

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
July 27, 2018

Present: Member Jacqueline Wong-Hernandez, Chairperson
Representative of the Director of the Department of Finance
Member Andre Rivera, Vice Chairperson
Representative of the State Treasurer
Member Lee Adams
County Supervisor
Member Richard Chivaro
Representative of the State Controller
Member Sarah Olsen
Public Member
Member Carmen Ramirez
City Council Member

Absent: Member Ken Alex
Director of the Office of Planning and Research

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 Wong-Hernandez called the meeting to order at 10:00 a.m. Executive Director Heather Halsey stated that Mr. Morgan, the Director of OPR's designee, would not be able to attend the hearing and called the roll.

APPROVAL OF MINUTES

Member Olsen made a motion to adopt the minutes. With a second by Member Adams, the May 25, 2018 hearing minutes were adopted by a vote of 4-0 with Member Ramirez abstaining and Members Alex and Chivaro absent.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

The Chairperson asked if there was any public comment. Mr. Dillon Gibbons, California Special Districts Association, asked for the affiliation of all the members and designees present. Chairperson Wong-Hernandez stated her name and that she permanently represents the Director of Finance and chairs the Commission. Member Rivera stated his name and that he represents the State Treasurer. Member Ramirez stated her name, that she is a city council member for the City of Oxnard, and represents herself and generally cities' interest. Member Adams stated his name and that he is a Sierra County supervisor, representing local government. Member Olsen stated her name and that she is the public member. Chairperson Wong-Hernandez noted that if Member Chivaro joins the meeting he represents the State Controller.

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

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

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

Item 2 Appeal of Executive Director Decisions

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

INCORRECT REDUCTION CLAIM

Item 3 *Integrated Waste Management*, 15-0007-I-12

Public Resources Code Sections 40148, 40196.3, 42920-42928; Public Contract Code Sections 12167 and 12167.1; Statutes 1992, Chapter 1116 (AB 3521); Statutes 1999, Chapter 764 (AB 75); State Agency Model Integrated Waste Management Plan (February 2000)

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

San Mateo County Community College District, Claimant

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission partially approve this Incorrect Reduction Claim and request that the State Controller reinstate \$8,197 to the claimant.

Lisa Kurokawa, appeared on behalf of the State Controller's Office. The claimant notified Commission staff that it would not be sending anyone to the hearing.

Ms. Kurokawa stated that the State Controller's Office agrees with the staff's conclusion and recommendation. Without further discussion among the Commission members, staff, and parties, Member Ramirez made a motion to adopt the staff recommendation. With a second by Member Rivera, the motion to partially approve this Incorrect Reduction Claim was adopted by a vote of 5-0 with Members Alex and Chivaro absent.

INCORRECT REDUCTION CLAIM

Item 4 *The Stull Act*, 14-9825-I-02

Education Code Sections 44660-44665;
Statutes 1983, Chapter 498; Statutes 1999, Chapter 4

Fiscal Years: 2005-2006, 2006-2007, 2007-2008, and 2008-2009

Carlsbad Unified School District, Claimant

Senior Commission Counsel Matt Jones presented this item and recommended that the Commission deny this Incorrect Reduction Claim.

Parties were represented as follows: Masha Vorobyova, representing the State Controller's Office. Sean Mick appeared on behalf of the claimant.

Mr. Mick stated that the claimant would like to submit on the record. Ms. Vorobyova stated that the State Controller's Office agrees with the staff's conclusion and recommendation. Without further discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to partially approve this Incorrect Reduction Claim was adopted by a vote of 5-0 with Members Alex and Chivaro absent.

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

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

No applications were filed.

STAFF REPORTS

- Item 6 Legislative Update (info)

Program Analyst Kerry Ortman presented this item. Ms. Ortman stated that the Governor signed SB 840, the Budget Act of 2018, and provided a description of the funding provided. Ms. Ortman also provided an update on SB 1498, the Local Government Omnibus Act of 2018, which proposed amending Government Code section 17551 to specify that for purposes of filing a test claim based on the date of first incurring increased costs, the phrase "within 12 months" means by June 30th of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant. Ms. Ortman noted that on May 10th, 2018, the bill passed to the Assembly and is now in Committee on Appropriations.

Member Chivaro joined the meeting.

Chairperson Wong-Hernandez recognized Mr. Gibbons from the California Special Districts Association, who requested to provide testimony, and reminded him that this is an information item and no action would be taken. Mr. Gibbons thanked the Commission and stated that following the amendments to the Commission's regulations, which realign the regulations with the Government Code to require the filing of a test claim not later than 12 months after first incurring increased costs as a result of a statute or executive order, language was placed into the local government omnibus bill, SB 1498, to bring back the previous regulatory language allowing the filing of a test claim by the June 30th deadline of the fiscal year following the fiscal year costs were first incurred. Mr. Gibbons questioned why the Director of Finance, "a member of the Commission", had submitted opposition to SB 1498 resulting in the language in the bill being pulled.

Chairperson Wong-Hernandez explained that there is a "clear delineation between the positions of the Department of Finance on pieces of legislation and the Department of Finance's role in this Commission, to the point that we're not even allowed to talk about things." Chief Legal Counsel Camille Shelton explained that the Department of Finance is a party before the Commission and that the Commission has not filed any bill analyses, or supported or opposed any bill before the Legislature. Executive Director Heather Halsey explained that she received a call from the Department of Finance, was asked for the Commission's position on SB 1498, replied that the Commission had taken no position, and provided the Department of Finance with

background information on the regulatory package which shows that consistency with the Government Code was not the only reason for the regulatory change. Member Ramirez stated that she had never seen the Commission take a position on any legislation, thanked Mr. Gibbons for his testimony and suggested that perhaps another forum would be more effective for his argument. Chief Legal Counsel Camille Shelton noted that the Department of Finance sues the Commission all the time and that the Department of Finance and the Commission are not the same.

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

Chief Legal Counsel Camille Shelton presented this item.

Item 8 Executive Director: Workload Update and Tentative Agenda Items for the September and November 2018 Meetings (info)

Executive Director Heather Halsey presented this item.

