated there would be a presentation. So give us one
15 second. My apologies.

16 MS. WINCHESTER: I'm glad it's IT, not me. Sorry.
17 Thank you. Thank you.

18 CHAIRPERSON PERRAULT: He's working on it. Give us
19 just a second.

20 MS. WINCHESTER: No problem. If you want me to
21 just go ahead, I can -- I can move forward without it.

22 CHAIRPERSON PERRAULT: It is absolutely up to you.

23 MS. WINCHESTER: I will go ahead and I'll just move
24 forward.

25 So this Commission is very, very familiar with

1 regional stormwater permits. It's come before the
2 Commission on multiple occasions. The -- what the --
3 (interruption in room). Sorry, what?

4 MS. MAGEE: I'm sorry. We're working on getting
5 your presentation up on the screen.

6 MS. WINCHESTER: Perfect.

7 CHAIRPERSON PERRAULT: Can you see it?

8 MS. WINCHESTER: I can see it.

9 CHAIRPERSON PERRAULT: That way -- what page would
10 you like us on?

11 MS. WINCHESTER: Okay. The first slide, please.
12 The -- I mean, the second slide, where we're talking
13 about municipal regional stormwater permits.

14 CHAIRPERSON PERRAULT: Okay.

15 MS. WINCHESTER: And I just want to -- just want to
16 highlight that the municipal regional stormwater permits
17 are issued by the State Water Board. The different
18 regions.

19 Next slide, please.

20 CHAIRPERSON PERRAULT: Thank you.

21 MS. WINCHESTER: And they contain significant
22 requirements for municipalities in implementing the
23 Clean Water Act. The beef and dispute and why this
24 Commission is so important is because the question is
25 what is and is not an unfunded mandate. What is simply

1 passing through as a federal requirement of the Clean
2 Water Act, or what are other areas where the City can
3 get reimbursement -- either through permit fees or
4 elsewhere -- or what is, in fact, just simply an
5 unfunded obligation imposed by the State on
6 municipalities when the municipalities are not in a
7 position to bear the burden.

8 That is this Commission's lane. It's super
9 important. And as you can see from the cases that have
10 come down, they have been litigated up and down the
11 courts, including to the California Supreme Court as
12 recently as 2016.

13 Next slide, please.

14 In fact, there -- next slide, please.

15 There is a pending consolidated action for a
16 regional stormwater permit issued in December of -- or
17 effective December of 2009. That is a consolidated test
18 claim with Dublin, San Jose, the County of Santa Clara,
19 and the Commission has a proposed draft pending. So
20 this is very important and very familiar to the
21 Commission.

22 Next slide, please.

23 So what happened here?

24 So -- let me just go back.

25 The Commission -- San Jose is here because it's

1 talking about getting the Commission -- the -- it has
2 taken a year to get to this -- this point.

3 Union City and San Jose filed a test claim. The --
4 both of them were deemed inadequate or incomplete.

5 "Duplicate" and "incomplete" sounds like duplicate --
6 both incomplete. Union City refiled. San Jose refiled.
7 And back and forth for over a year.

8 Why is this significant? Because once Union City
9 is deemed incomplete, San Jose is in a tough position.
10 Do you refile and protect? Or do you wait until there's
11 a final decision on Union City? But what's happened is,
12 over time, San Jose filed extensive filings, significant
13 effort in work in getting to this point.

14 In the proposed decision, the proposed decision
15 repeats, "As a matter of law, San Jose's claim is --
16 should be rejected as duplicative."

17 As a quasi adjudicatory body, it's very important
18 that this -- this issue be precisely defined. There's
19 two issues here. One is as a -- what's the legal
20 question regarding the regulation?

21 And then second, how are the facts of this case
22 applied to the legal standard? That's a question of law
23 and a question of fact. Two separate issues and super
24 important to be precise in the decision, which it's not;
25 it's not precise.

1 So next slide, please.

2 So let's start with the question of law. Everybody
3 agrees we're in regulation -- this is the appropriate
4 regulation. And no duplicative test claims will be
5 accepted after the first one is filed.

6 But affected agencies that are not similarly
7 situated -- meaning that the test claim affects them
8 differently -- may file a test claim on the same statute
9 but must demonstrate how and why they are affected. So
10 the regulation is really clear. We also have a question
11 of fact.

12 However, in the proposed decision, it inserts
13 something that doesn't exist in the statute, and that's
14 a meaning. So in the proposed decision, it says,
15 "Meaning that the test claim statute affects them
16 differently." It adds language that says that
17 meaning -- "their legal rights and interests are not
18 protected by the test claim filing; meaning their rights
19 and interests are not protected by the test claim
20 filing.

21 That language is not in the regulation. It is a
22 meaning imposed into the regulation, through the
23 proposed decision.

24 San Jose just wants to make it perfectly clear.
25 The regulation says, "Affected agencies may file a test

1 claim, but they must demonstrate how they are affected
2 differently."

3 The proposed decision says, "Meaning that their
4 legal rights and interests are not protected by the test
5 claim."

6 Again, the language is not in the statute. Why is
7 that important? It's because regulations need to be
8 amended through a public process and a hearing to ensure
9 that they are accurately reflected. And also, if the
10 Commission is going to make a legal interpretation of
11 its regulation, that -- inserting that language, that
12 the parties have -- parties, meaning other public
13 entities, have a right to weigh in, go through the
14 regulatory process.

15 So that's the question of law.

16 So next slide, please.

17 We want to talk about the question of fact. Does
18 Provision C.17, dealing with discharges associated with
19 unsheltered homeless populations, affect San Jose
20 differently?

21 Next slide, please.

22 Just again, this is a provision of the permittee.
23 Each permittee shall identify and implement the best
24 management practices to address discharges.

25 Next slide, please.

1 What does this mean?

2 Examples of those actions: Access to emergency
3 shelters; provision of social services; sanitation
4 services; voucher programs; RV sanitary sewage
5 disposals; establishment of RV safe parking areas;
6 formalized encampments; pump-outs; cleaning services.

7 These are significant types of requirements being
8 imposed on public agencies in an area that is probably
9 one of the most important, significant political/social
10 issues pending right now.

11 One of the most, if not the most, on areas where
12 you -- where public entities are working very hard to
13 address what is both an environmental and socioeconomic
14 and significant issue.

15 So next slide, please.

16 So Union City's claim says it will incur costs for
17 implementing best practices. How is San Jose different?
18 We have already implemented these best management
19 practices. We know how much it costs. We know what the
20 significance and the burden is on -- on these types
21 of -- of programs. They are unfunded, but that's a
22 question for another day. They are unfunded. They are
23 significant. And San Jose and Union City are not in the
24 same -- in the same boat.

25 Next slide, please.

1 So San Jose's unsheltered population, 6,200 --
2 70 percent of those unhoused are unsheltered. Union
3 City, according to the public records, has 489.

4 Again, if you go back and think about those types
5 of requirements that are listed in the -- in the permit
6 itself -- housing, RV, pumps-out -- you know, again that
7 laundry list; significantly different for a population
8 of 489 as compared to 6,200.

9 I think in the proposed decision, there's a lot of
10 discussion that, as a matter of law, San Jose and Union
11 City are aligned.

12 Again, you know, if the Commission's decision is
13 that San Jose is adequately protected and does not need
14 to participate, nor does this Commission care to have
15 the perspective of somebody implementing these
16 regulations, I think that's -- that is certainly within
17 the Commission's lane. But what we do want to talk
18 about is San Jose's implementation cost is over
19 \$19 million for fiscal year '22/'23.

