

PUBLIC MEETING

COMMISSION ON STATE MANDATES



TIME: 10:00 a.m.

DATE: Friday, January 24, 2014

PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



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A P P E A R A N C E S

COMMISSIONERS PRESENT

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

KEN ALEX
Director
Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member

ANDRÉ RIVERA
Representative for BILL LOCKYER
State Treasurer

DON SAYLOR
Yolo County Supervisor
Local Agency Member



COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Items 2, 3, 16, and 19)

JASON HONE
Assistant Executive Director
(Item 8)

CAMILLE N. SHELTON
Chief Legal Counsel
(Item 18)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

continued

TYLER ASMUNDSON
Commission Counsel
(Item 4)

MATTHEW B. JONES
Commission Counsel
(Items 5, 6, 7, and 8)

KERRY ORTMAN
Program Analyst
(Item 17)



PUBLIC TESTIMONY

Appearing Re Item 4:

For County of Los Angeles

HASMIK YAGHOBYAN
SB 90 Administration
County of Los Angeles Auditor Controller's Office
500 West Temple, Room 525
Los Angeles, California 90012

CONNIE D. DRAXLER
Deputy Director
Office of the Public Guardian
County of Los Angeles
320 West Temple Street
Los Angeles, California 90012

For Department of Finance

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4:

For Department of Finance

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

Appearing Re Item 5:

For County of Los Angeles

HASMIK YAGHOBYAN
SB 90 Administration
County of Los Angeles Auditor-Controller's Office
500 West Temple, Room 525
Los Angeles, California 90012

For Department of Finance

MICHAEL BYRNE
Department of Finance

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance

Appearing Re Item 6:

For Santa Clarita Valley Sanitation District of
Los Angeles County:

CLAIRE HERVEY COLLINS
Lewis Brisbois Bisgaard & Smith LLP
221 B, Figueroa Street, Suite 1200
Los Angeles, California 90012

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6: *continued*

For Santa Clarita Valley Sanitation District of
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LAURENE WESTE
Mayor
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SCOTT WILK
Assembly Member
38th Assembly District
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Councilmember
City of Santa Clarita
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For Los Angeles Regional Water Quality Control Board:

JENNIFER FORDYCE
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6: *continued*

For State Water Resources Control Board:

MICHAEL LAUFFER
Chief Counsel
State Water Resources Control Board
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Sacramento, California 95814

For Department of Finance

MICHAEL BYRNE
Department of Finance

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance

Appearing Re Item 7 and Item 8:

For Requestor Department of Finance:

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance

MICHAEL BYRNE
Department of Finance



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1 Our first item this morning is election of
2 officers.

3 At the January 25th, 2013, hearing, the
4 Commission on State Mandates elected Ana Matosantos as
5 Director of Finance, as the chairperson of the
6 Commission; and John Chiang, State Controller, as
7 vice-chairperson.

8 State law requires the members to elect a
9 chairperson and a vice-chairperson of the Commission on
10 State Mandates at the first hearing of the year.

11 CHAIR ORTEGA: Okay, are there any nominations
12 for the chair?

13 MEMBER ALEX: Yes. I will move that the
14 Director of the Department of Finance be the chair of the
15 Commission.

16 MEMBER CHIVARO: I'll second that

17 CHAIR ORTEGA: Any other nominations?

18 *(No response)*

19 CHAIR ORTEGA: Without objection, I'll close
20 the nominations.

21 All those in favor?

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

23 CHAIR ORTEGA: Opposed?

24 *(No response)*

25 MEMBER SAYLOR: I would like a speech -- an

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1 acceptance speech.

2 CHAIR ORTEGA: We can call Michael up here.

3 Okay, thank you.

4 Let's see, the second officer is the -- or are
5 there any nominations for the vice chair?

6 MEMBER ALEX: I can nominate the Treasurer for
7 the vice chair.

8 MEMBER CHIVARO: Second.

9 CHAIR ORTEGA: Any other nominations?

10 *(No response)*

11 CHAIR ORTEGA: Okay, without objection, the
12 nominations will be closed.

13 All those in favor?

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

15 CHAIR ORTEGA: Any opposed?

16 *(No response)*

17 CHAIR ORTEGA: Okay, thank you.

18 MS. HALSEY: Item 2 is the adoption of
19 the minutes.

20 CHAIR ORTEGA: Are there any objections or
21 corrections to the December 6th minutes?

22 *(No response)*

23 CHAIR ORTEGA: Any comments from the public on
24 the minutes?

25 *(No response)*

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1 CHAIR ORTEGA: No?

2 Is there a motion?

3 MEMBER OLSEN: I move adoption.

4 CHAIR ORTEGA: A motion by Ms. Olsen.

5 MEMBER CHIVARO: Second.

6 CHAIR ORTEGA: Second by Mr. Chivaro.

7 All those in favor?

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

9 CHAIR ORTEGA: Any opposed or abstain?

10 *(No response)*

11 CHAIR ORTEGA: Okay, the minutes are approved.

12 MS. HALSEY: Public comment. Now, we can take
13 up public comment. Public comment is for matters not on
14 the agenda.

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

19 CHAIR ORTEGA: Okay, is there any general
20 public comment?

21 *(No response)*

22 CHAIR ORTEGA: Seeing none, we'll move to the
23 next item, the Consent Calendar.

24 MS. HALSEY: Next, we have a proposal to add
25 three items to the Consent Calendar: 9, 10, and 11.

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1 CHAIR ORTEGA: Okay, any objection from the
2 Members of adding Items 9, 10, and 11 to the Consent
3 Calendar?

4 *(No response)*

5 CHAIR ORTEGA: Seeing none, any objections or
6 comments from the public on those items?

7 *(No response)*

8 CHAIR ORTEGA: Okay, seeing none, a motion on
9 the Consent Calendar?

10 MEMBER ALEX: So moved.

11 CHAIR ORTEGA: Moved by Mr. Alex.

12 MEMBER SAYLOR: Second.

13 CHAIR ORTEGA: Second by Mr. Saylor.

14 CHAIR ORTEGA: All those in favor of the
15 consent -- do we need a vote on the consent?

16 All those in favor of the Consent Calendar?

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

18 CHAIR ORTEGA: Any opposed or abstain?

19 *(No response)*

20 CHAIR ORTEGA: Seeing none, the Consent
21 Calendar is adopted.

22 MS. HALSEY: Thank you.

23 Next, we have appeal of Executive Director
24 decisions. And there are no appeals of Executive
25 Director decision scheduled for this hearing.

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1 Item 4, do we have all of the -- before I swear
2 in, do we have all the witnesses for Item 4 here?

3 MS. SHELTON: Hasmik?

4 MS. YAGHOBYAN: Yes.

5 MS. HALSEY: Yes?

6 Okay, good.

7 Now, let's go ahead and swear everyone in who
8 is going to be testifying on the Item 7 portion of the
9 hearing.

10 *(Parties and witnesses stood.)*

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

15 *(Chorus of "I dos" was heard.)*

16 MS. HALSEY: Thank you.

17 The first item we'll be taking up this morning
18 is Item 4, a test claim on *Public Guardianship Omnibus*
19 *Conservatorship Reform*.

20 And Commission Counsel Tyler Asmundson will be
21 presenting that item.

22 MR. ASMUNDSON: Good morning.

23 This test claim requests reimbursement for
24 costs incurred by counties who comply with the Omnibus
25 Conservatorship and Guardianship Reform Act of 2006,

1 which made comprehensive reforms to California's probate
2 conservatorship program.

3 The test-claim statute imposes new requirements
4 on the county office of the public guardian to receive
5 continuing education, beginning an investigation within
6 two business days of receiving a referral for
7 conservatorship or guardianship, and file a petition for
8 appointment as guardian or conservator when there is no
9 one else qualified and willing to act, and there is a
10 imminent threat to the person's health or safety or the
11 person's estate.

12 However, these activities are triggered by
13 the county's discretionary decision to create the
14 Office of Public Guardian pursuant to Government Code
15 section 27430, which specifies that the board of
16 supervisors may, by ordinance, create or terminate the
17 Office of Public Guardian.

18 As the courts have made clear, reimbursement
19 is not required when requirements imposed by the statute
20 are triggered by local government's discretionary
21 decision to participate in a program. Therefore, the new
22 requirements imposed upon the public guardian do not
23 create a state-mandated program within the meaning of
24 Article XIII B, section 6 of the California Constitution.

25 In addition, all other activities pled are

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1 either not required by local government or are triggered
2 by a court order. Activities required to comply with
3 mandates of the courts are not eligible for reimbursement
4 under Article XIII B, section 6.

5 Staff recommends that the Commission adopt the
6 proposed statement of decision to deny the test claim.

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

9 MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of
10 County of Los Angeles.

11 MS. DRAXLER: Connie Draxler, deputy director,
12 Los Angeles County Public Guardian.

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

14 MR. BYRNE: Michael Byrne, Department of
15 Finance.

16 MS. GEANACOU: Susan Geanacou, Department of
17 Finance.

18 CHAIR ORTEGA: Ms. Yaghobyan?

19 MS. YAGHOBYAN: Thank you. Good morning.

20 Well, as you can see, the Commission staff's
21 analysis, although correctly pointed that there are
22 mandated activities proposed on the local agencies
23 because of this new act; but, however, they said the
24 reimbursement should be denied because of the Government
25 Code section 72430, which the County created the body of

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1 public guardian and it was discretionary. And we also,
2 if we decide just to get rid of the public guardian
3 department or division, we can just dissolve it and there
4 will be no penalty.

5 And in further support of their decision, the
6 staff is citing three cases which, reviewing the cases
7 reveals not only these cases are distinguishable from the
8 County's test claim, but also they support our positions.
9 Because none of these cases, the activities there were --
10 like the counties or local agencies, they did not -- it
11 didn't rise to compel to be either practical or legal
12 compulsion. It was completely voluntary.

13 For example, one of the cases, the school board
14 decided to hire a police officer versus the security.
15 So they had the option. They didn't have to hire police
16 officers and then go on and try to get reimbursement for
17 POBR.

18 On the other hand, with the County's position,
19 although creating a public guardian body was
20 discretionary, on the other hand, the activities imposed
21 by this Act, they're not discretionary. We are compelled
22 to do it.

23 So if the Court orders the county or public
24 guardian to take over incompetent or mentally ill
25 people's affairs, we can't say no. Even if we didn't

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1 have a public guardian body, still we have to go on and
2 find and hire private/public guardians to do the
3 activities. Otherwise, we would not be in compliance of
4 the law; and we would be legally compelled to do it; and
5 otherwise, we would be facing the consequences.

6 So we don't think that the staff analysis
7 correctly points out the magnitude of us not providing
8 the services because the only question one can ask --
9 let's say if we get rid of the public guardian body, so
10 what's going to happen? If there's an imminent danger,
11 we have to take over, or the court orders us to take over
12 somebody's affair, what are we going to do? We just have
13 to find the person or the body to do the work.
14 Otherwise, like I said, we would be subject to legal
15 consequences.

16 The second disagreement or dispute we have with
17 the Commission staff analysis, they say that because
18 court mandates are barred from reimbursement; but what
19 they are not realizing, I believe, is that this is not a
20 court mandate. This mandate was enacted -- this statute
21 was enacted by the Legislature. And the codes are
22 mandated by, they're not mandating. So the Court has to
23 order when there are situations or circumstances, they
24 order the county to take over an incompetent person's
25 legal affairs.

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1 So it is not the court mandate; rather, it's a
2 court order. So, therefore, that disclaimer does not
3 apply.

4 In conclusion, the public guardian clearly --
5 all the cases cited by the Commission, they're -- they
6 seem significantly different because there are other
7 alternative resolutions, other alternative options for
8 the local agencies to take. But in this case, with the
9 County's case, the County carries a core mandatory
10 function, and there is no alternative means of carrying
11 that function, except having the public guardian body.

12 So what would you do if we don't have this body
13 and we have these activities that we are ordered by the
14 court? So what are we supposed to do?