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

A. PENDING LITIGATION

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

Trial Courts:

1. ***On Remand from California Supreme Court, Case No. S214855, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al*** (petition and cross-petition)
Los Angeles County Superior Court, Case No. BS130730, Second District Court of Appeal, Case No. B237153 [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]
2. ***On Remand from the Third District Court of Appeal, Case No. C070357 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)
Sacramento County Superior Court Case No. 34-2010-80000604
[*Discharge of Stormwater Runoff*, Order No. R9-207-000 (07-TC-09), California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
3. ***County of Los Angeles v. Commission on State Mandates, State Controller's Office***
Los Angeles County Superior Court, Case No. BS166734
[*Handicapped and Disabled Students IRC*, 13-4282-I-06]

4. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS166735
[*Handicapped and Disabled Students II IRC*, 12-0240-I-01]
5. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS167447
[*Seriously Emotionally Disturbed Pupils IRC*, 12-9705-I-04]
6. *Fresno Unified School Dist. v. Commission on State Mandates*
Sacramento County Superior Court, Case No. 34-2017-80002768
[*Certificated School Employees – Parental Leave*, 16-TC-01]

Courts of Appeal:

1. *Coast Community College District, et al. v. Commission on State Mandates*,
Third District Court of Appeal, Case No. C080349
Sacramento County Superior Court, Case No. 34-2014-80001842
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).)]
2. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*
Third District Court of Appeal, Case No. C081929

Sacramento County Superior Court, Case No. 34-2015-80002016
[*Water Conservation* (10-TC-12/12-TC-01, adopted December 5, 2014), Water Code Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4 California Code of Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register 2012, No. 28.]

California Supreme Court:

1. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*
California Supreme Court, Case No. S239907
Fourth District Court of Appeal, Division One, Case No. D068657
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL
[Mandate Redetermination, *Sexually Violent Predators*, (12-MR-01, CSM-4509); Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496) As modified by Proposition 83, General Election, November 7, 2006]
2. *California School Board Association (CSBA) v. State of California et al.*
California Supreme Court, Case No S247266
First District Court of Appeal, Case No. A148606
Alameda County Superior Court, Case No. RG11554698
[2010-2011 Budget Trailer Bills; Education Code sections 42238.24 and 56523]

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

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

B. PERSONNEL

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

The Commission adjourned into closed executive session at 10:42 a.m., pursuant to Government Code section 11126(e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

**RECOVENE IN PUBLIC SESSION
REPORT FROM CLOSED EXECUTIVE SESSION**

At 10:54 a.m., the Commission reconvened in open session, and Chairperson Wong-Hernandez reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

ADJOURNMENT

Hearing no further business, Chairperson Wong-Hernandez adjourned the meeting at 10:54 a.m.

Heather Halsey for

Heather Halsey
Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

RECEIVED

PUBLIC MEETING

**AUG 23 2018
COMMISSION ON
STATE MANDATES**

FRIDAY, JULY 27, 2018

10:00 A.M.

STATE CAPITOL BUILDING

ROOM 447

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ORIGINAL

REPORTED BY:

KATHRYN S. SWANK

Certified Shorthand Reporter No. 13061

Registered Professional Reporter

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A P P E A R A N C E S

COMMISSIONERS

JACQUELINE WONG-HERNANDEZ
Representative for MICHAEL COHEN, Director
Department of Finance
(Chair of the Commission)

ANDRE RIVERA
Representative for JOHN CHIANG, Director
State Treasurer
(Vice Chair of the Commission)

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

RICHARD CHIVARO
Representative for BETTY T. YEE
State Controller

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member
Local Agency Member

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COMMISSION STAFF

HEATHER A. HALSEY
Executive Director

HEIDI PALCHIK
Assistant Executive Director

MATTHEW B. JONES
Senior Commission Counsel

KERRY ORTMAN
Program Analyst

CAMILLE N. SHELTON
Chief Legal Counsel

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

PUBLIC PARTICIPANTS

Dillon Gibbons, Senior Legislative Representative
California Special Districts Association

Lisa Kurokawa, Bureau Chief
State Controller's Office, Compliance Audits Bureau,
Division of Audits

Sean Mick, Attorney at Law
Dannis Woliver Kelley, Attorneys at Law
for Claimant Carlsbad Unified School District

Marshia Vorobyova, Audit Manager
State Controller's Office, Division of Audits

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SACRAMENTO, CALIFORNIA

FRIDAY, JULY 27, 2018, 10:00 A.M.

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CHAIRPERSON WONG-HERNANDEZ: Good morning. The hour of 10 o'clock having arrived, the meeting of the Commission on State Mandates will come to order.

Heather, can you please call the roll.

MS. HALSEY: Sure.

And before I begin, Mr. Morgan, the director of OPR's designee, called to let us know that he will not be able to attend the hearing this morning, as he was in a serious bicycle accident and he's recovering from his injuries. He's going to be okay, but he's not looking pretty. And he sends his regrets.

With that, Mr. Adams.

MEMBER ADAMS: Here.

MS. HALSEY: Mr. Chivaro.

(No response)

MS. HALSEY: Ms. Olsen.

MEMBER OLSEN: Here.

MS. HALSEY: Ms. Ramirez.

MEMBER RAMIREZ: Here.

MS. HALSEY: Mr. Rivera.

MEMBER RIVERA: Here.

MS. HALSEY: Ms. Wong-Hernandez.

1 CHAIRPERSON WONG-HERNANDEZ: Here.

2 MS. HALSEY: Thank you.

3 CHAIRPERSON WONG-HERNANDEZ: Thank you.

4 So the next order of business is the minutes.

5 Are there any objections to or corrections for
6 the May 25th, 2018, minutes?

7 MEMBER RAMIREZ: I'm going to abstain, as I
8 wasn't present.

9 CHAIRPERSON WONG-HERNANDEZ: Great.

10 Anyone else?

11 MEMBER RAMIREZ: Unless you need my vote.

12 MEMBER OLSEN: I will be happy to move the
13 minutes.

14 CHAIRPERSON WONG-HERNANDEZ: Okay.

15 MEMBER ADAMS: I will second.

16 CHAIRPERSON WONG-HERNANDEZ: Okay. We have a
17 motion and a second on the minutes.

18 Is there any public comment on the minutes?

19 MS. HALSEY: We're going to need -- we're going
20 to need four --

21 CHAIRPERSON WONG-HERNANDEZ: Okay.

22 MS. HALSEY: -- members, so we can just wait on
23 that one.

24 CHAIRPERSON WONG-HERNANDEZ: All right. Then
25 we will hold that item.

1 MEMBER OLSEN: If you -- if you need my vote --
2 if you need my vote, I'll vote for it.

3 MS. SHELTON: If you read the minutes.

4 MEMBER OLSEN: I read the minutes.

5 MS. SHELTON: Then she's fine.

6 CHAIRPERSON WONG-HERNANDEZ: Okay. We are
7 going to vote on the minutes.

8 All right. I've got a motion and a second.

9 All those in favor of adopting the minutes,
10 signify by saying "aye."

11 (Ayes.)

12 CHAIRPERSON WONG-HERNANDEZ: Any opposed?

13 MEMBER RAMIREZ: I will abstain then.

14 CHAIRPERSON WONG-HERNANDEZ: And then an
15 abstention from Ms. Ramirez.

16 And now we will take up public comment for
17 matters not on the agenda. Please note that the
18 Commission cannot take action on items not on the
19 agenda. However, it can schedule issues raised by the
20 public for consideration at future meetings.