20 Again, we -- we believe that that is a perspective
21 that is properly before the Commission as a party.

22 Next slide, please.

23 So we respectfully request the Commission consider
24 its test claim, consolidate it with Union City's for
25 efficiency. However, at a minimum, what San Jose

1 requests is that if language being inserted into the
2 regulations is, you know -- is -- well, gosh. I lost
3 my -- my train of that sentence, which would have been
4 eloquent had I kept on it.

5 But if the Commission chooses not to consider San
6 Jose's test claim and consolidate it with Union City for
7 efficiency, San Jose proposes that this is -- this is
8 such an important issue. What -- why should other
9 cities jump through regulatory hoops, process after
10 process after process, to try to -- to get before the
11 Commission if the legal standard is as in the intended
12 decision.

13 Go through the regulatory process. Make that clear
14 for -- for public entities. It's ironic that it takes
15 so much time, effort, cost, attorneys' fees, staff time,
16 burden, just to simply bring before the Commission that
17 the State is improperly imposing costs and burdens and
18 attorney's fees.

19 I think -- I find that ironic. And I think what
20 should particularly happen is, moving forward amend the
21 regulation so that they're clear. Amend the regulation
22 so that we're not -- so people aren't in this same boat.

23 And if anybody has any questions, I welcome the
24 opportunity to respond.

25 CHAIRPERSON PERRAULT: All right. Thank you,

1 Ms. Winchester.

2 I'm not sure -- it sounds like maybe your colleague
3 is available for questions. Or is there a presentation
4 also -- an additional?

5 Okay.

6 MS. WINCHESTER: No. She's just available for the
7 stuff that I took questions on. The 19 million, 200-
8 and -- it's fine. Math.

9 CHAIRPERSON PERRAULT: Thank you very much. All
10 right.

11 With that, are there any public comments on this
12 item?

13 (No response.)

14 CHAIRPERSON PERRAULT: Seeing none in the room.

15 MR. SUPACHANA: Madam Chair, I do not see any
16 online public comments.

17 CHAIRPERSON PERRAULT: Okay. Is there a discussion
18 from the Commission? Questions?

19 MEMBER GALLEGOS: I have a question.

20 CHAIRPERSON PERRAULT: Yes. Ms. Gallegos.

21 MEMBER GALLEGOS: So two things: In the
22 description -- sorry. It is confusing.

23 It says that Union City's test claim does not plead
24 provision C.17, which I believe she referenced, which
25 requires information and best management practices to

1 control or reduce discharge of pollutants.

2 Does it or does it not?

3 MS. SHELTON: I'm going to let Juliana respond.

4 MS. WINCHESTER: If I may respond.

5 CHAIRPERSON PERRAULT: We'll go ahead and let staff
6 respond. Ms. Winchester, we'll go ahead and let staff
7 respond real quick.

8 MS. WINCHESTER: Oh. Apologize.

9 MS. GMUR: Yes, it does.

10 The City of San Jose is contending that it's --
11 it's insufficient because of their position, but it is
12 completely pleaded. It is in the test claim form. It
13 is supported in the narrative. And there are
14 declarations on point. It is -- it is in that test
15 claim jurisdictionally before the Commission.

16 MEMBER GALLEGOS: Okay. And she also proposes that
17 San Jose's issues are significantly different;
18 significantly enough different to warrant a separate
19 filing.

20 How -- what is your response to that given the
21 statistics that she put in her slide? And I don't know
22 if we can get that slide back up.

23 MS. GMUR: All right. In applying the regulation,
24 there are two types of agencies. There's the affected
25 agency that's not similarly situated. And there's the

1 similarly situated agency.

2 When you are looking to ascertain which one, it is
3 how the test claim statute -- or, in this case, the test
4 claim permit -- affect them differently.

5 The section C.17 applies to both Union City and
6 City of San Jose. They both must comply with it. City
7 of San Jose has higher implementation costs because of
8 their population, but the permit does not apply to them
9 differently.

10 Let's look at the example that she had on the
11 slide. That would be 10-TC-02, -03, -05. In that case,
12 the City of San Jose's test claim was consolidated in
13 because the City of San Jose pleaded a section that was
14 not pleaded by any other test claimant. They were
15 claiming that section C.2 imposed a mandate on the City.
16 No one else made that claim. And so the test claim
17 permit affected them differently. They had an
18 additional mandate that they needed to bring before the
19 Commission, and they were consolidated in.

20 In addition, that case was also complicated by the
21 fact that there were six prior permits that were all
22 different and would have -- affect each agency
23 differently.

24 As you know, in our mandates analysis, we compare
25 the prior permit to the test claim permit to find out

1 what is new. Depending on what was in your prior
2 permit, an activity may or may not be new.

3 MS. SHELTON: May I also just add that if you look
4 on page 25 of this analysis that lays out the elements
5 for finding a reimbursable state mandated program; and
6 on the cost issue, which is factor number 4, a test
7 claimant only needs to show that they will incur a
8 thousand dollars' worth of costs, period. They don't
9 have to show any more than that to be eligible for the
10 Commission to take jurisdiction.

11 So the amount of money certainly -- you know, I
12 think that the Commission would want to hear of the
13 testimony of City of San Jose and how that permit
14 section affected them maybe differently. But legally,
15 you have a valid jurisdiction over that test claim that
16 affects all of those eligible claimants and permittees
17 under that permit.

18 MEMBER GALLEGOS: The second question I have
19 actually highlighted the exact statement that she
20 referenced as well, meaning their legal rights and
21 interests are not protected by the test claim filing.

22 So is what she suggests true, that this is not
23 language that is --

24 MS. SHELTON: Agreed that it's not language in the
25 regulation, but you have to read the regulation with the

1 whole purpose of mandates law and what the legislature
2 enacted.

3 The whole section 17500 says the purpose is to
4 avoid multiple proceedings. We have Supreme Court cases
5 that indicate that. That's the whole point, is that we
6 don't have separate test claims filed by every county in
7 the state, every city in the state. Local government
8 should be working together when they are filing their
9 test claims so that they know who is filing on what.

10 There are options in the Commission's regulations
11 to file one joint test claim if the City of San Jose
12 wanted to be -- have party status. They chose not to do
13 that.

14 So you have to read that regulation in light of the
15 whole purpose of Article XIII B, section 6. But this
16 test claim -- it is pled the Commission has jurisdiction
17 on it, as you have seen with all the other stormwater
18 permits that have been approved, and where Ps and Gs
19 have been adopted, the eligible claimants include every
20 single permittee of that permit. So it is the same
21 situation here. And then all of those permittees would
22 be allowed to file reimbursement claims with the State
23 Controller's Office for the actual cost mandated by the
24 State.

25 MEMBER GALLEGOS: Thank you.

1 CHAIRPERSON PERRAULT: All right. Mr. Adams.

2 MEMBER ADAMS: Thank you.

3 I have great appreciation for San Jose's
4 frustration, considering its relative size to Union
5 City. And admittedly, the difference between 489
6 unsheltered folks versus 6,200 is huge.

7 I'm just wondering, is volume alone enough to say
8 there is an effective difference? I don't know the
9 exact populations of Union City and San Jose. But I
10 would imagine 400 could be a pretty good impact to a
11 smaller community versus 6,200 in a larger city of maybe
12 a million people.

13 So I'm not sure that I understand -- other than the
14 total costs, the impact to a smaller community might be
15 just as impactful as it is to the City of San Jose. So
16 effectively, is there really a difference there?

17 And, again, I appreciate the City of San Jose's
18 huge cost, as I represent at home a county of 3,000. We
19 are always pleading to the State that our small numbers
20 are of great impact to us even though they are not huge
21 numbers.

