

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Park Tower, 980 9th Street, Suite 300,
Sacramento, CA, 95814 and via Zoom
January 24, 2025

Present: Member Michele Perrault, Chairperson
Representative of the Director of the Department of Finance
Member William Pahland
Representative of the State Treasurer, Vice Chairperson
Member Lee Adams
County Supervisor
Member Shannon Clark
Representative of the Director of the Office of Land Use and Climate
Innovation
Member Deborah Gallegos
Representative of the State Controller
Member Karen Greene Ross
Public Member
Member Renee Nash
School District Board Member

NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.

CALL TO ORDER AND ROLL CALL

Chairperson Perrault called the meeting to order at 10:04 a.m. Executive Director Gmur called the roll. Members Adams, Clark, Gallegos, Greene Ross, Nash, Pahland, and Perrault all indicated that they were present.

ELECTION OF OFFICERS AND SUBCOMMITTEE APPOINTMENTS

Executive Director Gmur presented the first portion of the first item, for the election of the chair and vice chair of the Commission.

Chairperson Perrault asked for nominations for chairperson. Member Adams nominated Joe Stephenshaw, the Director of Finance, as chairperson. Chairperson Perrault asked if there were any other nominations. There was no response. Member Adams made the motion to elect Joe Stephenshaw, the Director of Finance, as chairperson. Member Pahland seconded the motion. Executive Director Gmur called the roll. The Director of Finance was elected chairperson by a vote of 7-0.

Member Adams made the motion to nominate Malia Cohen, the State Controller, as vice chairperson. Chairperson Perrault asked if there were any other nominations or motions. There was no response. Chairperson Perrault asked if there was a second. Member Nash seconded the motion. Executive Director Gmur called the roll. Malia Cohen, the State Controller, was elected vice chairperson by a vote of 7-0.

Executive Director Gmur introduced the second portion of this item, for the nomination of members to the Personnel, Legislation, and Litigation subcommittees. Executive Director Gmur stated that the membership for 2024 of the Personnel Subcommittee was Joe Stephenshaw, Director of the Department of Finance, and Fiona Ma, State Treasurer; for the Legislation Subcommittee, Malia Cohen, State Controller, Lee Adams, County Supervisor, and Samuel Assefa, Director of the Office of Land Use and Climate Innovation, alternate; and for the Litigation subcommittee, Fiona Ma, State Treasurer, Renee Nash, School District Board Member, and Maila Cohen, State Controller, alternate.

Chairperson Perrault requested nominations for the Personnel Subcommittee. Member Pahland nominated the Personnel Subcommittee as stated by Executive Director Gmur. Chairperson Perrault asked if there were any other nominations. There was no response. Chairperson Perrault asked if there was a motion. Member Pahland made the motion to elect the subcommittee as stated. Member Greene Ross seconded the motion. Executive Director Gmur called the roll. Joe Stephenshaw, Director of the Department of Finance, and Fiona Ma, State Treasurer, were elected to the Personnel Subcommittee by a vote of 7-0.

Chairperson Perrault requested nominations to the Legislation Subcommittee. Member Pahland nominated the Legislative Subcommittee slate as presented by Executive Director Gmur. Executive Director Gmur stated that the 2024 Legislative Subcommittee was Maila Cohen, State Controller, Lee Adams, County Supervisor, and Samuel Assefa, Office and Land Use and Climate Innovation, alternate. Member Adams made the motion to keep the Legislative Subcommittee as is. Member Pahland seconded the motion. Executive Director Gmur called the roll. Maila Cohen, State Controller, Lee Adams, County Supervisor, and Samuel Assefa, Office and Land Use and Climate Innovation, alternate were elected to serve on the Legislation Subcommittee by a vote of 7-0.

Chairperson Perrault requested a reminder of the current membership of the Litigation Subcommittee. Executive Director Gmur stated the membership for 2024 of the Litigation Subcommittee was Fiona Ma, State Treasurer, Renee Nash, School District Board Member, and Malia Cohen, State Controller, alternate. Member Pahland nominated the Litigation Subcommittee members as stated by Executive Director Gmur. Member Adams seconded the motion. Chairperson Perrault asked if it was a motion also and if there were any other nominations. There was no response. Member Pahland made the motion to nominate the Litigation Subcommittee as previously stated. Member Adams seconded the motion. Executive Director Gmur called the roll. Fiona Ma, State Treasurer, Renee Nash, School District Board Member, and Malia Cohen, State Controller, alternate were elected to the Litigation subcommittee by a vote of 7-0.