15 Like I said, even if you get rid of the public
16 guardian, we will still have to take on these orders by
17 court or if there is imminent danger, we have to step in
18 and then protect these people that they can't protect
19 themselves.

20 But keep in mind, that this Act came into the
21 picture, enacted as a result of all those articles in the
22 paper, that people, that they could not take care of
23 their estate or their affairs and all these articles in
24 that, you know -- and then the State, there was a reason
25 to enact this statute, saying that if there's an imminent

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1 danger to people's lives and liberty, people who cannot
2 take care of themselves or control themselves, that the
3 County has to step in and take over.

4 So we have no option but to do it; otherwise,
5 we are going to be held responsible or legal
6 consequences.

7 Now, Connie Draxler, our director, she is going
8 to give you more -- a bigger picture of the program.

9 MS. DRAXLER: Thank you, Commissioners, for
10 allowing me to speak with you today. I apologize if
11 I cover a little bit more or in depth of what Hasmik did;
12 but I do want to explain the public guardian program.

13 Not many individuals do understand what a
14 public guardian does.

15 First of all, we generally have two areas of
16 responsibility: mental-health conservatorships and
17 probate conservatorships.

18 The Omnibus Act, of course, is focusing on the
19 probate conservatorships. But throughout the analysis,
20 there are references back to the Welfare and Institutions
21 Code and to our responsibilities with regards to our
22 mentally ill population. So I do want to make sure that
23 we're not confusing the two populations.

24 The mandates under the Welfare and Institutions
25 Codes were codified in the LPS Act in the late 1960s. So

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1 even though the L.A. County Public Guardian asked for
2 the creation of the public guardian back in 1945, that
3 was all about our mentally ill individuals and not about
4 the probate cases. And, again, I would say that the
5 LPS Act superseded that 1945 request for the creation of
6 the Office of the Public Guardian.

7 Public guardians statewide provide
8 conservatorship and administrative services to older and
9 dependent adults who are at risk for physical, emotional,
10 and financial abuse, or are unable to care for
11 themselves. As a health and safety program, the public
12 guardian is the essential link to law enforcement and
13 adult protective services -- both funded through various
14 state funding streams.

15 We are also the provider of last resort for the
16 most vulnerable and at-risk disabled and elderly persons.
17 No other county department or agency has the legal
18 capability or mandate to provide care and life-management
19 decisions for this population. And without probate
20 conservatorships, other protective agencies and superior
21 court would have no viable resource to protect this
22 vulnerable adult population.

23 The analysis appears to imply that counties
24 could decide to terminate the office of the public
25 guardian. This action, if a county would decide to do

1 that, would actually take us back to pre Omnibus Act
2 time.

3 There were counties that, at the time, prior to
4 Omnibus Act, that discretionarily decided not to pursue
5 certain conservatorships. That's the whole reason for
6 *The LA Times* article and the whole reason for the
7 legislative acts that took place.

8 The Legislature did not want to have the public
9 guardian have the discretion to only do cases coming from
10 the court, but to actually require us to be involved with
11 cases in imminent threat to our older adult and dependent
12 adult vulnerable population.

13 So I think it is kind of -- I don't believe
14 it would be realistic at this point, since counties have
15 been filing these conservatorships for the past seven
16 years under the mandate and the Probate Code, to think
17 that a county government at this point could eliminate
18 the program.

19 Realistically, what would happen? There would
20 be no one available to assist our most vulnerable
21 population.

22 It is unfortunate that at the time that the
23 Omnibus Act was created, the inconsistency in the
24 Government Code was not realized, that there was the
25 "may" in the Government Code and the Probate Code was

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1 enacting the "*shall*." Unfortunately, that's not
2 something anyone caught; but at this point, do not hold
3 individual counties and public guardian programs
4 responsible for failing to rectify that inconsistency.

5 Also recognize that the circum surrounding the
6 Government Code, when that was enacted, or even some of
7 the references back to 1945, when we asked for the
8 creation of the office and had it as a "*may*," was a
9 different time and place.

10 The identification and awareness of elder abuse
11 and the need to protect older adult -- older, vulnerable
12 adults now requires someone to provide these services and
13 ensure that these services are being met.

14 There is no discretion at this point, and I
15 don't think that any county could at this point decide to
16 eliminate the public guardian without negative outcomes
17 and increased liability.

18 Thank you.

19 CHAIR ORTEGA: Department of Finance?

20 MR. SCOTT: The Department of Finance concurs
21 with staff.

22 CHAIR ORTEGA: Any comments or questions from
23 the commissioners?

24 MEMBER SAYLOR: A question.

25 CHAIR ORTEGA: Please.

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1 MEMBER SAYLOR: A question of the public
2 guardian.

3 You are -- I'm sorry, I missed your name.

4 Was it Connie Drexler?

5 MS. DRAXLER: Connie Draxler.

6 MEMBER SAYLOR: Ms. Draxler, so how many
7 counties actually have offices of public guardian?

8 MS. DRAXLER: Every county does. And it's
9 actually in the 24000 code of the Government Code. We're
10 listed as one of the county officials, and so every
11 county has a public guardian. It may be called "public
12 guardian" or it may be called "public conservator."

13 MEMBER SAYLOR: So all 58 counties have this
14 office?

15 MS. DRAXLER: Correct.

16 MEMBER SAYLOR: So are there responsibilities
17 that are required by state law of those offices?

18 MS. DRAXLER: Under -- it depends on which part
19 of the requirements we're talking. If we're talking
20 about their LPS conservatorship program, there are
21 mandates.

22 The Welfare and Institutions Code 5351
23 designates that the county board must identify a county
24 conservatorship investigator for the mental-health cases.
25 Generally, in almost every county that I'm aware of,

1 that's public guardian or public conservator.

2 On the probate side, we're governed under 2920,
3 and many other statutes within the Probate Code, which
4 require us, A, to accept any order from the court to
5 investigate whether or not a probate conservatorship is
6 necessary and potentially file.

7 I will note that prior to the Omnibus Act, we
8 did, in fact, get orders from the court. When a private
9 individual goes into court, files a conservatorship, if
10 something would happen with that private family member,
11 they become incapacitated and you get a vacancy in that
12 conservatorship role, the court has to find someone to
13 fill that vacancy. It is usually the public guardian
14 that they turn to, to fill that vacancy and to become the
15 successor conservator.

16 I will also indicate, although I can't confirm
17 because it was prior to my time with L.A. County, that
18 at one time L.A. County did submit SB-90 reimbursement
19 claims for those specific actions, that we received
20 reimbursement on court-ordered referrals to file probate
21 conservatorships. I understand that was suspended. But
22 at one time, those activities were considered a program
23 that should be reimbursed.

24 What the Omnibus Act did is take it one step
25 further. Not only were we required to take stuff from

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1 the court, but we were now required to investigate and
2 petition for any case that involved imminent threat for
3 any individual, any citizen within our county.

4 MEMBER SAYLOR: So a comment -- or, I'm sorry,
5 if there are other questions, I'd appreciate those. But
6 I have a comment.

7 CHAIR ORTEGA: Go ahead.

8 MEMBER RAMIREZ: I have some questions.

9 CHAIR ORTEGA: Sure, Ms. Ramirez.

10 MEMBER RAMIREZ: Thank you.

11 I'm familiar with this, having practiced some
12 of that law in the past.

13 But I would like to ask you if -- I was going
14 to ask you before you mentioned the reimbursement
15 situation, who funds the public guardian office now at
16 this time in L.A. County?

17 MS. DRAXLER: We are now a net County cost
18 program. Prior to the Omnibus Act, we were one of those
19 counties that had no county funding. Prior to the
20 Omnibus Act, we relied on a few memorandums of
21 understanding with hospitals that paid for our services;
22 and we got some reimbursement from Targeted Case
23 Management, which is a federal Medi-Cal reimbursement
24 program for our clients that were Medi-Cal.

25 We are now -- we have those sources still

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1 available, and we are now receiving net county costs to
2 fund our probate program.

3 MEMBER RAMIREZ: When you're dealing with a
4 conservatee who has means -- which you probably do
5 occasionally encounter -- do any part of your costs come
6 from the estate of that person?

7 MS. DRAXLER: Absolutely. We are entitled to
8 court-ordered fees for our services. We do have to file
9 court accountings on every case that we do to show the
10 services that we provided; and then the court will
11 determine, A, whether or not those requests for fees will
12 be approved; and then if they are, then the second step,
13 is their funding within the estate to take that. If
14 there is no funding, obviously, we don't get reimbursed
15 for the court order.

16 MEMBER RAMIREZ: And I do have a question for
17 staff, Mr. Asmundson.

18 MR. ASMUNDSON: Yes.

19 MEMBER RAMIREZ: Could you distinguish for us
20 what the difference would be between a court order to
21 take some action, do some work for an individual
22 conservatee, and legislative mandate?

23 MR. ASMUNDSON: Well, in this instance, as the
24 witness pointed out, the prior law stated that the Court
25 could -- or it said "may" appoint the public guardian to

1 act. And here, the Legislature changed the language to
2 require the court to do that when they find that there's
3 no one else willing to act.

4 However, it's kind of a red herring because the
5 Government Code does not require that the public guardian
6 exist and allows the county to eliminate the position.
7 There is nothing -- absolutely nothing that requires them
8 to continue to do this.

9 And the amended statute, section 2920, speaks
10 only to the public guardian. It does not speak to the
11 county generally. That's why we found that this is not a
12 mandate. Because it doesn't say the county must perform
13 these services, it says the specific office of public
14 guardian, which may be eliminated.

15 MEMBER RAMIREZ: Could you mention any other
16 county or special district mandates that are
17 discretionary -- not mandates that are discretionary,
18 that's a contradiction. But discretionary programs,
19 such as the public guardian program that we've dealt with
20 in the Commission?

21 MR. ASMUNDSON: I can't. Not off the top of my
22 head.

23 MS. SHELTON: We've had a lot of claims dealing
24 with a "may," "shall," where we're talking about Peace
25 Officer Procedure Bill of Rights which was mentioned by

1 the County earlier, where by the plain language of that
2 statute, imposed requirements on school districts who
3 employed peace officers. And we had information on the
4 record in that case where a majority of the school
5 districts had their own police department. But the Court
6 still indicated that it still was a choice of theirs to
7 have that department.

8 Just to back-tail on what Tyler was saying,
9 under the Constitution, under Article XIII B, section 9,
10 any order from the Court as an order from the court is
11 not eligible for reimbursement under Section 6.

12 So here, although the statute did change the
13 "may" to a "shall" with the direction to the court, the
14 findings are still the same. So there was really
15 technically no change in law there. Because under prior
16 law, the court still had to make those findings, and
17 still would be subject to an appealable order, had the
18 court not made the findings consistent with the evidence
19 in the record. So there was really no change in that
20 respect to that subdivision.

21 MS. DRAXLER: May I?

22 I would actually respectfully disagree. Prior
23 to the Omnibus Act, the Code -- there's two sections of
24 the Probate Code that references, you know, the actions
25 of the public guardian.

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1 In section 2920(b), there was a "*shall*" there
2 prior to the Omnibus Act. The Court could -- we had to
3 act if the Court ordered us.

4 The "*may*" was in all other populations. So if
5 we got a referral from outside the court or some activity
6 from adult protective services law enforcement referred
7 to us, we had discretion not to move forward in that in
8 those cases -- in those particular referrals or clients.

9 But there was the "*shall*" there for the court
10 prior to the Omnibus Act, because we always -- we would
11 receive those orders, and had been for years, and acting
12 on those orders. And we could not refuse them.

13 MR. ASMUNDSON: If I can clarify?

14 Actually, there was a "*shall*" and a "*may*."

15 MS. DRAXLER: Yes.

16 MR. ASMUNDSON: But the "*shall*" applied to the
17 public guardian. It said, "The public guardian *shall*
18 apply for appointment as guardian or conservator if the
19 court so orders. The court *may* make an order under this
20 subdivision on motion of an interested party."