21 CHAIRPERSON WONG-HERNANDEZ: Welcome.

22 Could you state your name for the record.

23 MR. GIBBONS: Yes. Chair, Members, Dillon
24 Gibbons with California Special Districts Association.
25 I'm going to speak later, but I was just hoping that,

1 for clarification, if the commissioners might say if
2 they are not -- if they are sitting in as a
3 representative of somebody who -- of a commissioner, I
4 just want to know what their affiliation is, if
5 possible.

6 CHAIRPERSON WONG-HERNANDEZ: Sure.

7 MS. PALCHIK: So representing Department of
8 Finance?

9 CHAIRPERSON WONG-HERNANDEZ: Okay. So I'm
10 Jacqueline Wong-Hernandez, and I'm representing the
11 Director of Finance, and I permanently represent him and
12 chair this committee -- or this Commission.

13 MEMBER RIVERA: Okay. I'm Andre Rivera. I'm
14 representing the State Treasurer.

15 MEMBER RAMIREZ: Carmen Ramirez. I am a city
16 council member for City of Oxnard and I represent just
17 myself.

18 CHAIRPERSON WONG-HERNANDEZ: Herself.

19 MEMBER RAMIREZ: Generally, city's interest.

20 MEMBER ADAMS: Lee Adams. I'm the Sierra
21 County supervisor. I'm representing the local
22 government.

23 MEMBER OLSEN: Sara Olsen. I'm the public
24 member.

25 CHAIRPERSON WONG-HERNANDEZ: Okay.

1 And if Mr. Chivaro joins us, he will be
2 representing the Controller.

3 Okay. Hearing no further public comment, we'll
4 move on to the next item.

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

8 Will the parties and witnesses for Items 3 and
9 4 please rise?

10 (Parties/witnesses stood to be
11 sworn or affirmed.)

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

16 (Affirmative responses were heard.)

17 MS. HALSEY: Thank you.

18 Item 2 is reserved for appeals of Executive
19 Director decisions, and there are no appeals to consider
20 at this hearing.

21 Chief Legal Counsel Camille Shelton will
22 present Item 3, an incorrect reduction claim on
23 integrated waste. This is the last pending IRC on the
24 Integrated Waste Program, and the claimant has notified
25 Commission staff that it would not be sending anyone to

1 today's hearing.

2 MS. SHELTON: Good morning. This incorrect
3 reduction claim challenges the Controller's audit
4 reductions as a result of the claimant not identifying
5 and deducting offsetting cost savings from its diversion
6 of solid waste in accordance with the test claim
7 statutes.

8 Staff finds that the Controller's reduction of
9 costs for all years in the audit period, except the
10 first half of Fiscal Year 2003/2004 is correct as a
11 matter of law, and is not arbitrary, capricious, or
12 without evidentiary support.

13 For the first half of Fiscal Year 2003/2004,
14 however, the Controller used a 50 percent diversion rate
15 to calculate the allocated diversion, although the test
16 claim statutes at that time required only 25 percent.

17 In addition, the controller did not allocate
18 the diversion rate for one of the claimants' colleges,
19 as it had for the other fiscal years, when the claimant
20 exceeded the mandate.

21 Accordingly, staff finds that the Controller's
22 reduction of \$8,197 for the first half of 2003/2004 is
23 not correct as a matter of law, and is arbitrary,
24 capricious, and without evidentiary support.

25 The Controller has agreed with the proposed

1 decision and to reinstate this amount to the claimant.
2 Staff therefore recommends that the Commission adopt the
3 proposed decision to partially approve this incorrect
4 reduction claim and authorize staff to make any
5 technical, nonsubstantive changes to the proposed
6 decision following the hearing.

7 Will the parties and witnesses please state
8 your names for the record.

9 MS. KUROKAWA: My name is Lisa Kurokawa. I'm a
10 bureau chief of the Compliance Audits Bureau at the
11 State Controller's Office.

12 And as Ms. Shelton said, that we do agree with
13 the Commission's decision to reinstate \$8,197.

14 CHAIRPERSON WONG-HERNANDEZ: Thank you,
15 Ms. Kurakowa.

16 Are there any questions from board members or
17 comments?

18 MEMBER RAMIREZ: I have no question, but I
19 would move the recommended action.

20 CHAIRPERSON WONG-HERNANDEZ: Okay. Great.

21 MEMBER RIVERA: I will second.

22 CHAIRPERSON WONG-HERNANDEZ: I have a motion
23 and a second.

24 Before we vote, let's take public comment.

25 Is there any public comment on this item?

1 Seeing none, we can take a vote on the staff
2 recommendation to approve.

3 MS. HALSEY: Sure.

4 And that motion was by Ms. Ramirez and the
5 second by Mr. Rivera.

6 Mr. Adams.

7 MEMBER ADAMS: Aye.

8 MS. HALSEY: Mr. Chivaro.

9 (No response.)

10 MS. HALSEY: Ms. Olsen.

11 MEMBER OLSEN: Aye.

12 MS. HALSEY: Ms. Ramirez.

13 MEMBER RAMIREZ: Aye.

14 MS. HALSEY: Mr. Rivera.

15 MEMBER RIVERA: Aye.

16 MS. HALSEY: Ms. Wong-Hernandez.

17 CHAIRPERSON WONG-HERNANDEZ: Aye.

18 Thank you.

19 MS. HALSEY: Motion carries.

20 Next, our newly promoted Senior Commission
21 Counsel Matt Jones will present Item 4, an incorrect
22 reduction claim on the Stull Act.

23 MR. JONES: Good morning.

24 In this IRC, the Carlsbad Unified School
25 District disputes reductions totaling \$274,101 for the

1 Stull Act program in Fiscal Years 2005/2006 through
2 2008/2009.

3 The Controller rejected the claimant's original
4 claim documentation because it was not based on
5 contemporaneous source documents and so the claimant
6 conducted a time study.

7 The disputed reductions therefore relate to the
8 development of that time study and the activities and
9 costs included in the time study and the number of
10 allowable teacher evaluations to which the time study
11 was applied.

12 Specifically, the Controller disallowed 19 of
13 22 discrete activities identified in the claimant's time
14 study, relating to training, meetings, observation,
15 report writing, conferences between evaluators and
16 teachers, and other activities relating to planning,
17 preparation, and organizing notes and STAR testing.

18 The Controller determined, and staff agrees,
19 that these activities are beyond the very narrow scope
20 of the approved higher level of service, and the
21 claimant has presented no argument or evidence
22 establishing the relationship between the time study
23 activities and the activities articulated in the
24 parameters and guidelines.

25 The Controller also reduced reimbursement based

1 on an overstated number of completed evaluations during
2 the audit period, including evaluations for
3 noninstructional certificated employees, such as
4 administrators, counselors, and librarians, among
5 others, and preschool teachers.