APPROVAL OF MINUTES

Chairperson Perrault asked if there were any objections or corrections of the October 25, 2024, minutes. There was no response. Chairperson Perrault asked if there was any public comment on this item. There was no response. Assistant Executive Director Dennis Supachana stated that for the caller ending in 95, if they had any public comments on any items, to please hit #2 on your phone so that he could see

if there were any public comments. Chairperson Perrault asked if there were any questions from the members. There was no response. Member Pahland made the motion to adopt the minutes. Member Nash seconded the motion. Executive Director Gmur called the roll. The Commission voted to adopt the October 25, 2004 minutes by a vote of 7-0.

Chairperson Perrault asked if there were any objections or corrections of the November 22, 2024, minutes. There was no response. Chairperson Perrault asked if there was any public comment on this item. Assistant Executive Director Dennis Supachana stated that there were no public comments. Chairperson Perrault asked if there was any discussion or questions from the members. There was no response. Chairperson Perrault asked for a motion. Member Nash made the motion to adopt the minutes. Member Adams seconded the motion. Executive Director Gmur called the roll. The Commission voted to adopt the November 22, 2024 minutes by a vote of 7-0.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

Chairperson Perrault asked if there was any public comment. There was no response. Assistant Executive Director Supachana stated that there were no public comments online.

CONSENT CALENDAR

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

ORDERS TO SET ASIDE

Item 4* *Lead Sampling in Schools: Public Water System No. 3710020, 17-TC-03-R*

ORDER TO SET ASIDE THE TEST CLAIM DECISION ON REMAND ADOPTED DECEMBER 1, 2023 PURSUANT TO COURT'S JUDGMENT, ORDER, AND WRIT

Pursuant to the judgement, order, and writ issued October 31, 2024 in *City of San Diego v. Commission on State Mandates*, Sacramento County Superior Court, Case No. 24WM000056

City of San Diego, Claimant

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

ADOPTION OF RULEMAKING CALENDAR

Item 6* Proposed Rulemaking Calendar, 2025

STATEWIDE COST ESTIMATES

Item 7* *California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, Sections D.2.; F.1.d.7.i.; F.4.b.; G.6.; K.1.b.4.n.; K.3.a.3.c.; J.1.; J.3.; J.4.; and Attachment D, Section D-2, Adopted December 16, 2009, 10-TC-11*

Executive Director Gmur stated that Items 4, 6, and 7 were proposed for consent. Chairperson Perrault asked if there were any objections to the proposed consent calendar from the members or from any members of the public. There was no response. Assistant Executive Director Supachana stated that there were no online public comments. Chairperson Perrault asked for a motion to adopt the consent calendar. Member Adams made the motion to adopt the consent calendar. Member Nash seconded the motion. Executive Director Gmur called the roll. The Commission voted to adopt the consent calendar by a vote of 7-0.

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

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

TEST CLAIMS

- Item 5 *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, Provisions C.2.b, C.2.c, C.2.e, C.2.f, C.8.b, C.8.c, C.8.d, C.8.e.i, ii, and vi, C.8.f, C.8.g, C.8.h, C.10.a, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f, 10-TC-02, 10-TC-03, and 10-TC-05*

City of Dublin, County of Santa Clara, and City of San Jose,
Claimants

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the Proposed Decision to partially approve the Test Claim.

Gregory Newmark and Shannan Young appeared on behalf of the City of Dublin. Rajiv Narayan appeared on behalf of the County of Santa Clara. Maro Laskowska appeared on behalf of the City of San Jose. Donna Ferebee appeared on behalf of the Department of Finance. Teresita Sablan, Emel Wadhvani, and Keith Lichten appeared on behalf of the State Water Resources Control Board and the San Francisco Bay Regional Water Quality Control Board.

Following statements by Ms. Young, Mr. Newmark, Chief Legal Counsel Shelton, Chairperson Perrault, Mr. Narayan, Chairperson Perrault, Ms. Laskowska, Chairperson Perrault, Ms. Ferebee, Ms. Wadhvani, Ms. Sablan, Chairperson Perrault, Mr. Lichten, Chairperson Perrault, Ms. Sablan, Chairperson Perrault, Ms. Ferebee, Chief Legal Counsel Shelton, Chairperson Perrault asked if there was any public comment. Assistant Executive Director Supachana stated that there was no online public comments. Following additional statements by Mr. Newmark, Chairperson Perrault asked if there were any public comments. Assistant Executive Director Supachana stated that there were no online public comments.