21 MS. DRAXLER: Yes.

22 MR. ASMUNDSON: So the court had discretion.
23 But what Camille was trying to point out is that if
24 certain evidence was presented, the court really couldn't
25 say no. If they required a conservator or a guardian,

1 the court, after being presented with that evidence,
2 would make the public guardian perform those services.

3 MS. DRAXLER: If there was no one else
4 available to provide those services.

5 MR. ASMUNDSON: Yes.

6 MS. SHELTON: And still, all of that is
7 stemming from a court order.

8 MEMBER SAYLOR: Okay. Another question. This
9 is a question.

10 Tyler, so if all the counties have responded to
11 the circumstance that exists of people needing certain
12 kinds of attention and courts making orders by
13 establishing this office, if all 58 counties have done
14 so, and then the Legislature establishes requirements
15 for those offices, I imagine -- it seems to me, with the
16 presumption that the offices exist and will continue
17 to exist, isn't that a practical compulsion?

18 Or how do you sort out that it's a
19 discretionary act? This -- I get that the language issue
20 is there, and that the word "may" exists in the statute.
21 But isn't there a real consideration here, that the only
22 way that counties have been able to carry out this
23 function is through the office that all 58 of them have
24 established?

25 MR. ASMUNDSON: Well, I'm not going to deny

1 that all counties have opted into this program, and that
2 there would likely be consequences if they decided to
3 terminate the office of the public guardian within, let's
4 say, L.A. County, for instance, because they may be
5 serving a population already.

6 However, when you're talking about practical
7 compulsion, the result has to be -- it has to be a
8 negative result, double taxation or something else, upon
9 the county, not a population. So here, if they chose
10 not to have a public guardian, you might likely have
11 consequences to the population that's being served. But
12 there is not a punishment or something that happens to
13 the county itself.

14 MEMBER SAYLOR: A question to L.A.: If your
15 office, the Office of the Public Guardian, was
16 eliminated, would the County still have responsibilities
17 that they would have to carry out on behalf of the
18 clients? And wouldn't they have to find some way to
19 contract or have some other private party do that at the
20 expense of the County?

21 MS. YAGHOBYAN: Yes.

22 MS. DRAXLER: The elimination --

23 MS. YAGHOBYAN: You do because specifically,
24 that's distinguishable from the case of *POBR* that
25 Camille -- that your counsel mentioned it, too. Because

1 in that case, the Court said it is extra, it's voluntary
2 and discretionary because they didn't have to hire police
3 officers. So if they didn't hire police officers, so
4 there was no legal consequences.

5 But in this case, let's say if we eliminate the
6 public guardian, what will happen? We will still have to
7 carry the court's order or act whenever there's an
8 imminent danger. So it wouldn't change any -- make any
9 difference.

10 We will not be in compliance with the Act if we
11 didn't do that or got rid of the public guardian. This
12 is where that practical compulsion comes into play.

13 MS. DRAXLER: We would also have the current
14 700 probate conservatees that are under our authority,
15 that have been ordered to -- that the court has ordered
16 us to be conservator, that something would need to be
17 done. We could not just walk into court and say, "Sorry,
18 Your Honor, we've decided to eliminate this program.
19 Here are your 700 cases back. Find someone to serve."

20 We're the last resort. They've already gone
21 through all of those options, and we were the last
22 resort. There is no one else for the court to turn to.

23 So there would be an immediate danger and
24 impact to those 700 cases, and any going forward that
25 would be placed on conservatorship with the public

1 guardian.

2 The option -- only option would be for the
3 County to contract with someone else to provide that
4 service; because there's -- you can't leave a vacancy
5 in the conservatorship program for who's serving as
6 conservator.

7 CHAIR ORTEGA: Camille?

8 MS. SHELTON: Just a couple. I think we're
9 going -- we're talking about a lot of things, and I think
10 I want to try to bring it back to this analysis. Because
11 all of the activities that we are discussing are the
12 ones that are triggered by the court order. Those, no
13 matter if you find that the public guardian office has to
14 exist, that would still not result in a reimbursable
15 state-mandated program because it is coming from a court
16 order.

17 So the only three activities that we're talking
18 about are complying with continuing education, beginning
19 an investigation, and filing the initial petition.

20 And under the law, the office of public
21 guardian does not have to exist. There are alternatives.

22 If you turn to page 18, Footnote 58, there's a
23 statute referenced, section 10002, which authorizes the
24 county counsel, a different department within the county,
25 to file the petition and to get a different conservator,

1 whether public or private.

2 There are options under the Code.

3 So just to bring it back to the three
4 activities that truly are mandated by the State; and
5 those are listed on page 6 of your executive summary.

6 CHAIR ORTEGA: Can I ask a question in
7 follow-up to that then?

8 Are you saying that if the duties were shifted
9 to the county counsel, then a petition -- a request for
10 reimbursement for the county counsel staff could
11 potentially be reimbursable?

12 MS. SHELTON: Well, right now, that statute
13 says it authorizes county counsel to bring the petition.
14 It doesn't require them to do that.

15 I agree. We had a difficult time with this
16 analysis because clearly the Legislature is trying to
17 require the public guardians to do something; and they
18 didn't do a very good job in capturing all the different
19 statutes in the different codes.

20 But they also -- you know, you could argue,
21 when you're doing legislative intent, they did not make
22 any changes to the statute authorizing the public
23 guardian's office and they did not make any changes to
24 the Welfare and Institutions Code section 10002,
25 authorizing the county counsel's office to file the

1 petition.

2 MS. DRAXLER: So county counsel files the
3 petition, but you have to name someone to actually act as
4 the conservator.

5 So, yes, the County Counsel files our petitions
6 right now. We don't actually go in and file our
7 petitions right now. They are our attorney of record,
8 and they file our petitions on our behalf. That's true
9 for a private individual, too. They'll get an attorney
10 to file on their behalf. But you have to name someone;
11 and, in fact, you can't name someone to act as
12 conservator unless they agree to serve as conservator.
13 So they couldn't go into the court and name us unless we
14 agreed to serve in that capacity.

15 MS. SHELTON: And the appointment of the
16 conservator is an order of the court. And then the court
17 maintains jurisdiction over the entire conservatorship
18 and issues an order regarding all the functions and
19 services provided by the conservator.

20 CHAIR ORTEGA: I'm going to let some other
21 folks ask some questions.

22 Ken, go ahead.

23 MEMBER ALEX: So it strikes me as a fairly
24 technical mandate situation here. So if the Legislature
25 had directed the county to -- if a certain quantum of

1 evidence existed to take action, that would be a mandate;
2 but because it directs the court to issue an order at the
3 point that there is evidence, that that becomes a
4 non-mandate.

5 MS. SHELTON: Well, there are two different
6 subdivisions.

7 MEMBER ALEX: Okay.

8 MS. SHELTON: Okay, the first subdivision in
9 (a) is directing the public guardian's office to file the
10 petition in those imminent cases discussed earlier. And
11 the second subdivision was always there, and it
12 authorized the court to appoint a conservator in those
13 cases where also the same findings had to be made as are
14 being made now.

15 That statute was one of the "may's" authorizing
16 the court to make the order, was changed to a "shall."
17 You know, "The court *shall* make the order of
18 conservatorship."

19 And the analysis there is that those findings,
20 that doesn't create a new state-mandated program there
21 because under prior law, the court would have still had
22 to make the order if the evidence was presented.
23 Otherwise, it was an appealable order. And it's a
24 requirement imposed on the court which, under trial court
25 funding, they're not eligible to get their costs through

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1 mandate reimbursement, anyway.

2 So any function following the court order on to
3 the public guardian's office is a mandate of the court
4 and not a mandate from the State.

5 MEMBER SAYLOR: This includes continuing
6 education requirement for conservators?

7 MS. SHELTON: No, no, those three -- those
8 three activities are a mandate of the state, you know,
9 if you were to find that the office of public guardian
10 was required by law to exist. So it would be -- the
11 three activities were: continuing education, doing the
12 investigations upon, you know --

13 MS. DRAXLER: Within two days.

14 MS. SHELTON: -- within two days, and then the
15 filing of the petition, which really is a function of the
16 county counsel's office.

17 MS. DRAXLER: Although anyone can file a
18 petition.

19 MS. SHELTON: Yes.

20 MS. DRAXLER: We just choose as a government
21 agency to use our attorneys. But a private individual
22 can file.

23 MS. SHELTON: And let me just make that clear.
24 Just that the language in the statute is requiring the
25 public guardian's office to file a petition in those

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1 imminent cases, when there is no one else available.

2 CHAIR ORTEGA: Are there any other questions?

3 *(No response)*

4 CHAIR ORTEGA: Comments?

5 MEMBER SAYLOR: Yes. I think this kind of gets
6 to the heart of some of the work that we do here.

7 Yes, we are making judgments on the basis --
8 we're making quasi-judicial determinations based on
9 evidence presented and based on interpretations of the
10 statutes. But there is also a practicality of what we're
11 doing. And I believe that this is one of the cases that
12 I'm beginning to see where, why would anybody bother with
13 this whole process of state-mandate review?

14 This is incredible. There is no practical
15 choice for our county other than to have an office of
16 public guardian. It's demonstrated by the fact that all
17 58 counties do it. The requirements that are imposed in
18 these three areas, they're very specific new, additional
19 requirements on those offices. The counties don't have a
20 practical option to eliminate the office of public
21 guardian. They come forward and say, "Look, you're
22 asking us to do more. You're demanding and requiring us
23 to do more. We appreciate -- you know, those are all
24 good ideas, great, wonderful. We're not going to be
25 eliminating the office of public guardian. There's no

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1 way we could do it." "We'd have to go back in," they're
2 saying, "and establish some other office to do it; and
3 then we'd have the same requirement to go there."

4 I just can't see us taking such a narrow view
5 on this claim. So I won't be supporting the staff
6 recommendation in this case.

7 And I think it is worth noting that it's un- --
8 to me, it seems very unlikely that the Legislature
9 assumed that counties would be faced with a choice to
10 eliminate the public guardian's office rather than comply
11 with the requirements that they made in this Omnibus Act.
12 The Legislature's intent had to be, it seems to me, to
13 continue these offices and simply bolster and strengthen
14 their quality and their timeliness.

15 That was what they were doing. They weren't
16 setting out a choice that you either do these additional
17 requirements or eliminate the office entirely. That was
18 not even in the cards. They thought the offices would
19 continue because they were all in place. So I can't
20 support this.

21 And I hope that somebody is listening to this
22 box who is a member of the Legislature because if this
23 Commission takes the path that our staff have recommended
24 based on the interpretation of the statutes, I hope that
25 those statutes change very quickly.

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1 CHAIR ORTEGA: Ms. Ramirez?

2 MEMBER RAMIREZ: Well, this is our quandary as
3 a commission. We are very legalistic, and I think this
4 is sometimes why people are very unhappy with the legal
5 profession because we do take a look at the law, and
6 sometimes it's very draconian.

7 I think the problem is the Legislature -- the
8 legislative process, that doesn't take into consideration
9 what these things cost. Obviously, we've got to have a
10 public guardian's office everywhere. I mean, it's how
11 we treat our ill and elderly folks who are dependent is
12 a hallmark of our society. It's got to be paid for.

13 But I see the quandary is, our Commission,
14 what we're obligated to do, and what is the precedent if
15 we go beyond our strict mandate about what we can and
16 cannot allow.

17 So I sympathize. I hope the public guardian
18 remains healthy. But I think the problem is in the
19 Legislature, not with the Commission's charter.

20 MEMBER ALEX: I want to echo Ms. Ramirez's
21 comments. And I do agree with Mr. Saylor that the
22 Legislature hopefully will take note of this. We're not
23 allowed to do equity. That's kind of a part of our
24 charter. And I think the mandate issue is set out
25 clearly by staff. And thank you for that. But this is a

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1 very tough pill to swallow.