22 So I would just -- would like to hear comments from
23 either side.

24 MS. SHELTON: May I mention -- and I will dovetail
25 on that. So the Commission invites comments. The

1 Commission wants to have comments from every
2 different-sized jurisdiction.

3 And at this stage, with the test claim, it is
4 purely a question of law. When the Commission -- if
5 it's approved -- moves to the parameters and guidelines
6 phase, that is when we really need to have the
7 participation of local government to identify how they
8 are implementing that particular activity, so that we
9 can properly describe that in the parameters and
10 guidelines. And that is a critical stage for
11 participation of local government. So, yes, you do want
12 the participation.

13 And even with the test claim postage, the City of
14 San Jose has the opportunity to file comments on the
15 test claim; has opportunity to file comments on the
16 draft proposed decision; can come to the Commission's
17 hearing and testify and bring a witness if they choose.
18 So they have ample opportunity to tell their story
19 before the Commission on this claim.

20 MEMBER ADAMS: Again, because of the size of the
21 unhoused, versus their relative size, I guess my
22 argument is, is there really a difference in how the
23 communities are affected? Or practically speaking, it
24 could be very close to the same.

25 MS. SHELTON: Right. So at this stage, all that

1 we're determining is looking at the plain language of
2 the permit. Is it new, the activity? Is it mandated by
3 the State? Does it impose a new program or higher level
4 of service? And is there an allegation of costs of at
5 least a thousand dollars? So that's it. The scope and
6 the individual circumstances, as that permit section is
7 applied to individual cities and counties, is not even
8 relevant yet.

9 CHAIRPERSON PERRAULT: Other questions from
10 Commission members?

11 Mr. Pahland.

12 MEMBER PAHLAND: Yeah. I do have a question for
13 Ms. Winchester.

14 As I understand your argument, it is effectively a
15 matter of magnitude and not substantive in position of
16 activity.

17 So you are not questioning whether what the rule
18 forces upon Union City is any different than what is
19 forced upon San Jose; only that San Jose's costs will be
20 greater.

21 Is that effectively your argument? Am I
22 understanding you correctly?

23 MS. WINCHESTER: Yes and -- yes, and.

24 The difference -- Union City's test claim didn't
25 allege any cost for implementation. And what it did is

1 it -- it -- the provision C.17 talks about adopting best
2 management practices and implementing them. So there's
3 like two separate requirements in that one provision.

4 Union City's costs are for adopting the best
5 management practices, not the implementation of the best
6 management practices, although they say they do plead
7 the entire provision. And certainly, we would -- we
8 would be arguing that it protected the both -- both
9 requirements, you know, if we weren't here.

10 But what we wanted to ensure -- San Jose wants to
11 ensure -- that both the adoption of best management
12 practices and the implementation of those best
13 management practices are properly before this
14 Commission.

15 So if the Commission decides those legal interests
16 are adequately protected, then perhaps this has been an
17 interesting legal exercise, but unnecessary. But it --
18 flip it the other way is, if we had hadn't adequately
19 protected the statute, if we hadn't adequately brought
20 it to the Commission's attention, would it have been
21 adequately preserved for adjudication?

22 The homeless, the unhoused issue impacts every
23 single public entity -- small, medium, and large. San
24 Jose, like I said, has already been implementing these
25 practices and has numbers for that.

1 I would certainly argue that -- and I would
2 certainly not protest if this Commission's determination
3 that -- that Union City protects adoption of best
4 management practices and implementation of those best
5 management practices are properly protected.

6 MEMBER PAHLAND: Okay.

7 CHAIRPERSON PERRAULT: Thank you -- oh, go ahead.
8 Do you have a follow-up?

9 MEMBER PAHLAND: Yeah. Follow-up questions.

10 CHAIRPERSON PERRAULT: And then I would like staff
11 to be able to respond for additional clarification.

12 MEMBER PAHLAND: Sure. Sure. I do have follow-up
13 questions then.

14 Boiled down to it, essentially your argument still
15 seems to be that I'm picking out difference in expense
16 associated with the activity imposed. And were that
17 sufficient to allow the filing of duplicate test claims,
18 wouldn't that, then, exception swallow the rule against
19 duplicate test claims? Because everybody can find that
20 I'm somehow implementing an activity imposed upon me
21 differently, or it's going to cost me more or less than
22 somebody else. And effectively, then the limitation to
23 a single test claim would be completely absorbed by
24 people finding minor distinctions and minor differences
25 in the specifics of carrying out the activity imposed.

1 MS. WINCHESTER: That's -- that's a very good -- a
2 very good perspective and point.

3 However, in this particular case, implementation of
4 best management practices for -- for the homeless
5 population, it is not just a matter of throwing somebody
6 money. It is housing people. It is -- this is not just
7 a degree of -- if we could just throw money at -- at the
8 problem, I submit that San Jose would have solved the
9 homeless problem decades ago. We throw a lot of money
10 at this challenge, working hard to solve it.

11 But why doesn't money just work? Why isn't it just
12 money? It is because it is social services. It is
13 housing. It is, how do we get folks healthy and into
14 homes permanently and ongoing? So this is not just a
15 matter of money and a matter of dollars. It is also,
16 what exactly does this mean?

17 And if you look at the language of the permit, it
18 does talk about housing. And, you know, I apologize. I
19 don't have it in front of me.

20 But I submit that it is not just money. This is a
21 separate issue that involves much, much more than that.
22 Social services that San Jose doesn't control -- you
23 know, providing housing. It is significant legal issue
24 other than just simply money.

25 MEMBER PAHLAND: Yeah. Okay. I understand what

1 you are saying.

2 But that seems to be not unique to San Jose in the
3 implementation of this permit or in regards to this
4 permit.

5 Let me move on to my next question, or my last
6 question here.

7 You have testified here today -- it's an
8 evidentiary matter. You have testified here today that
9 Union City has 489 unhoused; and, you know, San Jose has
10 order of magnitudes above that. How did you determine
11 what number of unhoused Union City has? And, you know,
12 you are here testifying that Union City has that much,
13 and I'm wondering what your foundational basis for that
14 testimony is.

15 Because, you know, I'm not hearing somebody from
16 Union City -- or I'm not seeing a declaration from a
17 Union City official. It could well be that Union City
18 has more than that; that if you pulled this information
19 from some publicly available source, it may or may not
20 be accurate.

21 MS. WINCHESTER: Again, so in using --

22 CHAIRPERSON PERRAULT: Go ahead, Ms. Winchester.

23 MS. WINCHESTER: Those numbers are from the
24 homeless -- the homeless survey -- the publicly
25 available data on the homeless point-in-time count. I

1 used the Alameda County numbers from the State's
2 homeless point-in-time count, and then Union City's
3 number from that -- from that official document and that
4 official record.

5 San Jose's -- we have the declaration of Ragan
6 Henninger. She's the house -- that's in -- in the
7 record. Her numbers, including what percentage are
8 unhoused or unsheltered, those are in the declarations
9 that are before the Commission.

10 But as far as Union City's number, I did take it
11 from a publicly available source. The State's -- the
12 State's population. I have the -- gosh, the citation.
13 The Alameda County --

14 MEMBER PAHLAND: I don't need the citation. I just
15 wanted to then draw the attention to difference between
16 two items of evidence proffered: Whereas, one, you have
17 a declaration of a competent witness; and, second, you
18 have an authenticated document from which numbers are
19 defined.

20 So I do have, then, in my mind at least a question
21 as to the true number of Union City unhoused, you know,
22 for purposes of then drawing a distinction between the
23 relevant burdens on the two cities.

24 So that's the end of my questions.

25 CHAIRPERSON PERRAULT: Okay. Great.

1 Ms. Greene Ross, you had your hand raised. Do you
2 still have comments or questions?

3 Give her a second. You are still muted. There she
4 is.

5 MEMBER GREENE ROSS: Yes. Sorry about that.

6 The question I had is, I understand you -- that
7 Union City cured its test claim filings in late May.
8 And so I just wanted to know the timing. Isn't it once
9 that happens, isn't the process for the various entities
10 that want to get reimbursed to go through the process
11 with the Controller's Office? So what's the status on
12 Union City's test claim? And couldn't San Jose, once --
13 now that that is cured -- as far as I can tell, is that
14 cured?