Chairperson Perrault asked if the Members had any questions or comments. Following discussion between Member Pahland, Mr. Newmark, Ms. Young, Ms. Sablan, Mr. Lichten, Chief Legal Counsel Shelton, and Ms. Sablan, Chairperson Perrault asked if there were any questions from other Members. Following statements by Member Adams, Member Greene Ross, Chairperson Perrault, and Mr. Newmark, Chairperson

Perrault asked for a motion. Following discussion between Member Pahland, Member Gallegos, Chairperson Perrault, Chief Legal Counsel Shelton, Executive Director Gmur, Member Adams, and Member Clark, Member Adams made the motion to adopt the staff recommendation. Member Nash seconded the motion. The Commission voted to adopt the Proposed Decision by a vote of 4-0 with Member Gallegos, Member Greene Ross, and Member Pahland abstaining.

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

REPORTS

Item 8 Legislative Update (info)

Executive Director Gmur stated that the Legislature reconvened the 2025-2026 legislative session and that staff will monitor for any legislation that affects the mandates process.

Item 9 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Shelton presented this item.

Item 10 Executive Director: Budget, Workload Update, and Tentative Agenda Items for the March 2025 and May 2025 Meetings (info)

Executive Director Gmur presented this item and described the Commission's workload.

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

The Commission adjourned into closed executive session at 12:43 p.m., pursuant to Government Code section 11126(e). The Commission met in closed session to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

A. PENDING LITIGATION

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

There are no cases currently pending.

B. POTENTIAL LITIGATION

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

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

C. PERSONNEL

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

RECONVENE IN PUBLIC SESSION

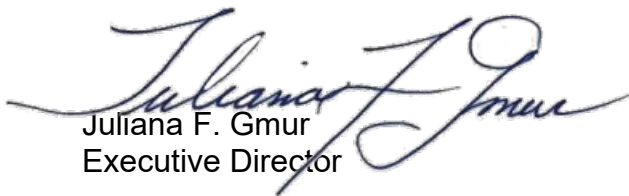
At 12:55 p.m., the Commission reconvened in open session.

REPORT FROM CLOSED EXECUTIVE SESSION

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

ADJOURNMENT

Chairperson Perrault asked for a motion to adjourn. Member Nash made the motion to adjourn the meeting. Member Greene Ross seconded the motion. The January 24, 2025, meeting was adjourned at 12:57 p.m., by a vote of 7-0.



Juliana F. Gmur
Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

PUBLIC MEETING

FRIDAY, JANUARY 24, 2025

10:00 A.M.

MEETING HELD
AT 980 9TH STREET
SUITE 300

SACRAMENTO, CALIFORNIA

AND

VIA ZOOM

VIDEO COMMUNICATIONS PLATFORM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

RECEIVED

FEB 21 2025

COMMISSION ON
STATE MANDATES

ORIGINAL

STENOGRAPHICALLY REPORTED BY:

KATHRYN S. SWANK

Certified Shorthand Reporter No. 13061

Registered Professional Reporter

KATHRYN S. SWANK, CSR
303 Paddock Court
Roseville, California 95661
Telephone (916) 390-7731
KathrynSwankCSR@sbcglobal.net

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

COMMISSIONERS PRESENT

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

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

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

SHANNON CLARK
Representative for SAMUEL ASSEFA, Director
Office of Land Use and Climate Innovation

DEBORAH GALLEGOS
Representative for MALIA COHEN
State Controller

KAREN GREENE ROSS
Public Member

RENEE NASH
Eureka Union School District
School District Board Member

---o0o---

COMMISSION STAFF

JULIANA GMUR
Executive Director

DENNIS SUPACHANA
Assistant Executive Director

CAMILLE N. SHELTON
Chief Legal Counsel

---o0o---

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

2 PUBLIC PARTICIPANTS

3 DONNA FEREBEE
4 Department of Finance
5 (Item 5)

6 MARGO LASKOWSKA
7 City of San Jose, Claimant
8 (Item 5)

9 KEITH LICHTEN
10 State Water Resources Control Board
11 and
12 San Francisco Bay Regional Water Quality Control Board
13 (Item 5)

14 RAJIV NARAYAN
15 County of Santa Clara, Claimant
16 (Item 5)

17 GREGORY NEWMARK
18 City of Dublin, Claimant
19 (Item 5)

20 TERESITA SABLAN
21 State Water Resources Control Board
22 and
23 San Francisco Bay Regional Water Quality Control Board
24 (Item 5)