6 Staff finds that the evaluations disallowed by
7 the Controller were beyond the scope of the mandate.
8 Staff therefore recommends that the Commission adopt the
9 proposed decision denying this IRC and authorize staff
10 to make any technical, nonsubstantive changes to the
11 decision following the hearing.

12 Will the parties and witnesses please state
13 your names for the record.

14 MS. VOROBYOVA: My name is Marshia Vorobyova.
15 I'm the audit manager with the State Controller's
16 office.

17 MR. MICK: My name is Sean Mick with Dannis
18 Woliver Kelley. I'm here representing the claimant.

19 CHAIRPERSON WONG-HERNANDEZ: Great.

20 If you are done, Mr. Jones --

21 MR. JONES: Yes.

22 CHAIRPERSON WONG-HERNANDEZ: -- Mr. Mick, would
23 you like to speak?

24 MR. MICK: At this time, we don't have any
25 further comments. We just would like to submit on the

1 record.

2 CHAIRPERSON WONG-HERNANDEZ: Okay. Thank you.

3 Ms. Vorobyova.

4 MS. VOROBYOVA: And the State Controller's

5 office agrees with the proposed decision.

6 CHAIRPERSON WONG-HERNANDEZ: Thank you.

7 Is there any public comment on this item?

8 Seeing none, are there any questions or

9 comments from Commission members?

10 Okay. Then is there a motion?

11 MEMBER OLSEN: I will move the staff

12 recommendation.

13 CHAIRPERSON WONG-HERNANDEZ: Okay. Ms. Olsen

14 moves the staff recommendation.

15 MEMBER RAMIREZ: I will second it.

16 CHAIRPERSON WONG-HERNANDEZ: Ms. Ramirez

17 seconds.

18 MS. HALSEY: Mr. Adams.

19 MEMBER ADAMS: Aye.

20 MS. HALSEY: Mr. Chivaro.

21 (No response.)

22 MS. HALSEY: Ms. Olsen.

23 MEMBER OLSEN: Aye.

24 MS. HALSEY: Ms. Ramirez.

25 MEMBER RAMIREZ: Aye.

1 MS. HALSEY: Mr. Rivera.

2 MEMBER RIVERA: Aye.

3 MS. HALSEY: Ms. Wong-Hernandez.

4 CHAIRPERSON WONG-HERNANDEZ: Aye.

5 Motion carries.

6 Thank you for being here, both of you.

7 MR. MICK: Of course.

8 MS. HALSEY: Item 5 is reserved for county
9 applications for a finding of significant financial
10 distress, or SB 1033 applications.

11 No SB 1033 applications have been filed.

12 Program Analyst Kerry Ortman will present
13 Item 6, the legislative update.

14 MS. ORTMAN: Good morning.

15 On June 27th, 2018, the Governor signed SB 840,
16 the Budget Act of 2018. The budget provides 1.1 billion
17 in one-time discretionary funding to schools in
18 2018/2019, down from the 2 billion that was proposed in
19 the May revision.

20 Additionally, the budget includes a one-time
21 payment of 312.2 million General Fund to repay local
22 agencies for costs incurred for 14 mandates that have
23 been identified by the Legislature as expired or
24 repealed. The repayment amount represents the
25 retirement of state obligation to local agencies for

1 costs incurred between 2004 and 2011.

2 The Commission's operating budget was approved
3 as proposed for 2,414,000 to include 1,962,000 in
4 personnel services, and 452,000 in operating
5 expenditures -- expenses and equipment.

6 Staff continues to monitor SB 1498, the Local
7 Government Omnibus Act of 2018, which, among other
8 things, proposes amending Government Code section 17551
9 to specify that, for purposes of filing a test claim,
10 based on the date of first incurring increased costs,
11 the phrase "within 12 months" means by June 30th of the
12 fiscal year following the fiscal year in which increased
13 costs were first incurred by the test claimant.

14 On May 10th, 2018, the bill passed to the
15 Assembly and is now in Committee on Appropriations.

16 Thank you.

17 CHAIRPERSON WONG-HERNANDEZ: Thank you.

18 Mr. Gibbons, from the California Special
19 Districts Association, requested to provide testimony, I
20 believe. Please feel free to come up, and then we'll
21 call for additional public comment.

22 MR. GIBBONS: Thank you.

23 CHAIRPERSON WONG-HERNANDEZ: Just a reminder,
24 this is an informational item. We're not taking action,
25 but we are happy to hear any comments you have, sir.

1 MR. GIBBONS: Thank you, Chair, and Members of
2 the Commission.

3 Dillon Gibbons with the California Special
4 Districts Association.

5 I would like to thank you for providing me the
6 opportunity to speak and the staff for working with me
7 to arrange this.

8 I would like to talk a little bit about this
9 issue, how it came about.

10 Last year, the Commission went through the
11 regulatory process to change the Government Code because
12 it was not in alignment -- or the change to the
13 regulations because it was not in alignment with the
14 Government Code.

15 During that -- that time -- or as a result of
16 those conversations, the Government Code -- we looked to
17 change the Government Code so that the regulations could
18 be changed again. We submitted written testimony and
19 came before this Commission on several occasions,
20 expressing our concern with not only that regulation,
21 but others.

22 However, that particular regulation, because it
23 was simply to comply or change or to match with the
24 Government Code, we sought to fix that issue.

25 During that testimony -- during those hearings

1 from the Commission, the comments were made -- I am
2 going to read a few, if that's all right.

3 Mr. Jones said, (as read), "As far as the
4 timing of the test claim filing, the recommendation
5 before you is simply to eliminate the June 30th deadline
6 because there's not really any clear authority that --
7 to be in regulations under the Government Code. It's
8 arguably inconsistent with the Government Code."

9 Another commissioner said -- Ms. Shelton, who
10 is not here --

11 MS. SHELTON: I'm here.

12 MR. GIBBONS: Oh, so sorry. I'm sorry.

13 (As read), "Soon the Legislature will see to
14 maybe clarify what they really intended in 17551 and
15 make it more clear, and that would be helpful for
16 everybody."

17 Followed by the Department of Finance
18 representative, who said, (as read), "And I think the
19 Commission would certainly reflect in the future process
20 and regulation any change that the Legislature might be
21 willing or interested in making on that point. But I
22 think the issue we have here is that the statute --
23 that's what's being proposed is the most close to the
24 statute. And I think, for me, going beyond that, by
25 putting the June 30th back in, seems, to me, to be an

1 untenable position for the Commission to take."

2 So it's because of that testimony, because of
3 these comments, and because of the stated reasons for
4 the Commission, that 1498 -- or this provision was put
5 into SB 1498.