15 MS. GMUR: Yes, ma'am. It is -- it is cured. It
16 was cured two days before City of San Jose was able to
17 cure their test claim. It is currently out for comment
18 and it is in its very beginning stages. It will have to
19 be -- go through the Commission process. A mandate will
20 have to be found.

21 And then once reimbursable components are --
22 activities are established through the parameters and
23 guidelines, then the State Controller's Office will
24 issue claiming instructions, and all the permittees
25 under this permit can file for reimbursement costs.

1 MS. SHELTON: At this stage, it's a legal process
2 first.

3 MEMBER GREENE ROSS: Right. I just want to check
4 on the status of that because once -- since it was cured
5 and that process begins, wouldn't San Jose have the
6 opportunity then to, you know, show the different amount
7 that they are -- that they would be allowed to claim?

8 MS. SHELTON: So --

9 MS. GMUR: Yes, ma'am. The matter has not
10 proceeded to hearing yet. And so the City of San Jose
11 will have ample opportunity at the test claim hearing
12 and at the parameters and guidelines stage to provide
13 their testimony.

14 MEMBER GREENE ROSS: Okay. I wanted to clarify I
15 understood the process.

16 MS. SHELTON: Yes. To cure a test claim just means
17 that their filing did not comply with one of the
18 Government Code sections that identifies all the
19 elements for a test claim filing.

20 And so what it means to cure is this office has
21 determined, well, you have now met all the elements for
22 a test claim filing, and now the Commission is taking
23 jurisdiction over that test claim.

24 At that point, then we send out the test claim for
25 comment. We issue a draft staff analysis or a draft

1 proposed decision. And then we issue -- we receive
2 comments back on that. We then prepare a proposed
3 decision for the Commission's hearing.

4 So this matter is not even set for hearing yet. It
5 is still -- the record is not even closed. We
6 haven't -- I believe we're still in the comment phase of
7 the test claim. So we still have several more months
8 before the Commission will even hear the matter to
9 determine whether or not there is a reimbursable state
10 mandated program.

11 If the test claim is approved, then the Commission
12 has to adopt parameters and guidelines, which identify
13 all the reimbursable activities, the eligible claimants,
14 the period of reimbursement, any offsetting revenues.
15 Once that is adopted, that goes to the State
16 Controller's Office to issue claiming instructions,
17 which just provides the notice and the right of local
18 government to file their reimbursement claims with the
19 State Controller's Office. So we have many steps before
20 we can get to the Controller's Office.

21 And at this stage, the amount of money that City of
22 San Jose or Union City incurs is only relevant to the
23 extent that they show costs of at least a thousand
24 dollars for their claim, their whole test claim.

25 So the exact amount is not that relevant at this

1 stage.

2 CHAIRPERSON PERRAULT: Okay. Thank you.

3 Any other questions, Ms. Greene Ross? Any
4 comments?

5 (No response.)

6 CHAIRPERSON PERRAULT: No? Okay.

7 Any other comments or questions from commissioners
8 in the room?

9 (No response.)

10 CHAIRPERSON PERRAULT: Okay. All right. Seeing
11 none, is there a motion to either adopt staff's
12 recommendation or make a motion to --

13 MEMBER PAHLAND: I will move to adopt staff
14 recommendation.

15 MEMBER NASH: I will second that.

16 CHAIRPERSON PERRAULT: Okay. And we have a second.
17 If we could please call the roll.

18 MS. HALSEY: Mr. Adams.

19 MEMBER ADAMS: Aye.

20 MS. HALSEY: Ms. Clark.

21 MEMBER CLARK: Aye.

22 MS. HALSEY: Ms. Gallegos.

23 MEMBER GALLEGOS: Aye.

24 MS. HALSEY: Ms. Greene Ross.

25 MEMBER GREENE ROSS: Aye.

1 MS. HALSEY: Ms. Nash.

2 MEMBER NASH: Aye.

3 MS. HALSEY: Mr. Pahland.

4 MEMBER PAHLAND: Aye.

5 MS. HALSEY: Ms. Perrault.

6 CHAIRPERSON PERRAULT: Aye.

7 Okay. That motion carries.

8 We would like to ask the presenters participating
9 remotely for Item 2 to please turn off your video and
10 mute your microphones.

11 And then we will move --

12 MS. WINCHESTER: Thank you for your time,
13 Commissioners.

14 CHAIRPERSON PERRAULT: Yes. Thank you.

15 And now we will move on to Item 3.

16 MS. HALSEY: Next is Item 3. The Controller
17 informed the Commission staff that they do not intend to
18 speak on this item, and the claimant did not provide any
19 information about whether they would be participating in
20 this matter.

21 Senior Commission Counsel Eric Feller will please
22 present a proposed decision and parameters and
23 guidelines on Disclosure Requirements and Deferral of
24 Property Taxation, 22-TC-06.

25 At this time, we invite the parties and witnesses

1 to please turn on their video and unmute their
2 microphone.

3 CHAIRPERSON PERRAULT: Eric.

4 MR. FELLER: Good morning.

5 These parameters and guidelines are based on the
6 test claim decision the Commission adopted on
7 July 26th of this year and the draft expedited
8 parameters and guidelines issued on August 1st.

9 The Commission found that the test claim statute
10 imposes a reimbursable state mandate on only the County
11 of Los Angeles for two categories of reimbursable
12 activities:

13 First, for them to process requests to defer
14 property taxes filed by property owners over 55 or
15 severely disabled or victims of a wildfire or natural
16 disaster and who seek relief under Proposition 19; to
17 transfer the taxable base year value of their primary
18 residence to a replacement primary residence.

19 Second, to print summaries on each tax bill of the
20 availability of Proposition 19 property tax relief and
21 tax deferment procedures for properties that have been
22 purchased, newly constructed, or changed ownership in
23 the year before the tax bill.

24 As Heather mentioned, no substantive comments were
25 filed on the draft expedite parameters and guidelines.

1 Staff recommends the Commission adopt the proposed
2 decision and parameters and guidelines with the
3 reimbursement period beginning September 28, 2022, and
4 authorize staff to make any technical, nonsubstantive
5 changes following the hearing.

6 CHAIRPERSON PERRAULT: Thank you very much.

7 We do not have comments from the Controller. And
8 it looks like we do not have any claimants.

9 MS. MAGEE: Page 7.

10 CHAIRPERSON PERRAULT: What's that?

11 MS. MAGEE: Ms. Yap.

12 CHAIRPERSON PERRAULT: Yes -- I just --

13 MS. MAGEE: No. Nobody else.

14 CHAIRPERSON PERRAULT: Ms. Yap, from the Department
15 of Finance, did you have any comments on this item?

16 MS. YAP: Hi. Kaily Yap, Department of Finance.

17 We have no comments on this matter.

18 Thank you.

19 CHAIRPERSON PERRAULT: Thank you.

20 Okay. Are there any public comments on this item
21 before I move to the Commission?

22 (No response.)

23 CHAIRPERSON PERRAULT: There are none in the room.

24 Are there any online?

25 MR. SUPACHANA: Madam Chair, there are no public

1 comments online.

2 CHAIRPERSON PERRAULT: Okay. Seeing none, are
3 there any comments or questions from members?

4 (No response.)

5 CHAIRPERSON PERRAULT: Seeing none in the room
6 either online?

7 (No response.)

8 CHAIRPERSON PERRAULT: Ms. Greene Ross, are you
9 trying to unmute?

10 (No response.)