25 EMEL WADHWANI
State Water Resources Control Board
and
San Francisco Bay Regional Water Quality Control Board
(Item 5)

SHANNAN YOUNG
City of Dublin, Claimant
(Item 5)

---o0o---

E R R A T A S H E E T

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page	Line	Correction
<u>18</u>	<u>17</u>	<u>Subcommittee state <u>slate</u></u>
<u>27</u>	<u>22</u>	<u>MR. <u>MS.</u> WADHWANI</u>
<u>81</u>	<u>13</u>	<u>MR. <u>MS.</u> WADHWANI</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I N D E X

ITEM NO.		PAGE
I.	Call to Order and Roll Call	9
II.	Election of Officers and Subcommittee Appointment	
	Item 1 Staff Report	10
III.	Approval of Minutes	
	Item 2 October 25, 2024	21
	Item 3 November 22, 2024	23
IV.	Public Comment for Matters Not on the Agenda (none)	25
V.	Proposed Consent Calendar for Items Proposed for Adoption on Consent Pursuant to California Code of Regulations, Title 2, Articles 7 and 8	25
VI.	Hearings and Decisions Pursuant to California Code of Regulations, Title 2, Article 7	
	A. Orders to Set Aside	
	Item 4 Lead Sampling in Schools: Public Water System No. 3710020, 17-TC-03-R	25
	ORDER TO SET ASIDE THE TEST CLAIM DECISION ON REMAND ADOPTED DECEMBER 1, 2023 PURSUANT TO COURT'S JUDGMENT, ORDER, AND WRIT	
	Pursuant to the judgment, order, and writ issued October 31, 2024 in City of San Diego v. Commission on State Mandates, Sacramento County Superior Court, Case No. 24WM000056	
	City of San Diego, Claimant	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

ITEM NO. PAGE

B. Test Claims

Item 5 California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, Provisions C.2.b, C.2.c, C.2.e, C.2.f, C.8.b, C.8.c, C.8.d, C.8.e.i, ii, and vi, C.8.f, C.8.g, C.8.h, C.10.a, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f, 10-TC-02, 10-TC-03, and 10-TC-05

City of Dublin, County of Santa Clara, and City of San Jose, Claimants

VII. Informational Hearings Pursuant to California Code of Regulations, Title 2, Article 8

A. Adoption of Rulemaking Calendar

Item 6 Proposed Rulemaking Calendar, 2025 25

B. (Skipped)

C. Statewide Cost Estimates

Item 7 California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, Sections D.2.; F.1.d.7.i.; F.4.b.; G.6.; K.1.b.4.n.; K.3.a.3.c.; J.1.; J.3.; J.4.; and Attachment D, Section D-2, Adopted December 16, 2009, 10-TC-11 25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

ITEM NO.		PAGE
	D. Reports	
	Item 8 Legislative Update	129
	Item 9 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar	130
	Item 10 Executive Director: Budget, Workload Update and Tentative Agenda Items for the March 2025 and May 2025 Meetings	130
VIII.	Closed Executive Session Pursuant to Government Code Sections 11126 and 11126.3	132
	A. Pending Litigation	
	B. Potential Litigation	
	C. Personnel	
IX.	Report from Closed Executive Session	132
	Adjournment	134
	Reporter's Certificate	135

---o0o---

1 FRIDAY, JANUARY 24, 2025, 10:04 A.M.

2 ---o0o---

3 CHAIRPERSON PERRAULT: Good morning. We're going
4 to go ahead and get started. It is 10:04. And we are
5 going to go ahead and call the Commission on State
6 Mandates January 24th, 2025, meeting to order.

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

14 Please note that the room is "microphoned," so
15 speakers and microphones are on all devices -- must stay
16 muted for the duration of the meeting to eliminate
17 feedback noise.

18 When called up for an item, the parties and
19 witnesses will please come to the witness table, two at
20 a time, and sit at the designated laptops.

21 The restrooms are located out the door and down the
22 hallway to the right. The women's room is across the
23 open atrium. The key for both restrooms are on the
24 table as you exit the conference room.

25 And, finally, please take note of the emergency

1 exits in the room. We have two doors.

2 Okay. For those participating remotely, the
3 materials for today's meeting, including the revised
4 notice, agenda, proposed consent calendar, and
5 witness -- and witness list, excuse me, are available on
6 the Commission's website at www.csm.ca.gov, under the
7 "hearings" tab.