6 Let me explain a little bit about what SB 1498
7 is. It is a local government omnibus bill. What that
8 means is, this is where folks throw in noncontroversial
9 items, all kinds of items, to -- to that bill, and it
10 goes to the Legislature. If there is any opposition to
11 any section of the omnibus bill, it gets pulled out by
12 rule.

13 So that's where we're at today.

14 That bill has been going through the
15 Legislature with no opposition, until last week, when a
16 member of this Commission submitted their opposition to
17 pull that section from the bill.

18 This, to me, is politics at its worst. Every
19 stated reason that came from this Commission was, the
20 reason for that change -- and in the regulations -- was
21 simply to comply with the Government Code, and that if
22 the Government Code was changed, that -- that the
23 Legislature sought to do that, that that would be fine.
24 And, yet, here we are; that section is being pulled from
25 the Government Code next week, when the Legislature

1 comes back, as a result of opposition from a member of
2 this Commission.

3 This is a very big deal to local government.
4 This is very significant.

5 As we testified last year, by having the
6 deadline -- the claim filing deadline match with the
7 fiscal year, as it had for almost a decade out of
8 compliance with the Government Code, we're able to turn
9 in more accurate test claim information that has been
10 audited and will more than likely not see denials. When
11 we're providing inaccurate information is when we have
12 test claims that are denied.

13 The -- the stated reason for the opposition is
14 that it undoes the regulations that were done just last
15 year. But the only reason the regulations were done was
16 because it was out of compliance with the Government
17 Code. So there is no way that local government is going
18 to be able to fix this issue, because we can't fix it by
19 regulations, because the regulations are out of -- out
20 of compliance with -- would be out of compliance with
21 the Government Code. But we can't fix the Government
22 Code because, then, it would go against what the
23 regulations were done by this Commission.

24 This, to me, is a travesty. So this issue
25 isn't going away, and there will soon be thousands of

1 local electeds and public -- representatives of the
2 public are going to be upset that the State is mandating
3 the way that they spend their money, and then this
4 Commission is trying to figure out a way to make sure
5 that they don't get reimbursed for it.

6 I know that it's not every commissioner here,
7 and I want to be clear on that. I think that there
8 are -- but I am happy to take any questions, and I would
9 love to hear some comments from the Commission, and I
10 would actually ask for this Commission to support SB
11 1498.

12 CHAIRPERSON WONG-HERNANDEZ: Ms. Olsen.

13 MEMBER OLSEN: So I have a few questions for
14 you. First of all, I don't think it's the intention
15 of -- of -- I will speak for myself, and I think I'm
16 speaking for all members of this Commission -- that it's
17 never our intention to put local governments in a
18 catch-22 situation, which is what you are describing
19 here, in terms of trying to -- to fix a problem that you
20 perceive.

21 And -- so that's my statement.

22 Now, my next question is, since it must be a
23 part of the public record, who is the member of the
24 Commission that has -- that has come forward and said
25 that they are not in favor of this?

1 MR. GIBBONS: It's the Department of Finance.

2 MEMBER OLSEN: Well, they are not --

3 MR. GIBBONS: Michael Cohen signs off on all of
4 the analyses to -- and says that this is the rationale
5 for why the Department of Finance is opposing.

6 CHAIRPERSON WONG-HERNANDEZ: So I'd like -- I'm
7 going to jump in at this point --

8 MR. GIBBONS: Please.

9 CHAIRPERSON WONG-HERNANDEZ: -- and let you all
10 know that I -- I am going to actually look to
11 Ms. Shelton to sort of explain the difference, because I
12 was -- I was told very early on in this post that
13 there's very much a clear delineation between the
14 positions of the Department of Finance on pieces of
15 legislation and the Department of Finance's role in this
16 Commission, to the point that we're not even allowed to
17 talk about things.

18 Go ahead, Ms. Shelton.

19 MS. SHELTON: That's correct.

20 Just to help you understand that the
21 Commission, as a body, is not any one individual member.

22 The Department of Finance is a party before the
23 quasi-judicial agency of the Commission on State
24 Mandates. The Commission on State Mandates has not
25 filed any bill analysis, supported or opposed any bill

1 before the Legislature. So that analysis has nothing to
2 do with the Commission on State Mandates.

3 It does, apparently -- you indicated it was
4 from the Department of Finance, again, which is a party
5 before the Commission on State Mandates.

6 MR. GIBBONS: When -- if I may. When
7 discussing this issue with the Department of Finance,
8 they -- I explained our issue, the catch-22. They said
9 that they would have a conversation with -- with the
10 Commission to determine whether or not that was indeed
11 the case.

12 They said, following that conversation, that
13 they -- that they believe that this -- that this undoes
14 the regulations and that this is going to -- that the
15 reason that they have an opposition is because it undoes
16 the regulations of this Commission.

17 Now, I understand that -- that -- from -- from
18 the comments you are making now, that there is no
19 conversation between the -- the Commission or the
20 representative of the Department of Finance and the
21 Department of Finance.

22 But I'm having a hard time understanding that
23 when the Department of Finance says that they are
24 talking to the Commission.

25 MS. HALSEY: I can actually answer this one.

1 CHAIRPERSON WONG-HERNANDEZ: Please. Thank
2 you.

3 MS. HALSEY: So I did receive a call from the
4 Department of Finance, and they did ask me what our
5 position was on this bill and for any background on it.
6 And I did tell them that we had no position on the bill,
7 that the Commission had taken no position. And I did
8 give them the background of the regulatory package,
9 which explains the reasons for that regulatory change,
10 which I do believe goes beyond just simply making the
11 regulation consistent with the Government Code.

12 And then, from there, they -- they wanted to
13 maintain the regulation as it is.

14 And the Government Code as it is. So that is
15 not a position of the Commission, but it is certainly a
16 position of Finance.

17 MR. GIBBONS: Well, the Department of Finance
18 is using the Commission to -- as their rationale. And
19 so if -- if you are not supportive of that, I would
20 encourage this Commission to contact the Department of
21 Finance and ask them to change the recommendation, as I
22 have. This is -- to me, this is -- I mean, this is an
23 abuse. It's a -- the Department of Finance sits on this
24 Commission, and they said last year that the rationale
25 for making this change was that it was out of

1 compliance. Yet, when we go to make the compliance --
2 and it was the Department of Finance that said should
3 the Legislature see that -- to make a change that --
4 that -- that so be it. Let me read that again.

5 CHAIRPERSON WONG-HERNANDEZ: So -- so what I
6 would offer to that is, I believe -- and I was not here
7 when the regulation was adopted, when we adopted this as
8 a body. But we would adopt a regulation in order to
9 implement Government Code in a faithful way.

10 Should Government Code change, even now,
11 regardless of what our opinion of that -- of that change
12 is, we would do the same. If it does, in fact, go
13 through and bill becomes law, then we, in this room,
14 like this body, would effect a new regulation to put
15 that in.