11 CHAIRPERSON PERRAULT: Okay. Excellent.

12 Okay. Then seeing no further discussion, is there
13 a motion to adopt staff's recommendation?

14 MEMBER ADAMS: Madam Chair, I would so move.

15 CHAIRPERSON PERRAULT: Okay. Moved by Mr. Adams.
16 Is there a second?

17 MEMBER PAHLAND: I will second.

18 CHAIRPERSON PERRAULT: Second by Mr. Pahland.
19 If we could please have a roll call.

20 MS. HALSEY: Mr. Adams.

21 MEMBER ADAMS: Aye.

22 MS. HALSEY: Ms. Clark.

23 MEMBER CLARK: Aye.

24 MS. HALSEY: Ms. Gallegos.

25 MEMBER GALLEGOS: Aye.

1 MS. HALSEY: Ms. Greene Ross.

2 MEMBER GREENE ROSS: Aye.

3 MS. HALSEY: Ms. Nash.

4 MEMBER NASH: Aye.

5 MS. HALSEY: Mr. Pahland.

6 MEMBER PAHLAND: Aye.

7 MS. HALSEY: Ms. Perrault.

8 CHAIRPERSON PERRAULT: Aye.

9 All right. Thank you. That motion carries.

10 We will now ask presenters participating remotely
11 for Item 3 to please turn off your video and mute your
12 microphones.

13 And we will go ahead and move on to Item 4.

14 MS. HALSEY: Commission Counsel Anna Barich will
15 present a proposed decision on California Assessment of
16 Student Performance and Progress, or CAASPP.

17 At this time, we invite the parties and witnesses
18 for Item 4 participating remotely to please turn on your
19 video and unmute your microphone.

20 MS. BARICH: Good morning.

21 This incorrect reduction claim alleges that the
22 State Controller's Office incorrectly reduced
23 reimbursement claims filed by Fresno Unified School
24 District for costs claimed to implement the California
25 Assessment of Student Performance and Progress Program,

1 or CAASPP, which tests students in grades 3 through 8
2 and grade 11 in English language arts and mathematics,
3 using a secured browser-based testing platform.

4 The claimant sought reimbursement for the purchase
5 of new computing devices and broadband internet services
6 to use for testing.

7 The Controller reduced the claim because it found
8 that the claimant did not provide adequate supporting
9 documentation that its existing inventory was
10 insufficient to meet the testing specifications, as
11 required by the parameters and guidelines; and that the
12 claimant's existing supply of computing devices and
13 broadband internet services was sufficient, according to
14 a tool provided by the CDE and the testing contractor
15 called the Smarter Balanced Technology Readiness
16 Calculator.

17 Staff finds that the Controller's reduction is
18 correct as a matter of law. The state-mandated program
19 does not require school districts to provide a computing
20 device to every student, and the program is designed to
21 be administered on older computer -- computing devices
22 during a 60-day -- during a 60-day testing window, so
23 that a district can comply with its test -- within its
24 existing resources.

25 Thus, to be entitled for reimbursement, the

1 parameters and guidelines require a claimant to show
2 with supporting documentation how its existing computing
3 devices are insufficient to administer the CAASPP test
4 to students based on the minimum technology
5 specifications within the testing window identified in
6 the CDE regulations.

7 The claimant's documentation does not support that
8 finding here.

9 In addition, using an SBAC calculator to find the
10 minimum number of devices needed was within the
11 Controller's audited authority and was not arbitrary,
12 capricious, or lacking in evidentiary support.

13 Accordingly, staff recommends that the Commission
14 adopt the proposed decision and deny this incorrect
15 reduction claim; and to authorize staff to make any
16 technical, nonsubstantive changes to the proposed
17 decision following the hearing.

18 Thank you.

19 CHAIRPERSON PERRAULT: Thank you.

20 Okay. Just as a reminder, parties and witnesses
21 will please state your name for the record.

22 Mr. Palkowitz and Ms. Kelstrom for the claimants,
23 would you like to begin?

24 MR. PALKOWITZ: Yes. Good morning. Thank you very
25 much.

1 I'm appearing on behalf of the Fresno Unified
2 School District. Also in attendance is Kim Kelstrom,
3 chief executive of the Fiscal Services for the Fresno
4 Unified School District.

5 So this matter, unlike the previous agenda item,
6 involves a test claim that has already been approved for
7 reimbursement. After parameters and guidelines were
8 issued and after the draft, the claimant and other
9 school districts submitted their claim for
10 reimbursement. The district agreed with the
11 Controller's decision that disallowed the purchase of
12 computer devices that was required by this mandate.

13 This mandate changed the way testing was going to
14 be done throughout California by requiring technology
15 devices such as laptops, iPads, and other
16 computer-related devices for all testing.

17 After the district submitted their claim, the
18 Controller did an audit. In that audit, the Controller
19 disallowed the purchase of approximately 5,000 computing
20 devices. This represented 15 percent of the total
21 district's devices.

22 The reason the district purchased these devices,
23 which was anticipated by this mandate, was that they
24 needed to provide devices for the testing of students.
25 This district has a population of over 67,000 students,

1 which over 40,000 were tested through grades through --
2 3 through 8 and number 11.

3 What this mandate required was that testing was to
4 be done over a 60-day period during the school year,
5 which represented 12 weeks at five days a week. There
6 was no requirement to do testing over a shorter period
7 of time.

8 What the district realized, in they having a 60-day
9 period, was that the students would receive additional
10 instruction if they had tested near the end of the
11 60-day period versus students that had testing during
12 the beginning of the 60-day period.

13 As a result, the district, in an effort to remove
14 these inequities, selected a 35-day period. The
15 Controller admitted that there is no requirement to have
16 60 days, and accepted that 35-day requirement was
17 reasonable.

18 The reason -- again, these inequities is that the
19 district has a very high free and reduced lunch
20 population of 90 percent, which includes lower
21 socioeconomic students along with English language
22 learners.

23 Furthermore, the district is a large district. It
24 includes a period of nine -- it includes 95 different
25 sites that needs to be tested and it is over a

1 geographical area of 6,000 square miles.

2 Instead of -- even with the 30-day, five-day
3 period, the district needed these devices to rotate
4 among the 95 sites, which involves rotating computers on
5 wheels, moving the devices through classrooms, through
6 different sites. As a result, as I mentioned, the
7 district did need to purchase approximately 5,100 new
8 devices, and for that -- that is what they claimed in
9 their reimbursement claim.

10 It was considered, during the parameters and
11 guidelines process and during the test claim process,
12 that schools would need to purchase additional devices,
13 and that when schools purchased them, it could be
14 staggered. The district purchased them all in the
15 calendar fiscal year '15/'16, '16/'17 for that testing.

16 The guidelines that the Controller used was -- was
17 referred to as SBAC. That is an acronym for Smart
18 Balance [sic]. But there is no requirement that that be
19 used as only the way to determine if the devices needed
20 were necessary.

21 In effect, the district contends that these
22 one-time purchases were reasonable; that the 30-day --
23 35-day testing period was reasonable to remove the
24 inequities. And, as a result, they feel that the amount
25 of the disallowance for the \$5,100 -- 5,100 devices was

1 unreasonable and was not supported by the parameters and
2 guidelines, nor was it supported by the documentation
3 the district provided.

4 The district did provide a total inventory of all
5 the devices and what they did is they backed out the
6 devices they purchased for this program. So, in effect,
7 they had an inventory of the devices they had in
8 existence before this program.

9 Based on all that evidence, we feel that an
10 incorrect reduction claim should be granted, and the
11 district should be reimbursed for the purchase of these
12 devices.