2 CHAIR ORTEGA: Okay, any other questions or
3 comments?

4 *(No response)*

5 CHAIR ORTEGA: Is there a motion?

6 MEMBER ALEX: All right, I'll move this staff
7 recommendation.

8 MEMBER RAMIREZ: Second.

9 CHAIR ORTEGA: We have a motion by Mr. Alex and
10 a second by Ms. Ramirez.

11 Please call the roll.

12 MS. HALSEY: Mr. Alex?

13 MEMBER ALEX: Aye.

14 MS. HALSEY: Mr. Chivaro?

15 MEMBER CHIVARO: Aye.

16 MS. HALSEY: Ms. Olsen?

17 MEMBER OLSEN: Aye.

18 MS. HALSEY: Ms. Ortega?

19 CHAIR ORTEGA: Aye.

20 MS. HALSEY: Ms. Ramirez?

21 MEMBER RAMIREZ: Aye.

22 MS. HALSEY: Mr. Rivera?

23 MEMBER RIVERA: Aye.

24 MS. HALSEY: Mr. Saylor?

25 MEMBER SAYLOR: No.

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1 MS. RAMIREZ: With regret.

2 CHAIR ORTEGA: Then the motion is approved.

3 Thank you, everyone.

4 We'll move to Item Number 5.

5 MS. HALSEY: Commission Counsel Matt Jones will
6 present Item 5, a test claim on SARATSO.

7 MS. YAGHOBYAN: Good morning.

8 MR. JONES: Good morning. This test claim
9 alleges reimbursable state-mandated costs related to the
10 Sex Offender Punishment and Control Act, the Sex Offender
11 Registration Act, and an alleged executive order from the
12 SARATSO review committee.

13 Staff finds that the test-claim statutes
14 imposed new mandated activities on counties to receive
15 training on the Sex Offender Risk-Assessment Tool as
16 identified by the SARATSO review and training committees,
17 and to administer risk assessments to eligible persons as
18 specified.

19 In addition, staff finds that the test-claim
20 statutes impose a number of reporting and documentation
21 requirements to be completed prior to the sentencing of
22 an eligible offender.

23 Staff recommends that the Commission adopt the
24 proposed statement of decision, partially approving the
25 test claim.

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1 Will the parties and witnesses please state
2 your names for the record?

3 MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of
4 County of Los Angeles.

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

7 MS. GEANACOU: Susan Geanacou, Department of
8 Finance.

9 MS. YAGHOBYAN: Thank you.

10 Generally, the County of Los Angeles agrees
11 with the staff's recommendation. The only disagreement
12 we have is the part that they are denying the mandate for
13 the probations in situations where there should be
14 intensive supervision versus regular supervision. And
15 that happens when the SARATSO does the evaluation and if
16 the persons are called or categorized as "*high risk*,"
17 which is six and more, their supervision is -- it's
18 supposed to be more intense.

19 So the staff is recommending to deny that part
20 of the activity, saying that this is the part of the
21 punishment and crime so, therefore, it's one of those
22 disclaimers to reimbursement, so it shouldn't be
23 reimbursed.

24 We disagree because this is not a part of
25 punishment. Because the population under SARATSO is not

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1 only the sex offenders -- registered sex offenders who
2 are on probation. The registered sex offenders could be
3 released from probation but still under SARATSO, still
4 needs intensive supervision.

5 The purpose of the SARATSO statute was to try
6 to eliminate reoffending by these registered sex
7 offenders. So once you are categorized as a sex
8 offender, a registered sex offender, you have lifetime
9 registration until you get pardoned by an official or an
10 elected official. Otherwise, you have to register.

11 So one thing to keep in mind is that this is
12 not a part of punishment because everybody else -- it
13 applies to everybody, it's not only the people who are on
14 probation. Therefore, although it's a Penal Code
15 section, but that doesn't automatically make it part of
16 punishment or punitive. Therefore, we don't think it's
17 punishment or crime, so it should be reimbursed, the
18 intensive supervision on certain probationers.

19 CHAIR ORTEGA: Thank you.

20 MR. BYRNE: The Department of Finance concurs
21 with the staff recommendation.

22 CHAIR ORTEGA: Okay, Matt, do you want to...?

23 MR. JONES: I will answer any questions the
24 Members have. But otherwise, staff recommends adoption
25 of the decision.

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1 CHAIR ORTEGA: Are there any questions or
2 comments from the Members?

3 *(No response)*

4 CHAIR ORTEGA: No?

5 *(No response)*

6 CHAIR ORTEGA: Is there a motion?

7 MEMBER CHIVARO: I'll move staff
8 recommendation.

9 MEMBER OLSEN: Second.

10 CHAIR ORTEGA: Okay, motion by Chivaro and
11 second by Ms. Olsen.

12 Please call the roll.

13 MS. HALSEY: Mr. Alex?

14 MEMBER ALEX: Aye.

15 MS. HALSEY: Mr. Chivaro?

16 MEMBER CHIVARO: Aye.

17 MS. HALSEY: Ms. Olsen?

18 MEMBER OLSEN: Aye.

19 MS. HALSEY: Ms. Ortega?

20 CHAIR ORTEGA: Aye.

21 MS. HALSEY: Mr. Ramirez?

22 *(No response)*

23 MS. HALSEY: Ms. Rivera?

24 *(No response)*

25 MS. HALSEY: Mr. Saylor?

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1 MEMBER RAMIREZ: I'm sorry, we got up there.

2 MS. HALSEY: Sorry.

3 MEMBER RAMIREZ: Start again.

4 The R's, you got them..

5 MS. HALSEY: Where did I leave off?

6 MEMBER RAMIREZ: I didn't hear my name.

7 MS. HALSEY: We have Ms. Ortega?

8 CHAIR ORTEGA: Yes. Aye.

9 MS. HALSEY: And, Ms. Ramirez?

10 MEMBER RAMIREZ: Aye.

11 MS. HALSEY: Mr. Rivera?

12 MEMBER RIVERA: Aye.

13 MS. HALSEY: Mr. Saylor?

14 MEMBER SAYLOR: Aye.

15 CHAIR ORTEGA: Thank you.

16 Item 6.

17 Before we start on Item number 6, I do want to

18 say that we have a lot of folks here on this item, so

19 we're going to set a time limit for each side, of

20 45 minutes for each side. And I will try to keep a

21 little bit of attention to the time and give you a

22 heads-up when your approaching the end of your allotted

23 slot.

24 Thank you.

25 MS. HALSEY: Was everybody sworn in, or do I

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1 need to re-administer the oath?

2 For all the witnesses who are here who haven't
3 been sworn in yet, I will re-administer the oath.

4 If you would please stand and raise your right
5 hand.

6 *(Parties and witnesses stood.)*

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

11 *(Chorus of "I dos" was heard.)*

12 MS. HALSEY: Thank you.

13 Commission Counsel Matt Jones will present
14 Item 6, a test claim on *Upper Santa Clara River Chloride*
15 *Requirements*.

16 MR. JONES: This test claim alleges
17 reimbursable state-mandated increased costs resulting
18 from a resolution adopted December 11th, 2008, by the
19 California Regional Water Quality Control Board for the
20 Los Angeles region.

21 Staff finds that the resolution does not impose
22 any new mandated activities because the resolution
23 imposes a lower level of service than required under
24 prior law.

25 In addition, staff finds that the test-claim

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1 executive order does not impose new costs mandated by
2 the State as defined under section 17514, because the
3 claimant has authority to raise fees or assessments
4 sufficient to cover the cost of the program.

5 And staff wants to point out that this mandate
6 determination is a question of law, not of equity. The
7 fairness of the costs of the Regional Board's order are
8 not at issue. And it's not the Commission's purview to
9 consider the reliability of the science behind the
10 Regional Board order of the efficacy of the decision.
11 Therefore, staff recommends that the Commission adopt
12 the proposed statement of decision denying the test
13 claim.

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

16 MS. COLLINS: Claire Collins, District Counsel
17 for the Santa Clarita Valley Sanitation District.

18 MR. BECK: Paul Beck, District Counsel for
19 Santa Clarita Valley Sanitation District.

20 MS. FORDYCE: Jennifer Fordyce, attorney for
21 Los Angeles Regional Water Quality Control Board.

22 MR. LAUFFER: Michael Lauffer with the State
23 Water Resources Control Board.

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

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1 MS. GEANACOU: Susan Geanacou, Department of
2 Finance.

3 CHAIR ORTEGA: Ms. Collins?

4 MS. COLLINS: Thank you.

5 Good morning, Commissioners, Counsel, staff.

6 May I stand to present, if that's all right?

7 Your commission is charged with reviewing test
8 claims that the State has imposed an unfunded mandate on
9 a local agency. The voters essentially said, there are
10 local agencies that are put between a rock and a hard
11 place by state mandates and that the State should,
12 therefore, pay.

13 We come to you today because the District and
14 the people it serves are caught between that rock and a
15 hard place.

16 The essence of this claim is that the State has
17 required the District to desalinate wastewater. Not
18 drinking water, but fully treated wastewater that comes
19 out of a publicly owned treatment works. This is water
20 that is otherwise perfectly clean and safe for humans and
21 animals. And to our knowledge, there is not a single
22 other treatment works in this state or in the nation that
23 is required to desalinate wastewater that goes to a
24 surface water pond.

25 CHAIR ORTEGA: Ms. Collins, I'm going to

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1 interrupt you for just a second and go back to what the
2 staff said earlier about the science behind the issue.
3 And that's not before the Commission.

4 MS. COLLINS: I understand.

5 CHAIR ORTEGA: So I'm going to ask you to stick
6 to the decision that is before us today.

7 MS. COLLINS: Let me give you some context.

8 So this is the state of California, as you can
9 see. The Santa Clarita Valley -- not to be confused with
10 Santa Clara -- is located about 35 miles northwest of the
11 City of Los Angeles, as you can see on the map.

12 Santa Clarita Valley consists of the City of
13 Santa Clarita plus unincorporated county portions. And
14 you can see on this map as well, a blue line that runs
15 through that. That's an approximation of the Santa Clara
16 River.

17 The Santa Clara River, however, is not wet in
18 all places. It actually goes dry in many portions and
19 runs wet only during high-rain events.

20 Chloride. Chloride is the word that is
21 obviously throughout this entire TMDL -- or, I'm sorry,
22 throughout this entire test claim. It's the title of the
23 test claim. But it's really just salt, right? We
24 learned in high-school chemistry that sodium chloride is
25 the chemical name for salt. And that's really what we're

1 talking about today. So to some degree, I'm just going
2 to talk about salt.

3 I know you don't want me to talk about this,
4 but just to give context, again, the drinking water limit
5 generally is about 250 milligrams per liter. That's the
6 degree to which usually you can taste salt in water. The
7 limit for groundwater in Ventura County, which is where
8 most irrigation water comes from, is 200 milligrams per
9 liter. The standard limit to protect agriculture is 142.
10 But the limit at issue in this case is 100 milligrams per
11 liter, which is basically a few grains of salt for a big
12 bottle of Dasani.

13 Now, the only potential beneficiary of this is
14 a single user on the river. And what I'd like to do is
15 orient you to how this works because we're talking about,
16 again, chloride. And most people don't know what that
17 means.

18 So this graphic, what it shows, is really
19 what's happening, the real-world implications of what
20 happens here.

21 This is a graphic that depicts the Santa
22 Clarita Valley. And here, you can see the two sources of
23 the drinking water in Santa Clarita Valley. One is the
24 state, the state's water project; and the other is local
25 groundwater. That local groundwater goes to a water

1 treatment facility where it's then distributed to homes
2 and businesses in the Santa Clarita Valley.

3 At the point it's delivered to users, as of
4 last year, it had about 68 milligrams of chloride per
5 liter. So the influent water already has potentially
6 moderately high chloride.

7 The homes and businesses then use it. They
8 wash their dishes with it; they wash their laundry. And
9 chloride is part of the discharge that everybody puts
10 into the sewer. And so homes and businesses add
11 approximately, at last year, about another 35 milligrams
12 of chloride to the water.