16 The Department of Finance can say -- I mean,
17 can and does support the law as it is. Just because,
18 during a discussion of whether a regulation should be
19 adopted, that that discussion talked about implementing
20 the law as it is, I think that's appropriate, and it
21 doesn't preclude a disagreement about a future law
22 change.

23 I don't think the idea of what a specific
24 change would look like and whether or not that would be
25 supported was spoken to from the standpoint of the

1 Department of Finance at that time. That's not how I
2 read the transcript.

3 MEMBER RAMIREZ: Madam Chair.

4 CHAIRPERSON WONG-HERNANDEZ: Please, Ms.
5 Ramirez.

6 MEMBER RAMIREZ: May I say -- Mr. Gibbons,
7 thank you for bringing this to our attention.

8 It's possible that there's another forum that
9 would be more effective for your argument.

10 I associate myself with the comments of
11 Ms. Olsen, that as a member of city council and a friend
12 to local government at every level, I don't want to see
13 any more complications of life. It's pretty complicated
14 and very costly as it is.

15 But I think that this Commission -- I've
16 never -- I've been on the Commission a while; I've never
17 seen us take a position on any legislation one way or
18 the other.

19 So just to make the record clear, we have taken
20 no position as a Commission. There might be individual
21 members. I personally have had some concerns when the
22 Legislature seems to not properly fund things. But the
23 law's pretty clear on where -- I think we've been
24 following the law. So I leave it there.

25 Thank you.

1 MR. GIBBONS: And I appreciate -- appreciate
2 the comments of the Commission. And I understand that
3 there's this -- that there is varying positions and
4 opinions on this issue.

5 From the perspective of local government, we're
6 going to have a very hard time seeing the delineation
7 between the Department of Finance, the director, and
8 their representative on the Commission, one doing one
9 thing -- saying one thing, and one doing another. And
10 it -- because of the way these omnibus bills work, it
11 only takes one person to oppose it, to pull it out, and
12 that's what's happening.

13 CHAIRPERSON WONG-HERNANDEZ: So to -- I am
14 going to interrupt you right there.

15 I take issue with the idea that the Department
16 is saying one thing and doing something else. I think
17 that the representative of the Director of Finance at
18 the time was saying, we need to adopt this regulation
19 because it conforms to Government Code section, and if
20 the Government Code changes, we will do the same. And
21 that is still true.

22 Whether the Department of Finance, in looking
23 at the policy change that is now being put forth,
24 decides to take a different position on that policy
25 change, affects only whether or not it would go through

1 an omnibus situation, right? There's an agreement --
2 and I -- I understand your point, that there's an
3 agreement. If someone has an objection to something
4 going through an omnibus bill, it gets pulled. That
5 doesn't mean that it can't go through in its own policy
6 bill and that the Legislature can't debate the merits of
7 that policy. It simply means, it doesn't sail through
8 in a package of noncontroversial changes, because we
9 don't think it's noncontroversial, as the Department of
10 Finance, apparently.

11 MR. GIBBONS: No. And I appreciate that.

12 And I -- and I -- I take you, 100 percent, at
13 your word, that that is -- that that is not the case.

14 My -- my -- my point was, I think it's going to
15 be hard for our -- for our membership, and I think it's
16 going to be hard for the public to -- to see that
17 delineation. I believe it to be true.

18 CHAIRPERSON WONG-HERNANDEZ: Well, hopefully
19 you can help them understand then, sir. I certainly
20 intend to try.

21 MR. GIBBONS: Okay.

22 But -- and I -- and I -- and I do thank you for
23 your time. And I have -- I have great respect for the
24 position that the -- the commissioners are put in. You
25 have very tough decisions on -- on trying to determine

1 whether or not somebody should be reimbursed and whether
2 something is a mandate. This is not an easy position to
3 be in, and I respect you greatly for it and the time you
4 put in for this. And I want to be clear on that.

5 You know, there are -- there are times we are
6 going to agree, and there's times we're going to
7 disagree. And I -- and I hope that we're in agreement
8 on -- on more issues than not.

9 So I want to thank you for your time, and,
10 again, reiterate my respect for the Commission and the
11 commissioners.

12 This is -- this is something that is not going
13 to go away for -- for local government.

14 As you mentioned, with -- with the omnibus
15 bill, yes, for -- for this year, this issue is dead.
16 The way the legislative timeline works out, it's gone.

17 Next year, we may try again, but it's -- we're
18 going to have a hard time getting something through if
19 the Department of Finance continues to oppose, based on
20 how they think that -- that we're -- we're upending the
21 actions of this Commission.

22 Thank you for your time.

23 CHAIRPERSON WONG-HERNANDEZ: Thank you.

24 Ms. Shelton, did you want to add anything?

25 MS. SHELTON: Only to provide another example

1 that the Department of Finance is not the Commission on
2 State Mandates. Oftentimes, the Commission will adopt a
3 decision that we have here, and Department of Finance
4 sues us all the time. They are not the same.

5 (Laughter.)

6 CHAIRPERSON WONG-HERNANDEZ: And our staff
7 stands right there and tells us something is a mandate.
8 We had, I think, a disagreement last round, where -- on
9 our last meeting where we -- you know, our staff
10 testified, and we, including me, voted with the
11 Commission staff recommendation.

12 So I -- I get that it looks awkward, but we're
13 all going to do the best we can to govern the best we
14 can and in accordance with the law.

15 But I thank you for your comments and for being
16 here, Mr. Gibbons.

17 MR. GIBBONS: And I -- and apologize if --
18 if -- if it came across as me insinuating that --
19 that -- that you and the Department of Finance are
20 somehow in collusion on this. And -- and I want to make
21 it clear that that is not what I believe.

22 CHAIRPERSON WONG-HERNANDEZ: And I did not take
23 it that way.

24 MR. GIBBONS: Okay.

25 CHAIRPERSON WONG-HERNANDEZ: But I was very

1 defensive of Ms. Ortega because she's pretty close to a
2 saint.

3 (Laughter.)

4 MR. GIBBONS: No. Fair. No. And I
5 appreciated her comments last year.

6 It is the actions of the Department of Finance
7 this year.

8 CHAIRPERSON WONG-HERNANDEZ: I see.

9 MR. GIBBONS: Thank you.

10 CHAIRPERSON WONG-HERNANDEZ: Okay.

11 All right. Any other public comment on this
12 item?

13 Okay. Any questions from members or comments
14 beyond what you have already offered?

15 All right. Then we'll move on to the next
16 item.

17 MS. HALSEY: Item 7 is the Chief Legal Counsel
18 Report.

19 Camille Shelton will present this item.

20 MS. SHELTON: Good morning.

21 We do have a recent decision from the Los
22 Angeles County Superior Court, which upheld the
23 Commission's decision on the incorrect reduction claim
24 for seriously emotionally disturbed pupils. The court
25 found that the Commission correctly determined the

1 issue, that the Controller's reduction of cost claimed
2 for mental health treatment services provided by
3 out-of-state residential programs, organized and
4 operated on a for-profit basis, is correct as a matter
5 of law.