13 I, myself, and Ms. Kelstrom is available to respond
14 to any comments or questions you may have.

15 Thank you.

16 CHAIRPERSON PERRAULT: Thank you, Mr. Palkowitz.
17 Appreciate that.

18 Mr. Solis Galeana and Ms. Alexander, for Department
19 of Finance, do you have any comments?

20 MR. SOLIS GALEANA: Good morning, Commissioners and
21 staff. Hugo Solis Galeana with the Department of
22 Finance.

23 We appreciate the staff analysis and agree with the
24 staff's finding that the Controller's reduction is
25 correct. We concur with the recommendation that the

1 Commission adopt the proposed decision to deny the
2 incorrect claims reduction.

3 I'm with my colleague, Amber Alexander, and we're
4 happy to answer questions at the appropriate time if
5 needed.

6 Thank you.

7 CHAIRPERSON PERRAULT: Thank you.

8 Okay. Moving on. Mr. Howell for the State
9 Controller's Office, do you have any comments?

10 MR. HOWELL: Not at this time.

11 Ken Howell, State Controller's Office, Division of
12 Audits. I was the audit manager over this particular
13 engagement. So if anybody has any questions, I can
14 certainly answer those.

15 But -- but we do agree with the proposed decision
16 as well.

17 CHAIRPERSON PERRAULT: Thank you. Thank you,
18 Mr. Howell.

19 Before I move to Commission members, are there any
20 public comments?

21 (No response.)

22 CHAIRPERSON PERRAULT: Seeing none in the room, are
23 there any online?

24 MR. SUPACHANA: Madam Chair, there are no online
25 public comments.

1 CHAIRPERSON PERRAULT: Okay. Excellent.

2 Are there any questions from the members?

3 Mr. Pahland.

4 MEMBER PAHLAND: So I have a question for

5 Mr. Palkowitz.

6 Does the district contend that it would be
7 impossible for it to administer the tests without having
8 bought new computers?

9 Again, let me rephrase it: Is it impossible to
10 administer the test in compliance with state law without
11 having to purchase new computers?

12 MR. PALKOWITZ: I believe I would say yes, because
13 of the discretion that they can do it on a -- a shorter
14 period of time. And so there, it would have been
15 impossible to do it if they stayed with the --

16 MEMBER PAHLAND: Go ahead.

17 MR. PALKOWITZ: Go ahead. I'm sorry.

18 MEMBER PAHLAND: Yeah. I guess my question is,
19 state law gives you a certain amount of time. And I
20 understand the advantage in the shorter amount of time.
21 I'm not questioning that component.

22 But would it have been impossible to comply with
23 the state law as written, with the district's existing
24 computer inventory?

25 MR. PALKOWITZ: I really can't comment on what is

1 possible or what's impossible.

2 The district made a decision on what was reasonable
3 to comply with the state mandate. They have discretion
4 in doing that. It is difficult to say, sir, if that
5 would have been impossible or not.

6 MEMBER PAHLAND: Okay. Thank you.

7 CHAIRPERSON PERRAULT: Other questions?

8 MEMBER PAHLAND: No.

9 CHAIRPERSON PERRAULT: Ms. Clark, I see your hand
10 is raised.

11 MEMBER CLARK: Hi. Thank you.

12 I just noted that it seemed like in the briefing,
13 there was a determination using this calculator by the
14 Controller's Office that even using the 35-day testing
15 window, it would still only require 4,215 devices
16 within -- within the existing inventory.

17 And I just wondered if -- if folks could speak to
18 how that number, you know, was generated and why that
19 number is not sufficient, if that's the, you know,
20 appellant's contention.

21 CHAIRPERSON PERRAULT: Mr. Howell, do you want to
22 respond? Or Mr. Palkowitz? Go ahead.

23 MR. PALKOWITZ: Sure. Thank you.

24 So the Smart Balance technology, that was not part
25 of the parameters and guidelines. They used that as an

1 outside source as using some determination. That wasn't
2 discussed in the parameters and guidelines, so there was
3 no requirement to be used.

4 Again, that -- even using that, that was just some
5 type of guideline of criteria that is not to be
6 determinative on what should be the amount of devices to
7 be used.

8 So unless there's a strict interpretation that that
9 must be filed -- or followed, which I don't believe the
10 Controller admitted to in their audit, so I don't think
11 that should be the determinant of what's going to be the
12 amount of devices that are going to be allowed or
13 disallowed.

14 CHAIRPERSON PERRAULT: Mr. Howell, did you want to
15 respond to methodology or -- also, I'm looking at staff
16 here if there's a comment in response.

17 MS. BARICH: I would let Mr. Howell speak first.

18 CHAIRPERSON PERRAULT: Go ahead, Mr. Howell.

19 MR. HOWELL: I'm sorry.

20 CHAIRPERSON PERRAULT: Go ahead.

21 MR. HOWELL: One thing I did -- I did notice by
22 going through and reading the decision. By using this
23 approach, this kind of methodology, the Commission
24 actually pointed out on the top of page 56, if anything,
25 this method of using this calculator, overestimates --

1 overestimates the claimant's actual need and gives the
2 claimant its best possible chance, as the Controller
3 finding the claimant's existing bandwidth was
4 insufficient.

5 MS. BARICH: Mr. Howell --

6 MR. HOWELL: So bandwidth, we --

7 MS. BARICH: -- to clarify, that was
8 specifically --

9 MR. HOWELL: Oh, I'm sorry.

10 MS. BARICH: -- for the issue of bandwidth.

11 On using the calculator for the number of computers
12 needed, that was a separate question.

13 MR. HOWELL: Correct. Yes.

14 The issue -- but for our purposes, the issue of
15 using that calculator actually served two purposes. One
16 was to check their current -- what we did when we --
17 when we initiated the engagement, we would always ask
18 for that initial inventory list. From there, once we
19 had that initial inventory list, it allows us the
20 opportunity to go through and actually remove any
21 computing device that doesn't meet the minimum
22 specifications. And then kind of use that as the base
23 level and then determine, okay, based on the number of
24 students, the number of students tested, the number of
25 existing computing devices, would they have enough,

1 without needing to go out and buy additional devices
2 within the mandated testing window, which is 60 days.

3 Now, if a district chooses to use a shortened time
4 window, they can do that, but that doesn't mean it is
5 mandated. And, therefore, that decision doesn't then
6 mandate the requirement that they go out and buy
7 additional computers to then meet that shortened time
8 window to get all the testing done by -- by the time the
9 testing needs to be finished.

10 So when we use that SBAC calculator, it was a
11 way -- it was publicly available. It was actually
12 district -- it was actually a -- designed for districts
13 to be able to use to assess their current inventory
14 levels and to figure out if what they have on hand at
15 the time is enough to meet the requirements of the
16 mandated program.

17 So we thought, okay, well, if it's available for
18 them, it's available for us as well. Let's see if their
19 existing inventory list -- once we remove all, again,
20 devices that are specifically for student use, let's
21 figure out if that's enough. And by doing that, that's
22 how we came up with the number of 4,000.

23 So even -- even skewing the numbers to favor the
24 district in the most advantageous way possible, they
25 still only needed around 42-, 4300 computing devices,

1 but they had 31,000.

2 So when you factor all of that in, it's like
3 there's such a great disparity here. It is like they
4 haven't been able to show us any evidence at all that
5 they needed the additional computing devices to get the
6 testing done within the testing window.

7 CHAIRPERSON PERRAULT: Thank you, Mr. Howell.

8 Additional comments from staff?

9 MS. BARICH: I will let Camille.

10 MS. SHELTON: I was just going to circle it back to
11 the parameters and guidelines and the decision on the
12 parameters and guidelines. Those are binding on the
13 parties; they are regulatory in nature. And the
14 parameters and guidelines require that the claimants
15 shall maintain supporting documentation showing how
16 their existing inventory is not sufficient to comply
17 with the minimum technology specifications. And that
18 was not provided. So on that basis alone, you could
19 deny the incorrect reduction claim.