13 That then runs into the sewer to our treatment
14 plants. And there are two of them in Santa Clarita. And
15 at that point currently, we disinfect it with chlorine,
16 and that adds about 10 milligrams of chloride.

17 We're planning on doing a new treatment through
18 UV light, which will reduce that by about 6.

19 But ultimately, as it enters our plants, it's
20 about -- it's over 100. And as it leaves our plants,
21 it's about 113, as of last year. But two-thirds of that
22 is from the influent water. It's not added by the people
23 of Santa Clarita; it can't be controlled by them.

24 That ultimately goes into the Santa Clara
25 River, which goes downstream, ultimately leading to the

1 ocean.

2 This is a Google map, essentially looking at
3 some of the same areas.

4 You may notice, Santa Clarita also -- most
5 people recognize it by Six Flags Magic Mountain. That's
6 the gateway to going over the Grapevine.

7 So here's the 5, which you would take to go
8 over the Grapevine.

9 The City of Santa Clarita is here (*pointing*).
10 And in the papers, you'll see reference to Reach 4B, 5,
11 and 6, which I would assume most people have no idea what
12 that means. So this is the picture that shows you what
13 that means.

14 Our water reclamation plants, or recycling
15 plants, are located at Saugus and Valencia, right next to
16 the river. This is Reach 6. The river is dry north of
17 this. We're the only flow that contributes to this
18 portion of the river. It comes out of the water
19 treatment plant. If it runs dry again a little bit
20 around here at the end of Reach 6, going to Reach 5, then
21 the Valencia Water Treatment Plant discharges water into
22 the river.

23 It crosses over the Ventura County line and
24 into Reach 4B, where the only identified diverter of
25 water is one ranch, Camulos Ranch. That ranch has

1 alleged that high chloride levels might contribute to
2 lower crop yields for avocados and strawberries. They're
3 the only diverter of surface water here.

4 So ultimately, what is being requested here is
5 that those two water reclamation plants bring that water
6 down to 100 milligrams per liter, which requires desal --
7 desalinization -- I think we've got it -- for these.

8 The issues that Santa Claritas face is that
9 that desal plant is going to cost \$130 million to build.
10 And they don't receive any of the water that comes out of
11 that for their use as it goes downstream to Camulos
12 Ranch.

13 It turns out that most of Camulos Ranch, we
14 understand, grows on groundwater. And that limit is
15 200 milligrams, twice what the limit is that the District
16 is required to treat this to. And for that reason, the
17 District has consistently fought this permit limit for
18 decades.

19 The primary basis that the staff report states
20 for denying this test claim is that there is prior law
21 here. And we disagree with that. And we have staff
22 members here who have participated in the negotiations.
23 But the 100-milligram limit has been constantly and
24 consistently fought for over a decade. And to the
25 degree there were previous orders, those orders were

1 constantly and consistently on appeal or in negotiations.
2 So we dispute the fact that there was a prior law of
3 100 milligrams per liter, because we have tried to
4 negotiate and change that over the entire period here, at
5 least starting in 2002, and leading up to 2008, when the
6 District, under the face -- or in the face of millions
7 of dollars of fines from the Regional Board, relented,
8 and moved forward with the 100-milligram-per-liter limit
9 in conjunction with an alternative plan, which is talked
10 about in the papers as AWRM, the Alternative Water
11 Resources Management Plan. It's since been abandoned by
12 the District.

13 Excuse me for a second.

14 Now, the District has, as I said, fought this
15 for years. It appealed -- it made comments, it appealed
16 to the State Board, it got remanded. The District, in
17 fact, got special legislation in order to remove water
18 softeners, because water softeners were contributing to
19 the salt level in the effluent. It has removed something
20 like a third of all the salt by taking out almost
21 8,000 water softeners from its residents over the last
22 ten years.

23 In the middle of this, the Board has reduced
24 the timetables for compliance. And despite being able
25 to take out a third of the chloride, it wasn't enough to

1 get down to that 100-milligram-per-liter limit, which --
2 and, again, I know you don't want us to talk about the
3 science -- but the District has maintained from the
4 beginning, it didn't have a basis and was a discretionary
5 decision on the part of the Regional Board that
6 assessed or that set the permit limit.

7 So we maintain that the prior law here is the
8 current levels which are much, much higher, which are
9 influent water plus a certain margin that accounts for
10 all of the salt that goes in from families and businesses
11 and all the salt that goes in from treatment.

12 The staff analysis also states that because the
13 District was asked to do it faster, that that isn't a
14 state mandate because doing things faster isn't
15 necessarily a higher level of service. Now, we disagree
16 with that in our papers. You reviewed them.

17 If you ask Fed Ex to deliver something in two
18 days instead of four, that's a higher level of service.
19 If you drive a car faster down the freeway at 60 than at
20 45, that's a higher level of speed.

21 We believe that in demanding that the District
22 come into compliance sooner, that itself is also a higher
23 level of service.

24 Finally, the staff report says that even if
25 this were a state mandate, that the District -- or if

1 this were a mandate, the District has fee authority
2 and, therefore, it can't be a state mandate, to which
3 we respond: We can't raise fees from the folks who
4 primarily benefit from this \$130 million plant. It's a
5 \$130 million plant, and the primary beneficiary is
6 outside of the jurisdiction. It's across the Ventura
7 County line. There is no way to recover those costs,
8 which are significant for a small community like Santa
9 Clarita. It's \$130 million to build a plant that's going
10 to create desalinated water to go to a single ranch that
11 can't prove that it's being harmed.

12 It also can't collect from the State water
13 project, which is the source of two-thirds of the salt.
14 So it's without a remedy from the sources of the
15 beneficiaries of the program. And instead, the 65,000
16 homes that live in Santa Clarita Valley are forced to pay
17 the entire freight of the \$130 million project.

18 Really, this is a situation where one community
19 is uniquely positioned based on geography to have to
20 handle a very, very large capital project. And we don't
21 see that there is a true benefit to that community, and
22 the community has been frustrated by that, and that's why
23 it's come to you.

24 I want to say one last thing, and it relates
25 back to water pollution in general. Now, most people.

1 when they think about water pollution, they think about
2 cleaning up real harms to real people or animals. And
3 that's really the only thing we've got here is
4 speculative harm to a crop that has never been proven.

5 This is not like the chemical spill in West
6 Virginia earlier this month. There, noxious chemicals
7 were poorly contained -- or contained. There were lax
8 regulators. It got out, it got into a river, it smells
9 disgusting, people can't drink the water, and it's real
10 harm.

11 Now, somebody did something wrong there, right?
12 Someone failed to contain pollutants. Someone failed to
13 put in protective devices; and those people should be
14 held accountable, and those people should pay to clean up
15 their own mess.

16 MEMBER ALEX: Look, this is really not relevant
17 to this mandate determination. We are not a regulatory
18 body dealing with the issue of pollution.

19 MS. COLLINS: I understand.

20 MEMBER ALEX: And I'm sure you've had many
21 discussions about this with the regulators.

22 MS. COLLINS: Yes.

23 MEMBER ALEX: So if we could kind of move to
24 the mandate, we'd appreciate it.

25 MS. COLLINS: So the District maintains that

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1 the mandate is a discretionary number that was put in
2 place over a period of time, that was not finalized until
3 2010.

4 And we maintain that the prior-law argument is
5 not what really happened in the real world. This was
6 negotiated over a long period of time, and it's now put
7 the District in place where it has to raise \$130 million,
8 and doesn't have the ability to collect that money from
9 the primary causes nor the primary beneficiaries.

10 MEMBER ALEX: Thank you.

11 MS. COLLINS: The other witnesses who we listed
12 today are available for questions and for any other
13 questions that the commissioners may have.

14 MEMBER RIVERA: Actually, I do. Just one
15 question.

16 CHAIR ORTEGA: Okay.

17 MEMBER RIVERA: Regarding the fee authority,
18 you're stating that you cannot charge the residents
19 themselves.

20 Can you not charge that fee authority to the
21 ranch? Can you do that?

22 MS. COLLINS: Commissioner, the ranch is
23 outside of the jurisdiction of the sanitation district,
24 which ends at the Los Angeles County line.

25 MEMBER RIVERA: Okay.

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1 CHAIR ORTEGA: Finance?

2 MR. BYRNE: The Department of Finance concurs
3 with the staff recommendation.

4 CHAIR ORTEGA: Are there any questions or
5 comments?

6 Yes?

7 MEMBER RAMIREZ: I'd just like to ask staff to
8 respond to the comments or the argument.

9 MR. JONES: Would you mind if I let the Water
10 Board respond first?

11 MS. FORDYCE: Good morning. Jennifer Fordyce,
12 attorney for the Los Angeles Regional Water Quality
13 Control Board.

14 The Los Angeles Regional Board also concurs
15 with the staff analysis and proposed statement of
16 decision.

17 We really appreciate your staff's careful and
18 thoughtful work in analyzing the specific facts of this
19 case.

20 Your staff has drafted a well-reasoned and
21 legally supportable decision which correctly concludes
22 that the 2008 resolution that was adopted by the Regional
23 Board does not constitute a reimbursable state-mandated
24 program.

25 The claimant's comments concerning the

1 appropriateness of the 100-microgram-per-liter chloride
2 limit and water-quality objective is not relevant to the
3 test claim at issue today, as your counsel has advised
4 you.

5 The 100-microgram-per-liter chloride water-
6 quality objective was first established in 1978 and
7 remains the water-quality objective today.

8 The issue today does not concern whether the
9 100-microgram-per-liter limit is the correct limit, the
10 wrong limit. The question today is whether it was a new
11 limit as adopted by the Regional Board in 2008. And it
12 wasn't.

13 At issue today is whether the 2008 resolution
14 constitutes a reimbursable state mandate program. And
15 we assert it does not, as it does not impose a new
16 program or higher level of service.

17 We disagree with the characterization that
18 there was somehow a continuous appeal between 2002 and
19 2008. There were at least three separate actions. There
20 wasn't an appeal, but in June 2002, adopting the TMDL,
21 when it goes to the State Board, it's not necessarily an
22 appeal; it's an approval process. For a TMDL to become
23 effective, it has to be adopted -- it has to be approved
24 by the State Water Board, Office of Administrative Law,
25 and then US EPA.

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1 So it necessarily has to go through those
2 steps, anyway. It's not necessarily an appeal.

3 And, as you know, from the facts, the 2002 TMDL
4 was sent back to the Regional Board for reconsideration;
5 and the Regional Board adopted a new resolution which
6 then it was approved by US EPA in -- I'm sorry, I had the
7 facts --

8 MS. SHELTON: 2008.

9 MS. FORDYCE: Thank you.

10 And so, here, as your staff noted in the
11 proposed decision, the appropriate measure is to compare
12 the test-claim statute, which is the 2008 resolution,
13 with the law immediately prior to the alleged mandate.

14 As of here, the law that was in effect
15 immediately prior to the alleged mandate was the 2006
16 resolution, which became effective in 2008.

17 So we, therefore, encourage the Commission to
18 adopt the proposed statement of decision. And we thank
19 you for the opportunity to address you, and we're here
20 for any questions.

21 CHAIR ORTEGA: Is there any other public
22 comment on this item?

23 MS. COLLINS: There's three.

24 CHAIR ORTEGA: Please, come on up.

25 MR. WILK: I'll go first.

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1 Good morning. My name is Scott Wilk. I'm the
2 State assemblyman for the 30th Assembly District, which
3 comprises the Santa Clarita Valley and northwest
4 San Fernando Valley in L.A. County, and then the
5 wonderful City of Simi Valley in Ventura County.

6 Again, thank you for the opportunity to make
7 some public comments here regarding the state mandate
8 test claim.

9 You know, inscribed on the front wall of the
10 State Assembly chamber is the statement, "It's the duty
11 of the Legislature to pass just laws."

12 I believe it's also the duty of regulators to
13 apply those laws justly; and this is a situation where
14 I believe that the Los Angeles Regional Water Quality
15 Board has not done that.