6 We also have a litigation calendar:

7 On August 17th, 2018, the Sacramento County
8 Superior Court will hear the challenge to the decision
9 on Certificated School Employees -- Parental Leave test
10 claim.

11 We also just received notice from the third
12 District Court of Appeal that on August 27th, they will
13 hear the *Paradise Irrigation District versus Commission*
14 *on State Mandates*, which is a challenge to the water
15 conservation test claim denial.

16 CHAIRPERSON WONG-HERNANDEZ: Okay. Any
17 comments on this before we go into closed session?

18 I'm sorry. I'm so sorry. I'm jumping ahead.

19 MS. HALSEY: That's okay.

20 CHAIRPERSON WONG-HERNANDEZ: Go ahead.

21 MS. HALSEY: Any question for Camille? No?

22 Okay. Next item is the Executive Director's
23 Report.

24 After this hearing, there are 19 pending test
25 claims, 15 of which are regarding Stormwater MPDS

1 permits. Also, two parameters and guidelines, including
2 one on Stormwater MPDS permits, and two statewide cost
3 estimates. Again, including one on Stormwater MPDS.
4 Those MPDS Ps&Gs and statewide cost estimate are both on
5 inactive status pending the outcome of litigation
6 regarding the test claim decisions underlying them.

7 In addition, we have one Parameters &
8 Guidelines amendment on inactive status pending the
9 outcome of litigation in the CSBA case, which is
10 currently pending before the Supreme Court -- California
11 Supreme Court.

12 Finally, we have eight incorrect reductions
13 pending, four of which were filed this year.

14 As of today, the Commission staff expects to
15 complete all currently pending test claims and IRCs by
16 approximately the March 2020 Commission meeting,
17 depending on staffing and other workload.

18 Today, also, in addition -- I have some
19 administrative information to provide:

20 In addition to preparing and presenting hearing
21 matters before the Commission, Commission staff are
22 responsible for all of the administrative duties of a
23 state agency and, for the duty of the Executive
24 Director, to keep a full and true record of all
25 proceedings of the Commission.

1 Under the Commission's current record retention
2 policy, the Commission maintains a program of all
3 program records, and that is records of the board of
4 control that we have, as well as records of Commission
5 hearings and records of all matters filed with the
6 Commission, in both hard copy and, also, for claims
7 heard in 2010 and later, electronically. So we keep
8 them in two formats.

9 Recent test claim filings, comments,
10 administrative records, and especially those relating to
11 permits issued by the State Water Resources Control
12 Board are in the tens of thousands of pages. And the
13 entirety of the records for each of these claims ranges
14 from 100 to 200 thousand pages and is growing.

15 And moreover, the sheer size of these records,
16 which require between -- between 10 and 20 cases of
17 paper to print a single copy, on double-sided, costs
18 approximately 1200 a copy in black or white, or \$9,000 a
19 copy in color. And that does not include staff time or
20 storage costs, so it's pretty enormous.

21 And also, these administrative records that
22 have been submitted by the parties have many color
23 pages, maps of odd sizes, diagrams, and the paper sizes
24 on those vary and also these exhibits are generally --
25 often not Bates numbered.

1 So just printing these out is a huge task.
2 Just a recent example, we -- staff worked on printing
3 one administrative record out and it took two weeks,
4 including one week of all administrative staff
5 hands-on-deck, plus my time and Heidi's time. And we
6 printed it in black and white, and then we went through
7 and found the color, and then selected the color pages
8 to print in color and then insert them, at which time,
9 we really realized the importance of the Bates
10 numbering, because you literally have to flip through,
11 page by page, to find where those would go. So an
12 enormous amount of staff time.

13 And also, with that, there's a huge potential
14 for error; accidentally putting something in the wrong
15 place or something not making it in, and then not having
16 a complete and accurate record.

17 Because of this, the costs and the labor and
18 just the unsustainability of this, we're looking into
19 options.

20 And so I was just presenting this as an
21 informational item to the members and to the members of
22 the public and parties that are here, to let you know
23 what's happening, to let you know what we're
24 considering, and also to solicit any input or feedback
25 that people have.

1 We've looked at a couple options. One is what
2 I told you we did with this one record, which was to
3 print it in black and white and then manually go through
4 and identify the pages that must be printed in color and
5 in various sizes and then print those out and manually
6 insert them.

7 This option is the least costly in terms of
8 copy cost, but is, for sure, the most costly in terms of
9 staff time.

10 Another option would be to print the whole
11 record in color in 8 by 11, and then go through and just
12 find the odd-sized pages, print those odd-sized pages
13 out, and manually insert those. This would be probably
14 the most expensive in terms of printing costs but would
15 reduce some staff time. But there still would be a risk
16 of human error with the odd-sized pages.

17 We were looking at contracting with the Office
18 of State Publishing to professionally print. We've
19 already found out, that's not an option. So they do
20 printing, but you have to bid each job and -- and give
21 them very specific information on the number of pages
22 and which ones are in color and what sizes. And by the
23 time we do that, we could have just done it. So that's
24 not going to work.

25 And then, finally, the potential of moving to

1 an all electronic record maintenance system, using a
2 trusted system, which is approved by CalRIM.

3 This would require updating our record
4 retention plan, getting approvals from CalRIM for that
5 update, and then adopting or amending Commission
6 policies and regulations to ensure that records are
7 properly saved and retained in electronic format. And
8 this option would require significant staff work on the
9 front end, but, on the back end, would result in immense
10 savings in printing and storage costs.

11 This is the direction that the courts are
12 moving in. But, admittedly, courts do not have a
13 general duty that the Commission has, to maintain
14 permanent records of civil actions.

15 Also, the courts' guidance and regulations that
16 they have adopted, to date, are still in a state of
17 evolution and flux, and say so on the front of them, so
18 they're -- it's sort of a moving target.

19 So that is where we are at today.

20 CHAIRPERSON WONG-HERNANDEZ: Ms. Ramirez --

21 MEMBER RAMIREZ: I know you haven't finished
22 your report, but I would like to say that I think that's
23 appalling, that we're spending so much resources of
24 staff, human, time, as well as resources of the planet.
25 It's got to change.