20 Here, the Controller went further to actually see
21 if they had a problem with the number of computers --
22 computing devices they had and the bandwidth on the
23 internet.

24 And they are allowed to use the calculator. The
25 calculator was fully discussed in the Commission's

1 decision as a method to see if -- if each district had
2 sufficient materials to comply with the mandate.

3 So you have enough information here on that.

4 Thank you.

5 CHAIRPERSON PERRAULT: Thank you.

6 Are there any other comments from Commission
7 members?

8 (No response.)

9 CHAIRPERSON PERRAULT: Yeah. I will just -- I just
10 want to comment and just reiterate, for the record, that
11 while the claimant is using a 35-day test period, that
12 is within their discretion. But the 60-day requirement
13 is still what is withheld. Correct?

14 MS. BARICH: It's the -- it's the maximum amount of
15 testing time that they are allowed by the state. It is
16 what they have to complete their testing within --

17 CHAIRPERSON PERRAULT: Their window.

18 MS. BARICH: -- at minimum.

19 CHAIRPERSON PERRAULT: And then the only other
20 thing I just wanted to just verify on, that there was a
21 statement made that the purchasing window time period
22 also seems to be an impact; that it was allowable -- it
23 was allowed for districts to stagger their purchases
24 across but they chose to do it in a compacted way. But
25 again, that's a discretionary choice.

1 MS. BARICH: The -- the purpose of the staggering
2 is that the -- is that school districts might find that
3 their existing supply of computing devices are suddenly
4 no longer able to use the -- four or five years out,
5 they are no longer compliant with the -- with the
6 testing requirement, so they need new computers to
7 replace those old ones. That sort of thing.

8 CHAIRPERSON PERRAULT: Okay. Thank you.

9 Okay. With that, unless there's other questions,
10 I'm looking to see if there is a motion to either adopt
11 the staff recommendation or otherwise.

12 MEMBER PAHLAND: I will move to adopt the staff
13 recommendation.

14 CHAIRPERSON PERRAULT: Mr. Pahland will move; and I
15 will go ahead and second.

16 If we could please have a roll call.

17 MS. HALSEY: Mr. Adams.

18 MEMBER ADAMS: Aye.

19 MS. HALSEY: Ms. Clark.

20 MEMBER CLARK: Aye.

21 MS. HALSEY: Ms. Gallegos.

22 MEMBER GALLEGOS: Aye.

23 MS. HALSEY: Ms. Greene Ross.

24 MEMBER GREENE ROSS: Aye.

25 MS. HALSEY: Ms. Nash.

1 MEMBER NASH: Aye.

2 MS. HALSEY: Mr. Pahlund.

3 MEMBER PAHLAND: Aye.

4 MS. HALSEY: Ms. Perrault.

5 CHAIRPERSON PERRAULT: Aye.

6 Okay. That motion carries.

7 We'll go ahead now and ask presenters participating
8 remotely for Item 4 to please turn off your videos and
9 mute your microphones.

10 And we will move on to Item 5.

11 Thank you again for participating, everyone.

12 MS. HALSEY: Item 5 is reserved for county
13 applications for a finding of significant financial
14 distress, or SB 1033 applications. No SB 1033
15 applications have been filed.

16 Next, Program Analyst Jill Magee will please
17 present Item 6, the Legislative Update.

18 CHAIRPERSON PERRAULT: Jill.

19 MS. MAGEE: Good morning. The following are the
20 legislative updates since the last time the Commission
21 met:

22 The last day of the two-year legislative session
23 was August 31st, 2024. The Governor must sign or veto
24 all bills that passed by September 30th, 2024.

25 First, AB 1781, State mandates: claims. This

1 substantive spot bill would have changed the minimum
2 mandate reimbursement claim amount from \$1,000 to \$800.
3 This bill did not pass before the end of the two-year
4 session and is now dead.

5 Staff will continue to monitor legislation for
6 bills that impact the mandates process.

7 Thank you.

8 CHAIRPERSON PERRAULT: Thank you.

9 Move on to Item 7.

10 MS. HALSEY: Next is the Chief Legal Counsel
11 Report. Camille Shelton will please present Item 7.

12 MS. SHELTON: Good morning.

13 There have been no new filings; no recent
14 decisions.

15 We did participate in oral argument a couple of
16 weeks ago, on September 13th, in the City of San Jose v.
17 Commission on State Mandates case dealing with the
18 remand of lead sampling.

19 Thank you.

20 CHAIRPERSON PERRAULT: Thank you.

21 All right. Heather, the Executive Director's
22 Report.

23 MS. HALSEY: This is an action and an information
24 item. And first, we will take up the action item, which
25 is the proposed 2025 Commission hearing calendar.

1 Commission meetings are generally held on the fourth
2 Fridays of odd months unless they conflict with a
3 holiday.

4 In 2025, the Thanksgiving holiday conflicts with
5 the Commission's regular hearing date. The May hearing
6 is proposed for the Friday of Memorial Day weekend, as
7 usual. And, therefore, all but one of the 2025 regular
8 meetings are proposed for the fourth Fridays of odd
9 months.

10 In addition, tentative hearing dates are proposed
11 for April 25th, 2025, and October 24th, 2025.

12 Staff recommends the Commission adopt the proposed
13 2025 hearing calendar.

14 CHAIRPERSON PERRAULT: Thank you, Ms. Halsey.

15 Are there any questions or comments from the
16 commissioners?

17 (No response.)

18 CHAIRPERSON PERRAULT: Seeing none. None online.

19 Is there a motion?

20 MEMBER ADAMS: Madam Chair, I so move.

21 CHAIRPERSON PERRAULT: Okay. Move by Mr. Adams.

22 Is there a second?

23 MEMBER NASH: Second.

24 CHAIRPERSON PERRAULT: Second by Ms. Nash.

25 If we could please have roll call.

1 MS. HALSEY: Mr. Adams.

2 MEMBER ADAMS: Aye.

3 MS. HALSEY: Ms. Clark.

4 MEMBER CLARK: Aye.

5 MS. HALSEY: Ms. Gallegos.

6 MEMBER GALLEGOS: Aye.

7 MS. HALSEY: Ms. Greene Ross.

8 MEMBER GREENE ROSS: Aye.

9 MS. HALSEY: Ms. Nash.

10 MEMBER NASH: Aye.

11 MS. HALSEY: Mr. Pahland.

12 MEMBER PAHLAND: Aye.

13 MS. HALSEY: Ms. Perrault.

14 CHAIRPERSON PERRAULT: Aye.

15 Thank you. That motion carries.

16 And now if you want to provide us the informational
17 portion of your report.

18 MS. HALSEY: After this hearing, there are 20 --
19 sorry, 37 pending test claims, 35 of which are regarding
20 stormwater. There are one parameters and guidelines and
21 six statewide cost estimates and no IRCs pending.

22 Commission staff expects to complete all of the
23 currently pending test claims by approximately the
24 May 2027 Commission meeting, depending on staffing and
25 other workload.

1 However, some of the test claims may be heard and
2 decided earlier than currently indicated if they are
3 consolidated for a hearing.

4 And that is all I have.

5 CHAIRPERSON PERRAULT: Are there any questions on
6 the report?

7 (No response.)

8 CHAIRPERSON PERRAULT: Okay. Seeing none.

9 Okay. Well, before we move into closed session, it
10 is -- unfortunately, it is our Executive Director's last
11 full hearing. And in honor of her departure, we didn't
12 want to conclude our open meeting without acknowledging
13 all of the wonderful work she has done for this team.
14 Ms. Halsey has been with this team for a very long time,
15 and I know that they are going to miss her. All the
16 while, we still obviously wish her the best in
17 retirement.