16 I'm not going to address sound science in
17 deference to the chair, but that certainly is an issue.

18 The second issue is that federal law states
19 that the water has to be discharged for the benefit of
20 downstream users. And in the case of Santa Clarita
21 Valley, that would be the avocado and strawberry farmers
22 as well as nursery plants.

23 The City of Thousand Oaks, which is also under
24 the authority of this same body and has the same
25 downstream users, avocado and strawberry farmers and

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1 nursery plant farmers, have a setting of 150 parts per
2 million for their chloride. If Santa Clarita Valley was
3 held to the same standard as Thousand Oaks, we would not
4 be here today, because our community would be in
5 compliance.

6 And then finally, requiring 265,000 residents
7 to carry the burden of \$130 million capital costs, as
8 well as \$4.1 million in ongoing annual operating costs
9 to discharge water in a better condition than they
10 received it from the State Water Project, and not to even
11 benefit themselves, just defies logic.

12 I believe that this unfunded mandate, if it's
13 not mitigated, is going to choke economic growth in one
14 of the few areas of the state that actually has a vibrant
15 economy. We have a biotech hub, a growing biotech hub,
16 established manufacturing center, a cutting-edge
17 aerospace research and development sector, and we're a
18 favored location for the film and television industry.

19 I understand you have a very small bandwidth
20 today, but I hope you'll take our testimony seriously and
21 render a just decision. And I really thank you for your
22 time.

23 MS. WESTE: My name is Laurene Weste. I'm the
24 mayor of the City of Santa Clarita.

25 As the mayor, in conformance with state law,

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1 I'm also director on the Santa Clarita Valley Sanitation
2 District. And to be clear, I'm just speaking here to you
3 today as mayor of the City of Santa Clarita.

4 I'd like to thank you for the opportunity to
5 make public comment on the state mandate test claim for
6 the Upper Santa Clara River TMDL Chloride Requirement.

7 The City of Santa Clarita has taken great pride
8 in our community and places a premium on the protection
9 of our environment.

10 Just one example of that commitment is our
11 open space, in which we have placed over 8,000 acres that
12 can never be developed and that will be enjoyed for
13 generations to come.

14 This issue before you today is about fairness.
15 We understand the importance of water-quality laws and
16 the implementation requirements by State agencies. These
17 requirements, however, can create a substantial monetary
18 burden on local government.

19 The cost of compliance with the Upper
20 Santa Clara River chloride total maximum daily load is
21 in the range, as you have heard, \$130 billion in capital
22 costs with operation and maintenance at \$4.1 million per
23 year. This cost is due to the unfunded mandate as a
24 new requirement related to the claim, of the results of
25 decisions by the State Water Resources Control Board and

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1 Los Angeles Regional Water Quality Control Board.

2 The residents of Santa Clarita and the
3 surrounding unincorporated area within the Santa Clarita
4 Valley Sanitation District will be paying 100 percent of
5 the costs for this new treatment facility. Even though
6 my city residents are not the majority contributor to the
7 chloride level in the water which comes to the community
8 high in salt from the State Water Project and will be
9 receiving none of the benefits from the treatment plant
10 they are paying for, Santa Clarita's residents will bear
11 the entire financial burden.

12 In 2006, the City of Santa Clarita
13 co-sponsored Senate Bill 475 with the sanitation
14 districts of L.A. County, which created the first of
15 its kind authority in California for local agencies to
16 require removal of self-regenerating water softeners.
17 It was a landmark in America.

18 After the sanitation district board enacted an
19 ordinance requiring the removal of all self-regenerating
20 water softeners, and the local electorate voted to
21 support the ordinance through a referendum that was
22 required under SB 475. My community voted to do that.

23 Our community has done its fair share by
24 removing approximately 7,900 self-regenerating water
25 softeners, lowering the chloride level by 30 percent.

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1 Government allows consumers to use salt
2 products that are detrimental to the environment, and
3 then turns around and taxes its citizens to fix the
4 problems created by the very products that are legal.
5 Government at all levels needs to look at the source
6 control as a strategy for addressing environmental
7 concerns.

8 My community, like others throughout
9 California, is continually faced with new regulations to
10 grapple with.

11 The economic well-being of Santa Clarita and
12 communities throughout California is essential to
13 sustaining an excellent quality of life and our ability
14 to continue to protect the environment. That is why it's
15 critical that compliance with these regulations be
16 financially supported by our state.

17 I urge you to carefully consider the arguments
18 made by the District. This unfunded mandate must be
19 addressed by the State to maintain a fairness and create
20 the incentive to protect the financial stability of local
21 government.

22 My community is working hard to protect the
23 Santa Clara River, to protect our downstream neighbors
24 and the overall environment.

25 I want to thank you for allowing us to

1 participate and for hearing us, and for consideration of
2 our comments, and for the residents of Santa Clarita to
3 be heard.

4 Ladies and gentlemen, what you're doing here
5 is one of the most cruel things I've ever seen. And I am
6 a born native Californian. I can't believe this is going
7 on. We have tried and tried. You're putting something
8 on us that does not belong.

9 I thank you for listening, and I appreciate
10 your decision.

11 MR. BOYDSTON: Thank you, Chair and Members of
12 this august body.

13 Please forgive me, I will be a little nervous,
14 having never spoken to any group of people inside of our
15 Capitol. And although I am a councilman, recently
16 elected for the City of Santa Clarita, I'm just an
17 ordinary guy who, for five years, has been trying to find
18 the common sense of how this all came about. And, I
19 don't know, maybe you will all help enlighten me to this.

20 Because every time that I've gone forward and
21 said, "This doesn't make any sense. You say you have
22 this range of chloride, but you won't give us any time to
23 do the studies." And when I say that, I said that to
24 the -- you know, the sanitation district; and they said,
25 "Well, the Regional Board is telling us that we have to

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1 do this." And then the Regional Board says, "Well, you
2 know, the State Board, it says we have to do this."

3 So here we are, this is the State. And I know
4 you're not the State Board, but I guess you're the board
5 that's put in place to see who is going to pay for it,
6 who is going to pay over a hundred, maybe hundreds of
7 millions of dollars.

8 And quite honestly, I was at the Regional Board
9 just a little while back, and, Madam, one of the ladies
10 on the board there was comparing the \$200,000 fine that
11 they gave my community as parking tickets. She said,
12 "This is just parking tickets." But \$200,000 is a lot of
13 money.

14 As a councilman, one of the only things that
15 was not in budget that we voted on last year was
16 \$200,000: \$100,000 to feed seniors and \$100,000 to keep
17 at-risk kids off the street.

18 So the money means a real thing to us. And
19 I know you deal with hundreds of millions of dollars.
20 But with this, there is no science; and they won't give
21 us the time. They say the State will not give us the
22 time to do actual studies. Put the avocados trees, go
23 into the lab, make avocado trees and grow it, and find
24 out what the actual damaging thing is because the range
25 right now that has come up with the six scientists --

1 three of them who work for the agricultural interests
2 downstream who want this chloride-free water to put it
3 on their crops and put it on their land that is ruined
4 because they overpumped their aquifer and brought in
5 34,000 milligrams of salt out of the ocean and put it in
6 there, they need that low-chloride water. They need it
7 to refill their aquifer and they need it to leach out the
8 salt.

9 And we're supposed to supply that?

10 We haven't put any damaging level in there, and
11 they say, "Oh, this is what it is. This range of safety
12 is between 100 and 270 milligrams."

13 When it takes hundreds of millions of dollars
14 to take out 20 or 30 or 40 milligrams of salt, out of
15 20 million gallons each day that goes out of the sewer
16 plant, okay, that's a huge difference. And they can't
17 specify it, they can't bring it down?

18 Well, how do you bring it down? You allow the
19 people to do the test. You allow the people to grow the
20 avocado trees and then see, is there damage?

21 I mean, I think that's what they're trying to
22 do in Washington, when they passed the Federal Clean
23 Water Act, they were just trying to protect people that
24 were using the water.

25 And I get all of the legal ramifications, but

1 we have lost sight of the trees because the lawyers are
2 busy planting the forests.

3 And I admire the skill-set and the skill level
4 so the people that will tell you: No, you don't have to
5 pay for it. No, here's the reason, no, no, no, no, no.
6 Put it back on the little people down there. They'll pay
7 for it.

8 And it's a tragedy. And I think it's a
9 travesty.

10 And I pray, if there's any way you have any
11 tools at your disposal to allow us the time to actually
12 figure out what would damage avocado trees before we
13 spend \$130 million that could be better spent on feeding
14 hungry people and educating our children.

15 I thank you so much for your time.

16 CHAIR ORTEGA: Thank you. Before you leave,
17 I might have missed it, but if you would identify
18 yourself for the --

19 MR. BOYDSTON: I am so sorry. My name is
20 TimBen Boydston, and I'm speaking as an individual, and
21 for a lot of people back home that are super frustrated
22 because they said: "The people at the state level are
23 making the rules. There's nothing we can do about it.
24 It's too far away, they're too big, they have too much
25 money."

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1 CHAIR ORTEGA: Thank you.

2 MR. BOYDSTON: Thank you.

3 CHAIR ORTEGA: Ms. Olsen.

4 MEMBER OLSEN: So I'm somewhat affected by
5 everybody's passion here this morning. And I would like
6 to go back to the representative from the Regional Water
7 Board. And I'd like you to address Assemblyman Wilk's
8 comment that if this were happening downstream at
9 Thousand Oaks, there would be a different standard that
10 they would have to meet.

11 Why are there two standards?

12 You're the Water Board for both areas, correct?

13 MS. FORDYCE: I'm the attorney for the
14 Los Angeles Regional Water Quality Control Board.

15 MEMBER OLSEN: And that would be for both of
16 those areas?

17 MS. FORDYCE: And Santa Clarita and Thousand
18 Oaks are both in the Los Angeles region, yes.

19 MEMBER OLSEN: Okay.

20 MS. FORDYCE: I mean, I can't answer the
21 question about whether the limit would be different.
22 And, I'm sorry, I can't answer whether its limit --
23 whether the limit is different right now.

24 But why it could be different is because water
25 bodies are different. The characteristics are different

1 water-body by water-body.

2 And so when the Water Board establishes
3 water-quality objectives, they have to look at what is
4 the natural concentration and what's the background, and
5 what's the -- you know, what kind of point sources and
6 non-point sources are being discharged to that water.
7 They're just -- they're different, that's really the
8 simple answer. So there's just not one uniform number
9 that applies statewide.

10 MS. COLLINS: Sorry, Madam Chair?

11 CHAIR ORTEGA: Yes?

12 MS. COLLINS: Phillip Friess is the head of the
13 technical services department of the Santa Clarita Valley
14 Sanitation District. And I was hoping you would give him
15 a couple of minutes.

16 CHAIR ORTEGA: Yes, I think this side has about
17 seven, eight more minutes left, including your rebuttal
18 time. So just keep that in mind.

19 MS. COLLINS: Thank you.

20 MR. FRIESS: Madam Chair, I'd like to just make
21 a couple of comments with regard to the prior-law issue,
22 the 2006 TMDL representing the prior law, to the 2008
23 TMDL.

24 From the Sanitation District's perspective,
25 we've been engaged in relatively continuous, intense

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1 negotiations with the Regional Board since about 1998 on
2 the chloride issue, when the Santa Clara River was listed
3 as being impaired for chloride.

4 We challenged the listing in the 1998-1999 time
5 frame. We sought to have the water-quality objective
6 that Ms. Fordyce referred to as having been established
7 in 1975. We sought to have that changed in the 1998-to-
8 2000 time frame unsuccessfully.

9 And then when the TMDL was adopted in 2002, we
10 challenged that it was remanded by the State Board back
11 to the Regional Board. And the implementation schedule
12 for the TMDL was extended to give us time to do special
13 studies which we performed. The remanded TMDL was
14 readopted by the Regional Board in 2004, and certified by
15 the State Board and EPA in the 2005 time frame.