1 So, actually, you can find things easier on
2 electronic storage than you can on paper. So I would
3 encourage -- I would encourage moving towards the modern
4 system, rather than the -- I -- some years ago, I was
5 in -- I went on a legal trip to Cuba, taking judges and
6 lawyers. And the Cuban system, at that point, a few
7 years ago, they had every -- they didn't even have paper
8 clips, and they tied all these papers together with
9 string and stuff. And I think, at some point, we're
10 going to look back at what you just described as that
11 same sort of system. We have to go electronic.

12 So let us know what you need from the
13 Commission to move it along. I mean, I hope my
14 colleagues agree with that.

15 Thank you.

16 CHAIRPERSON WONG-HERNANDEZ: Mr. Adams, did you
17 have a comment?

18 MEMBER ADAMS: I was just going to say,
19 conversely, the way you get your -- our agenda items to
20 us electronically is to be commended. And I would like
21 to cancel my request for three color copies of all these
22 water permit cases.

23 CHAIRPERSON WONG-HERNANDEZ: Go ahead,
24 Ms. Olsen.

25 MEMBER OLSEN: So I have a question about

1 number 4. I think it's a great way to go. This point
2 that you have, that the courts are moving in that
3 direction, but they don't have the responsibility to
4 keep a permanent record, is it unusual that we have a
5 requirement to keep a permanent record? I mean, it
6 seems --

7 MS. HALSEY: Not all state agencies do, but --

8 MS. SHELTON: I have never looked at that. But
9 we definitely have a statute requiring us keeping
10 permanent record of all the items coming before the
11 Commission.

12 MEMBER OLSEN: And I mean, I can understand a
13 ten-year record, maintaining it for ten years, or
14 something like that. And maybe it doesn't matter if
15 we're actually going to electronic. Electronic --

16 MS. HALSEY: It's partly --

17 MEMBER OLSEN: -- may be out there, but --

18 MS. HALSEY: It's partly because they're the
19 records of the State. And, for instance, they would --
20 especially the records of the decisions, in particular,
21 would probably go to Archives, in the event that State
22 Mandates was no more, something like that, for
23 historical purposes. And they also could go -- they
24 could go to Archives, even as they get very old and are
25 no longer active, potentially.

1 MS. SHELTON: Also keep in mind that, you know,
2 old decisions, like graduation requirements, was done in
3 1983. It is still an issue here, in 2018.

4 MS. HALSEY: So they don't -- they don't really
5 die.

6 MS. PALCHIK: And may I just add that, in
7 addition to our statutory requirement to keep the full
8 record, we have an agreement with the state archives and
9 California Records Information Management, CalRIM, so we
10 would have to follow all their guidelines too. And as
11 it is, our record retention schedule, which dictates how
12 long we keep each -- not only the mandate program piece
13 of it, but our administrative records, applications,
14 there's an actual schedule that dictates how long we
15 keep that.

16 And all of our program work, all of the
17 mandates pieces, are tagged as archiveable. So it's not
18 the case that -- that we could do anything with them
19 until we have met with state archives, and they
20 determine which would keep forever.

21 MS. HALSEY: And -- and also that is -- so
22 that's one of the considerations in moving to
23 electronic, to make that sure that we do it in a format
24 that is expected to be able to migrate and -- and to
25 live as an archiveable electronic document.

1 CHAIRPERSON WONG-HERNANDEZ: Ms. Ramirez?

2 MEMBER RAMIREZ: Well, we can't be the only
3 state institution that has to deal with this. I would
4 think the courts are also burdened with this, and they
5 are just -- we just need to be modern and get with it.

6 So what -- do you know if other agencies or
7 institutions are taking a look at this?

8 MS. HALSEY: We're -- we're in the process of
9 doing a lot of research. Different people are doing
10 different pieces. We have someone looking into the
11 technical aspects, someone looking into regulatory
12 pieces, another person looking into what are the courts
13 requiring --

14 MEMBER RAMIREZ: Thank you.

15 MS. HALSEY: -- so we're in the process of
16 fleshing these issues out.

17 CHAIRPERSON WONG-HERNANDEZ: Thank you.

18 That's, I think, really good for us all to be
19 aware of, that this is going on.

20 And to echo Ms. Ramirez's comments, let us know
21 how we can be helpful, either in helping to investigate
22 those, what other agencies and entities are doing, or to
23 help you get changes that you think would be beneficial
24 to the program and still preserve the appropriate number
25 of records.

1 MS. HALSEY: Thank you so much. I'm sure we'll
2 be updating you on this, as we go forward.

3 Also, just to close out my ED report.
4 Tentative agenda items -- please check the tentative
5 agenda items on my report to see if your item or an item
6 you are interested in is coming up over the course of
7 the next few hearings.

8 You can also use the pending case load
9 documents on the Commission's website, which are updated
10 at least bimonthly, to get an idea of when something is
11 tentatively expected to be heard.

12 Please expect to receive a draft proposed
13 decision on a test claim or IRC matter for your review,
14 and comment at least eight weeks prior to the hearing
15 date, and a proposed decision approximately two weeks
16 before the hearing.

17 CHAIRPERSON WONG-HERNANDEZ: Thank you.

18 Are there further comments from commissioners?

19 And is there any public comment on the ED
20 report?

21 Okay. Then seeing none, the Commission will be
22 recessing -- not recessing. Excuse me. We'll be
23 meeting in closed executive session, pursuant to
24 Government Code section 11126(e). So we're going to
25 need to clear the room. And that will be to confer with

1 and receive advice from legal counsel for consideration
2 and action, as necessary and appropriate, upon the
3 pending litigation listed on the published notice and
4 agenda; and to confer with and receive advice from legal
5 counsel regarding potential litigation.

6 The Commission will also confer on personnel
7 matters pursuant to Government Code section 11126(a)(1)
8 and will reconvene in open session in approximately 15
9 minutes.

10 (Closed session was held from
11 10:42 a.m. to 10:54 a.m.)

12 CHAIRPERSON WONG-HERNANDEZ: Welcome back.

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

22 With no further business to discuss, I will
23 entertain a motion to adjourn.

24 MEMBER RAMIREZ: So moved.

25 MEMBER CHIVARO: Second.

1 CHAIRPERSON WONG-HERNANDEZ: We have a motion
2 and a second.

3 All those in favor of adjournment, please say
4 "aye."

5 (Ayes.)

6 CHAIRPERSON WONG-HERNANDEZ: All those opposed?

7 (No response)

8 CHAIRPERSON WONG-HERNANDEZ: This meeting is
9 adjourned.

10 (Proceedings concluded at 10:54 a.m.)

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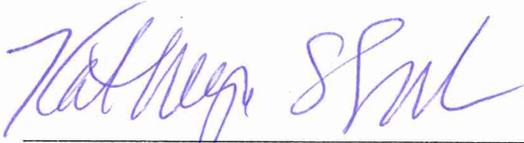
CERTIFICATE OF REPORTER

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 was 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 22nd day of August 2018.



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