18 But before we do that -- and Heather, you are not
19 here, but we do have a resolution that we would like
20 to -- we will present to you. The staff will get it to
21 you at -- sometime after the meeting.

22 But before we move into closed session, I would
23 like to just go ahead and read the resolution into the
24 record. And then if other members have comments that
25 they would like to provide, we'll go there.

1 So -- but bear with me while I read this. A little
2 bit on the lengthy side.

3 But in honor of Heather Halsey, Executive Director
4 for the Commission on State Mandates, from 2008 to 2024.

5 Whereas, Heather Halsey has been with the
6 Commission since 2008, starting as a senior staff
7 counsel, and was appointed Executive Director in
8 March of 2012; and

9 Whereas, prior to serving as staff to the
10 Commission, Heather was senior staff counsel for the
11 Department of Health Care Services and associate
12 attorney for the Law Firm of Hatch & Parent; a committee
13 consultant for the Assembly; and staff counsel and
14 legislative analyst for the Governor's Office of
15 Planning and Research, where she served as a member of
16 the Commission from April 2000 to May 2002; and

17 Whereas, Heather, as Executive Director,
18 established internal processes for the timely completion
19 and review of test claims, incorrect reduction claims,
20 and other matters pending with the Commission; and
21 oversaw amendments to the Commission's regulations to
22 streamline the process for these matters, which resulted
23 in the reduction of the backlog that existed when she
24 was appointed, including a backlog of 141 incorrect
25 reduction claims; and

1 Whereas, Heather quickly and successfully
2 transitioned Commission staff to working remotely during
3 the COVID-19 pandemic, including remote and hybrid
4 public hearings of the Commission, kept staff informed,
5 and implemented policies and procedures to protect the
6 health and safety of Commission staff, resulting in no
7 Commission staff outbreaks; and

8 Whereas, Heather kept staff on task and urged them
9 to follow the process and, in the same time, encouraged
10 the attorneys to enjoy stormwater claims and urged them
11 all to take vacations, exercise, and have fun.

12 Now, therefore be it resolved, the Commission on
13 State Mandates warmly congratulates Heather Halsey on
14 her retirement and wishes her days and nights filled
15 with travel, warm beaches, good authentic food, and
16 music.

17 Done this 27th day of September 2024, in the County
18 of Sacramento, County of California. In witness
19 thereof, by the Commission on State Mandates.

20 Thank you so much, Heather, for everything you have
21 provided to not just the Commission members, but I know
22 your -- your staff and your team. And we wish you the
23 best of luck and relaxation in your retirement.

24 So with that, are there any other comments from
25 commissioners on this item?

1 Mr. Adams.

2 MEMBER ADAMS: Thank you, Madam Chair.

3 Heather, I just want to say all the best in all
4 future endeavors. I can't believe that I've been
5 sitting here six or seven years. And it seems like just
6 yesterday that I sent you a picture of Halsey Hall at
7 Annapolis, and you called me on the phone and said,
8 "What the heck are you doing there?" Named after
9 Grandpa.

10 So again, congratulations, and I will miss you very
11 much.

12 CHAIRPERSON PERRAULT: Commissioners?

13 MS. SHELTON: Can I go?

14 CHAIRPERSON PERRAULT: Yes, of course. Go ahead.

15 MS. SHELTON: Well, Heather and I have been working
16 together in some capacity for almost 20 years, which is
17 unbelievable. She is one of the hardest working people
18 that I know.

19 When she came here, as we indicated in the
20 resolution, we had a huge backlog of test claims and
21 incorrect reduction claims. And to Heather's credit,
22 she really did establish and develop internal processes
23 and procedures to address that backlog. She held up and
24 was responsible for streamlining the Commission's
25 regulations so that the process got rid of duplicate

1 stages in the hearing process. We now have draft
2 expedited Ps and Gs, thank you to Heather.

3 But the internal processes really helped me with my
4 review of all the items that went before the Commission.
5 We were able to stagger things. And it became more
6 seamless than crazy right before a Commission hearing.
7 So that's a huge accomplishment, Heather. I think you
8 have done a great job, and we are really going to miss
9 you.

10 So congratulations on your retirement.

11 CHAIRPERSON PERRAULT: Any others?

12 Mr. Pahlund.

13 MEMBER PAHLAND: Yeah. Certainly.

14 I've been here a very short period of time, and,
15 you know, I have only seen what goes on every other
16 month and missed most of the day-to-day. But in my very
17 brief period here, it seems like you have left a very
18 indelible mark on the Commission on State Mandates.

19 And, you know, it is clear, a steady hand is -- you
20 know, taken in an organization that's perhaps in some
21 disarray and, you know, created a very smooth
22 well-running operation that does extremely important
23 work. So I would like to express my thanks as a board
24 member for your service here.

25 MS. HALSEY: Thank you so much.

1 CHAIRPERSON PERRAULT: Well, thank you. Heather,
2 again, we appreciate it, and I know you will be -- will
3 be missed greatly.

4 So as I said, we have a fancy version of what I
5 just read to get to you, and the staff will make sure
6 you receive that.

7 So again, thank you.

8 MS. HALSEY: I just want to say --

9 CHAIRPERSON PERRAULT: Yes.

10 MS. HALSEY: I just wanted to say how thankful I am
11 to the Commission for appointing me to the position of
12 Executive Director and giving me their trust. And also
13 giving me countless opportunities to grow personally and
14 professionally over the years. And I will miss the
15 support I received from the entire Commission staff
16 throughout my tenure as Executive Director. Each of you
17 has contributed so much to the Commission's achievements
18 over the past 12 years. And I look forward to watching
19 you all continue to grow, and I wish you all continued
20 success in your careers and beyond.

21 Thank you.

22 CHAIRPERSON PERRAULT: Thank you.

23 Okay. With that, we are going to go ahead and
24 recess to closed session.

25 The Commission will meet in closed executive

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

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

9 And we will reconvene in open session in
10 approximately 15 minutes.

11 (Closed session was held from
12 11:32 a.m. to 11:53 a.m.)

13 CHAIRPERSON PERRAULT: So we'll go ahead and
14 reconvene into open session.

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

22 Commission also conferred on personnel matters
23 pursuant to Government Code section 11126(a)(1).

24 So with no further business to discuss, I would
25 like to entertain a motion to adjourn.

1 MEMBER NASH: So moved.

2 CHAIRPERSON PERRAULT: Moved by Ms. Nash.

3 A second?

4 MEMBER ADAMS: I will second.

5 CHAIRPERSON PERRAULT: Second by Mr. Adams.

6 Can we please have a roll call?

7 MS. HALSEY: Mr. Adams.

8 MEMBER ADAMS: Aye.

9 MS. HALSEY: Ms. Clark.

10 MEMBER CLARK: Aye.

11 MS. HALSEY: Ms. Gallegos.

12 MEMBER GALLEGOS: Okay. Aye.

13 MS. HALSEY: Ms. Greene Ross.

14 MEMBER GREENE ROSS: Aye.

15 MS. HALSEY: Ms. Nash.

16 MEMBER NASH: Aye.

17 MS. HALSEY: Mr. Pahlant.

18 MEMBER PAHLANT: Aye.

19 MS. HALSEY: Ms. Perrault.

20 CHAIRPERSON PERRAULT: Aye.

21 And with that, we will go ahead and adjourn the
22 Commission on State Mandates at 11:54 a.m.

23 Thank you, everybody, and see you at our next
24 meeting.

25 (Proceedings concluded at 11:54 a.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing proceedings were reported in shorthand by me, Kathryn S. Swank, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings nor in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of October 2024.



KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
License No. 13061

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