16 That gave us time to do scientific studies that
17 we hoped would allow substantial modification of the
18 requirements of the TMDL. We did a threatened-and-
19 endangered species study, a groundwater/surface-water
20 interaction modeling study, an agricultural literature
21 review, evaluation study, all in hopes of substantially
22 modifying the requirements of the TMDL.

23 The 2006 TMDL was just a shortening of the
24 implementation schedule of the TMDL, as we had completed
25 some of those studies.

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1 The 2008 TMDL was the TMDL that was adopted
2 after the culmination of our having completed all those
3 studies, which informed the ability to modify somewhat
4 the requirements of the TMDL in the end. But it was
5 all in our mind, a continuous process conducted over an
6 extended period of time. I just wanted to make that
7 point.

8 CHAIR ORTEGA: Okay, thank you.

9 Assembly Member Wilk, did you --

10 MR. WILK: Yes, I'd love to make a comment
11 because I think that question was an excellent question.

12 CHAIR ORTEGA: Please.

13 MR. WILK: This is why it's all arbitrary. So
14 in 1978, they did the study. Santa Clarita came out at
15 100, so they set it at 100. Thousand Oaks came out at
16 150, so it was set at 150. They did a prior study in
17 1975 where Santa Clarita Valley came out at 80, and then
18 Thousand Oaks came out at 50.

19 So in three years, Thousand Oaks went from
20 50 to 150. We went from 80 to 100. And they just
21 arbitrarily said that's now the level.

22 So it's not based upon water, it's not -- they
23 have this -- we have the same downstream beneficial
24 users: avocado, strawberry, and nursery plants. That is
25 what's so frustrating about this is that it's completely

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1 arbitrary.

2 If we were at 150, we would not be in front
3 of you today because we had done all the steps that was
4 laid out by the mayor to show that we in good faith have
5 done everything we can to clean the water to benefit
6 downstream users. So I really appreciate that question.

7 Thank you.

8 CHAIR ORTEGA: Yes. And thank you so much
9 for -- you know, we certainly respect your point of view
10 on that. But, again, of course, the issue before the
11 Commission is certainly not the levels, so..

12 MR. WILK: I understand.

13 CHAIR ORTEGA: Thank you.

14 I think I'm going to close the presentation
15 period now.

16 If there are any more comments or questions
17 from the commissioners, please.

18 Ms. Ramirez?

19 MEMBER RAMIREZ: I did want to hear from
20 Mr. Jones, the staff response.

21 Can we do that? Thank you.

22 MR. JONES: Member Ramirez, is there any
23 particular point you'd like me to address? Because that
24 was quite a lot.

25 MEMBER RAMIREZ: Just in terms of the mandate

1 and what earlier, in another matter, Commissioner Alex
2 mentioned equity.

3 MR. JONES: Right.

4 MEMBER RAMIREZ: And what our charter is in
5 regards to equity.

6 MR. JONES: Sure, well, as the members know,
7 but maybe we'll state it again for the benefit of the
8 public and the parties.

9 Certainly the Commission's jurisdiction and
10 charter does not include consideration of what's fair.
11 And as the members all have made clear, neither does it
12 include considering what the Water Board has done, what
13 the Regional Board has done, and whether there is any
14 science to back it up.

15 But more importantly here, the mandate finding
16 in the proposed statement of decision that you have
17 before you really just turns on two issues. Chiefly,
18 that only the 2008 order was pled. The 2002, 2004, 2006
19 orders, the remand orders in between, none of those
20 orders are before you today. And all of those orders
21 were effective prior to the 2008 order. All of those
22 orders having been signed off on by the State Water
23 Board, the director of -- or excuse me, the OAL and the
24 Administrator of the US EPA. So all of those orders were
25 effective.

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1 And we don't generally engage in sort of a
2 "*but for*" analysis when we're writing these analyses for
3 you and when we're writing these proposed decisions.
4 But here, it's appropriate to just realize that if the
5 2008 order had not come about, but for that order, the
6 District would still be required to meet the 100-
7 milligram-per-liter chloride standard and would
8 presumably incur all of the costs that they're alleging
9 before you today as arising from the 2008 order.

10 So clearly, those orders that would require
11 that same thing have to be analyzed as prior law.

12 You know, there are a lot of machinations and
13 claims about costs. And I apologize if that sounds like
14 we're minimizing it; but we just -- the Commission is not
15 empowered to consider costs to the local government. The
16 Commission is only empowered to consider mandates.

17 And I don't know if you have any other specific
18 questions on the record, but the staff recommends the
19 proposed decision in front of you.

20 CHAIR ORTEGA: Anyone else?

21 Mr. Alex?

22 MEMBER ALEX: I have a question either for Matt
23 or Camille, just for my own edification.

24 Obviously, the TMDL requirements are from
25 federal law, and then the State Water Board is -- or the

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1 Regional Board, and followed by the State Board, set the
2 TMDL levels for a particular basin.

3 Is the mandate derivative of the federal law,
4 and does the federal law impact the concept of a mandate?

5 MR. JONES: That issue is still --

6 MEMBER ALEX: Still being litigated?

7 MR. JONES: -- perhaps up in the air.

8 MEMBER ALEX: Okay.

9 MS. HALSEY: If I could answer, we did not
10 address that issue in this test claim because it wasn't
11 necessary, because prior law already required this. We
12 did not delve into the federal issue.

13 MEMBER ALEX: I understand that you didn't --
14 hadn't read it --

15 MS. HALSEY: Right.

16 MEMBER ALEX: -- but I'm asking --

17 MS. HALSEY: And we did that because it wasn't
18 necessary; and it would have been a much bigger analysis,
19 yes.

20 But, yes, you're right. It does come -- and we
21 do have it, though, in the background. And, of course,
22 it does come from the Clean Water Act. And it's just, we
23 didn't do a full analysis of whether the whole thing is a
24 federal mandate.

25 MEMBER ALEX: Okay.

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1 MS. SHELTON: Can I just clarify, for mandates
2 reasons, you have to satisfy each element. And in order
3 to be approved as a reimbursable state-mandated program,
4 every element has to be proved. So if you have a failure
5 of one of those elements, then it automatically is not a
6 reimbursable state-mandated program.

7 CHAIR ORTEGA: Mr. Saylor?

8 MEMBER SAYLOR: I will support this staff
9 recommendation in this case. I think that the issues
10 are narrowly defined for the Commission's review; and
11 I think the analysis that we've got before us is clear
12 and accurate, as far as I can tell, as a dummy that comes
13 in here every couple months.

14 But I will say that the presentations from the
15 representatives of Santa Clarita have been very powerful;
16 and the residents and citizens in that neighborhood truly
17 owe their representatives a "thank you" for their active,
18 ardent advocacy on behalf of the community.

19 And this issue will not go away with the action
20 that happens here today. It's going to be ongoing, and
21 your community is not the only one in the state that
22 faces this kind of a challenge, too; and we're all going
23 to be seeing much more of these issues in the time to
24 come.

25 So to the Assembly Member and the Council

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1 Member and Mayor, thank you so much for being here today.
2 And we did hear you. This is not the arena that your
3 issues can be addressed, it appears.

4 CHAIR ORTEGA: Anything else from the
5 commissioners?

6 *(No response)*

7 CHAIR ORTEGA: Do we have a motion?

8 MEMBER OLSEN: I'll move adoption of the staff
9 recommendation.

10 MEMBER SAYLOR: Second.

11 CHAIR ORTEGA: Second by Mr. Saylor.

12 Roll call.

13 MS. HALSEY: Mr. Alex?

14 MEMBER ALEX: Aye.

15 MS. HALSEY: Mr. Chivaro?

16 MEMBER CHIVARO: Aye.

17 MS. HALSEY: Ms. Olsen?

18 MEMBER OLSEN: Aye.

19 MS. HALSEY: Ms. Ortega?

20 CHAIR ORTEGA: Aye.

21 MS. HALSEY: Ms. Ramirez?

22 MEMBER RAMIREZ: I'm going to abstain. Thank
23 you.

24 MS. HALSEY: Mr. Rivera?

25 MEMBER RIVERA: Aye.

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1 MS. HALSEY: Mr. Saylor?

2 MEMBER SAYLOR: Aye.

3 MS. COLLINS: Thank you.

4 CHAIR ORTEGA: The staff recommendation is
5 adopted.

6 Thank you, everyone.

7 Item 7?

8 MS. HALSEY: Item 7, Commission Counsel Matt
9 Jones will present a mandate redetermination on *Local*
10 *Recreational Areas: Background Screenings*.

11 CHAIR ORTEGA: Go ahead, Matt.

12 MR. JONES: Item 7. At the first hearing on
13 this mandate redetermination on December 6th, 2013,
14 the Commission held that the requestor, the Department
15 of Finance, made an adequate showing that the State's
16 liability under the test-claim statute had been modified
17 by a subsequent change in law as defined in the
18 Government Code providing fee authority to cover the
19 costs of the program.

20 At this hearing, the Commission is required
21 to consider whether to adopt a new test-claim decision to
22 supersede the previously adopted test-claim decision and
23 to reflect the State's modified liability under the
24 test-claim statute.

25 Staff recommends that the Commission adopt the

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1 proposed statement of decision as its new test-claim
2 decision, ending reimbursement for the activities under
3 the test-claim statute, beginning July 1, 2011.

4 If the Commission adopts the proposed statement
5 of decision, staff will present the next agenda item,
6 Item 8, proposed parameters and guidelines, reflecting
7 the end of reimbursement for the test-claim statutes.

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

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

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

13 MS. GEANACOU: Susan Geanacou, Department of
14 Finance.

15 CHAIR ORTEGA: Okay. Mr. Scott?

16 MR. SCOTT: The Department of Finance concurs
17 with staff.

18 CHAIR ORTEGA: Is there any public comment on
19 this item?

20 *(No response)*

21 CHAIR ORTEGA: Anything from the Commissioners?

22 *(No response)*

23 CHAIR ORTEGA: Do we have a motion?

24 MEMBER ALEX: Move staff recommendation.

25 CHAIR ORTEGA: Moved by Mr. Alex.

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1 MEMBER CHIVARO: Second.

2 MEMBER RIVERA: Second.

3 CHAIR ORTEGA: Second by Mr. Chivaro.

4 Call the roll.

5 MS. HALSEY: Mr. Alex?

6 MEMBER ALEX: Aye.

7 MS. HALSEY: Mr. Chivaro?

8 MEMBER CHIVARO: Aye.

9 MS. HALSEY: Ms. Olsen?

10 MEMBER OLSEN: Aye.

11 MS. HALSEY: Ms. Ramirez?

12 MEMBER RAMIREZ: Aye.

13 MS. HALSEY: Mr. Rivera?

14 MEMBER RIVERA: Aye.

15 MS. HALSEY: Mr. Saylor?

16 MEMBER SAYLOR: Aye.

17 CHAIR ORTEGA: I think you missed me.

18 Aye.

19 MS. HALSEY: Did I miss you?

20 CHAIR ORTEGA: Yes.

21 MS. HALSEY: Sorry.

22 CHAIR ORTEGA: That's okay.

23 MS. HALSEY: Commission Counsel Matt Jones will

24 now present parameters and guidelines amendment on *Local*

25 *Recreational Areas: Background Screenings.*

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1 MR. JONES: Item 8. These parameters and
2 guidelines pertain to the new test-claim decision adopted
3 for the *Local Recreational Areas: Background Screenings*
4 mandate, reflecting the end of reimbursement for the
5 program.

6 The proposed parameters and guidelines provide
7 that reimbursement for the program is ended July 1, 2011,
8 pursuant to the filing date of the redetermination
9 request.

10 Staff recommends that the Commission adopt the
11 proposed parameters and guidelines reflecting the end of
12 reimbursement based on fee authority provided to local
13 government in the amended statutes.

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

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

17 MR. BYRNE: Michael Byrne, Department of
18 Finance.

19 MS. GEANACOU: Susan Geanacou, Department of
20 Finance.

21 CHAIR ORTEGA: Mr. Scott?

22 MR. SCOTT: The Department of Finance concurs
23 with staff.

24 CHAIR ORTEGA: Is there any public comment on
25 this item?

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(No response)

CHAIR ORTEGA: Any questions or comments from
the Commission?

(No response)

CHAIR ORTEGA: Okay, do we have a motion?

MEMBER OLSEN: I'll move the adoption.

CHAIR ORTEGA: Moved by Ms. Olsen.

MEMBER RIVERA: I'll second.

MEMBER RAMIREZ: Second.

CHAIR ORTEGA: Second by Mr. Rivera.

Please call the roll.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Aye.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Ms. Ortega?

CHAIR ORTEGA: Aye.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Aye.

MS. HALSEY: Mr. Rivera?

MEMBER RIVERA: Aye.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Aye.

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1 MS. HALSEY: Thank you.

2 Items 9 through 15 are all on the Consent
3 Calendar. So we're moving on to Item 16.

4 Item 16 is reserved for county applications for
5 finding of significant financial distress or SB-1033
6 applications. No SB-1033 applications have been filed.

7 Item 17 is the legislative update, which will
8 be presented by Commission Staff Member Kerry Ortman.

9 MS. ORTMAN: Commission staff continues to
10 monitor legislation for bills that might affect the
11 mandate process. There are no new bills to report on at
12 this time, but it's still early in the session.

13 On December 10th, 2013, the Assembly Local
14 Government Committee held an informational hearing on
15 state mandates with the participation of the LAO,
16 Department of Finance, California League of Cities,
17 California Special District Associations, CSAC, the State
18 Controller's Office, and Commission staff.

19 The presentations included an overview and
20 history of mandates, a review of the mandates process,
21 and an update on the Commission's backlog reduction plan,
22 the local-government perspective on mandates, and an
23 overview of the State Controller's role in the mandate
24 redetermination process.

25 CHAIR ORTEGA: Thank you.

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1 Any questions?

2 (No response)

3 CHAIR ORTEGA: Okay.

4 MS. HALSEY: Item 18 is the Chief Legal
5 Counsel's report which will be presented by Chief Legal
6 Counsel Camille Shelton.

7 MS. SHELTON: As indicated in the report, the
8 County of Los Angeles and the surrounding cities have
9 filed a petition for review with the California Supreme
10 Court in the *Municipal Stormwater and Urban Runoff*
11 *Discharge* claim.

12 I did receive notice this week that the Supreme
13 Court is giving themselves an extra month to decide
14 whether to accept jurisdiction on that petition. So we
15 should know something on or before February 24th.

16 CHAIR ORTEGA: Thank you.

17 Any questions from Members?

18 (No response)

19 CHAIR ORTEGA: Okay, Heather?

20 MS. HALSEY: Item 19, it's the Executive
21 Director's report. And today, I'm giving the mid-year
22 workload update.

23 After today's hearing, the Commission has
24 completed ten test claims, six parameters and guidelines,
25 seven parameters-and-guidelines amendments, 13 incorrect

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1 reduction claims, ten statewide cost estimates, and two
2 mandate redeterminations in this fiscal year.

3 This represents a major accomplishment for
4 Commission staff and is a significant increase in matters
5 completed over the first half of the last several fiscal
6 years for each type of matter, except for the IRCs.

7 And with regard to the IRCs, most of the
8 low-hanging fruit has been eliminated, and the Commission
9 will be hearing and deciding on some of the more
10 contentious issues pending over the next several
11 hearings.

12 And it is hoped that the resolution of some of
13 those contentious issues will then spur additional
14 informal resolution of pending IRCs between the parties.
15 And Commission staff will take steps to facilitate that
16 type of informal resolution as well.

17 And regarding remaining caseload, we have
18 18 test claims, four parameters and guidelines,
19 five parameters-and-guidelines amendments, five statewide
20 cost estimates, 76 incorrect-reduction claims, and two
21 mandate redetermination claims remaining to be heard.

22 Commission staff expects to present all of the
23 remaining test claims, with the exception of the *NPDES*
24 *Permit* claims which are pending in court, to the
25 Commission by the May hearing. And we also expect to

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1 present all the currently pending parameters and
2 guidelines, parameters-and-guidelines amendments, and
3 mandate-redetermination claims within this calendar year.

4 On the proposed budget, the Governor's proposed
5 budget includes essentially no change from current year
6 for the Commission's operations budget.

7 With regard to mandate funding, the Governor
8 proposes \$36,204,000 different local agency mandates, and
9 \$293,452,000 to fund the cost of K-12 and community
10 college mandates.

11 The administration proposes the following
12 changes from the current fiscal year, in the 2014-15
13 budget. For local agencies, there is a reduction in the
14 current-year appropriation for the *Sexually Violent*
15 *Predators* program, in the wake of the recently adopted
16 new test-claim decision that reduced the number of
17 reimbursable activities.

18 The proposed budget also includes suspension
19 of two programs with recently adopted statewide cost
20 estimates; and those programs are *Local Agency Ethics* and
21 *Tuberculosis Control*.

22 For the K-12 budget, it is primarily block
23 grant funding. And the budget also proposes to fund
24 additional mandate programs with recently adopted
25 statewide cost estimates by adding them to the list of

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1 mandated programs subject to block grant funding. And
2 those new programs include: *Charter Schools IV, Public*
3 *Contracts, and Uniform Complaint Procedures.*

4 And for the community-college budget, the
5 proposed changes include the following: Elimination of
6 the *Community College Construction* mandate, funding of
7 the *Public Contracts* mandate by adding the -- and adding
8 the program to the block grant, and then reducing the
9 block grant funding by \$512,000 as an adjustment.

10 For more detailed information on the budget,
11 I do have attached appendices to the Executive Director's
12 report.

13 And then finally, tentative agenda items.

14 For all the parties, if you check the Executive
15 Director's report to see if your item is coming up in the
16 next couple of hearings, if you do have any test claims
17 that you're staffing, they should be scheduled for either
18 March or May. So expect those draft staff's analyses to
19 be coming out shortly.

20 And that's all I have, unless you have
21 questions.

22 CHAIR ORTEGA: Thank you.

23 Questions?

24 MEMBER ALEX: I just wanted to thank you and
25 staff for dealing with a huge amount of backlog and for

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1 continuing very professional work on all of the test
2 claims.

3 MS. HALSEY: Thank you.

4 CHAIR ORTEGA: Go ahead.

5 MEMBER RAMIREZ: I'd like to echo those
6 comments. But also, I'd like to congratulate staff on
7 their achievements. But I also think that from -- you
8 know, I still consider myself relatively a newcomer here,
9 but continue to feel that some of our claimants and
10 members of the public, even, are not quite clear in the
11 concept of what we're doing here. And I'm concerned
12 about it, that the interest and energy that is displayed
13 here seems misplaced; and that perhaps some of it should
14 be more directed at getting programs properly funded and
15 authorized, so that we sometimes feel like a villain, and
16 I don't think it's really fair to staff, especially.

17 And I don't know what the appropriate way to
18 proceed would be; but I actually feel that it would take
19 some sort of discussion with our legislators about the
20 whole process. Because I do sense a frustration, I'm
21 sure, that folks go back home and say, "They wouldn't
22 listen to us." And I sense their frustration. I feel
23 it, too; but I know we have to follow the law.

24 It seems that people don't quite catch the
25 subtleties here.

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1 So just a comment for the record.

2 CHAIR ORTEGA: Thank you.

3 MEMBER SAYLOR: I second both comments, of both
4 Commissioner Alex and Commissioner Ramirez.

5 You guys, this staff have done an incredible
6 job here. There's a massive amount of workload, and it's
7 really good to see it all come through.

8 I continue to wonder on some of the claims
9 that come before us, where the issue from a mandates'
10 perspective seems pretty clear -- it's a fee or it's a
11 court ruling or -- it's just clear on the face that it's
12 not a mandate; and yet such investment has gone into the
13 preparation of the claim, and the response and the
14 expense involved following that for all parties seems
15 extreme.

16 And it does seem that some clarity of what can
17 be done and what the rules are would help all parties.

18 And some of these issues, it seems like we
19 ought to be able to figure out early resolution on the
20 ones where it's really just -- it's not a question of the
21 substance or the facts -- or of the policy topic or
22 whatever; it's just it isn't a mandate that can be
23 reimbursed through this process. So can't we just move
24 on to the ones that are really at issue and find a way --
25 we can't solve all the problems that I'd like to have us

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1 be dealing with, frankly. But the ones we can, that are
2 relevant to us, I wish we could have greater clarity for
3 the claimants as well as for the process.

4 MS. HALSEY: Commission staff -- what I didn't
5 report on is Commission staff did participate in the
6 statewide county conference that the State Controller
7 puts on this year. And that was really good, where we
8 were able to present our mandates and how our process
9 works, and what the Commission can and cannot do, and how
10 we go through our legal analyses. And I do think things
11 like that are helpful.

12 I don't think anyone was thrilled with our
13 presentation, but they did understand -- well, that's not
14 what they wanted to hear. But they did understand it,
15 and we did give them handouts and showed them literally,
16 how do we do the analysis and how do we determine whether
17 this is a mandate. And I think it would be good to
18 continue to do that with more groups of parties,
19 including cities, special districts, schools.

20 MEMBER SAYLOR: I guess -- one last comment on
21 this. I attended the annual conference of the California
22 State Association of Counties. And they have a committee
23 that is a -- I think it's called something like
24 Government Operations or General Government, or something
25 like that. And there was quite a bit of discussion about

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1 the mandates process at that meeting, and that led up to
2 the hearing that happened in December. So there's a
3 growing dismay and concern in "Local Government Land"
4 around "Does this work?" and "What can be done?"

5 CHAIR ORTEGA: Anything else?

6 *(No response)*

7 CHAIR ORTEGA: Okay, I think with that, we will
8 recess into closed session.

9 The Commission will meet in closed executive
10 session pursuant to Government Code section 11126(e) to
11 confer with and receive advice from legal counsel for
12 consideration and action, as necessary and appropriate,
13 upon the pending litigation listed on the published
14 notice and agenda; and to confer with and receive advice
15 from legal counsel regarding potential litigation.

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

18 We will reconvene in open session in
19 approximately 15 minutes.

20 Thank you, everyone, for vacating the room.

21 *(The Commission met in closed executive
22 session from 11:45 a.m. to 12:05 p.m.)*

23 CHAIR ORTEGA: So we're going to reconvene the
24 open session. No action was taken in the closed session.
25 And we have two items to take up now.

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1 The first item will be consideration of the
2 Chief Counsel's compensation.

3 MEMBER OLSEN: So consistent with prior
4 conversations, I'd like to make a motion that consistent
5 with treatment of state employees, generally, the chief
6 counsel's salary be adjusted for merit by 5 percent as
7 soon as allowed by Cal HR rules.

8 CHAIR ORTEGA: Is there a second?

9 MEMBER RAMIREZ: Second.

10 CHAIR ORTEGA: All those in favor?

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

12 CHAIR ORTEGA: Any opposed or abstentions?

13 *(No response)*

14 CHAIR ORTEGA: Seeing none, that motion is
15 approved.

16 And the second item will be consideration of
17 compensation of the Executive Director.

18 Heather, do you want to...?

19 MR. HONE: Item 21 is the salary adjustment for
20 the Executive Director to the Commission. This exempt
21 position is pursuant to Government Code section 17530.

22 MEMBER OLSEN: And I'd like to make motion that
23 the Executive Director's salary be adjusted by 5 percent
24 on the anniversary date of her appointment.

25 CHAIR ORTEGA: Is there a second?

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MEMBER RIVERA: Second.

CHAIR ORTEGA: Okay, all those in favor?

(A chorus of "ayes" was heard.)

CHAIR ORTEGA: Any opposition or abstentions?

(No response)

CHAIR ORTEGA: That motion is approved.

I think, with nothing further before the
Commission, we will stand adjourned.

(The meeting concluded at 12:06 p.m.)

--oOo--

REPORTER'S CERTIFICATE

I hereby certify:

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

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

In witness whereof, I have hereunto set my hand on the 7th of February 2014.

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