8 When being sworn in at the beginning of the hearing
9 and when called for an item, the parties and witnesses
10 will please turn on their video and unmute their
11 microphone. At the conclusion of the item, please turn
12 off the video and mute the microphone.

13 In the event we experience technical difficulties
14 or the meeting is bumped offline, we will restart and
15 allow time for people to rejoin before recommencing the
16 meeting.

17 Finally, please remember to speak slowly and
18 accurately for the benefit of the court reporter and an
19 accurate transcript of the hearing.

20 Juliana, will you please call the roll.

21 MS. GMUR: Mr. Adams.

22 MEMBER ADAMS: Here.

23 MS. GMUR: Ms. Clark.

24 MEMBER CLARK: Here.

25 MS. GMUR: Ms. Gallegos.

1 MEMBER GALLEGOS: Here.

2 MS. GMUR: Ms. Greene Ross.

3 MEMBER GREENE ROSS: Here.

4 MS. GMUR: Ms. Nash.

5 MEMBER NASH: Here.

6 MS. GMUR: Mr. Pahland.

7 MEMBER PAHLAND: Here.

8 MS. GMUR: Ms. Perrault.

9 CHAIRPERSON PERRAULT: Here.

10 MS. GMUR: Next is Item 1. Election of officers.

11 CHAIRPERSON PERRAULT: Okay. We'll go ahead and
12 move to Item 1.

13 Are there nominations for Chair -- oh.

14 MS. GMUR: If I may, ma'am.

15 CHAIRPERSON PERRAULT: Please. You may.

16 MS. GMUR: At the January 26th, 2024, meeting, the
17 Commission elected Joe Stephenshaw, Director of Finance,
18 Chairperson of the Commission; and Fiona Ma, State
19 Treasurer, Vice Chairperson.

20 All Commission members, as defined by Government
21 Code section 17525, are eligible to be officers; the
22 Commission's regulations do not describe an election
23 procedure. However, the regulations specify that
24 Robert's Rules of Order are the Commission's default
25 rules. Under Robert's Rules of Order, there are two

1 ways to hold the election:

2 One, nominations may be made and a vote taken. A
3 nomination does not require a second.

4 A motion may be made -- two, a motion may be made
5 to elect a member chairperson or vice chairperson. A
6 motion requires a second and then a vote is taken.

7 Staff recommends that the current chairperson
8 conduct the elections of the chairperson and vice
9 chairperson.

10 CHAIRPERSON PERRAULT: Okay. Thank you. I
11 apologize for running ahead.

12 MS. GMUR: Not at all.

13 CHAIRPERSON PERRAULT: Okay. So with that, are
14 there nominations for chairperson? And is there a
15 motion for election of a new chairperson?

16 MEMBER ADAMS: Madam Chair, I would make a
17 nomination to retain Director of Finance Joe Stephenshaw
18 as our Chair.

19 CHAIRPERSON PERRAULT: And we do not need a second;
20 is that correct? Is that what you said to me?

21 MS. GMUR: For a nomination, no, ma'am. We do not.

22 CHAIRPERSON PERRAULT: Okay. Okay. So we have a
23 motion to retain the current chair, the Director of
24 Finance Joe Stephenshaw as Chairperson.

25 Are there any other nominations?

1 (No response.)

2 MS. GMUR: Just for the record, ma'am, that is a
3 nomination that we are proceeding on.

4 CHAIRPERSON PERRAULT: Okay. And seeing -- I'm
5 sorry. So seeing no other nominations, do we need to
6 take a vote then for that one, without objection? Or
7 may we move forward without objection?

8 MS. GMUR: We could take a vote.

9 CHAIRPERSON PERRAULT: Okay. Okay. Okay. So the
10 motion -- there's been a motion to elect the Director of
11 Finance Joe Stephenshaw as Chairperson.

12 MEMBER ADAMS: Just to correct. It's nomination.
13 Not a motion.

14 CHAIRPERSON PERRAULT: A nomination. Thank you.

15 MEMBER ADAMS: Or I will make it a motion --

16 CHAIRPERSON PERRAULT: Thank you.

17 MEMBER ADAMS: -- if you want. Whatever.

18 CHAIRPERSON PERRAULT: My Vice Chair is being so
19 helpful this morning. Thank you.

20 Is there a motion? You would like to make that a
21 motion?

22 MEMBER ADAMS: Sure.

23 CHAIRPERSON PERRAULT: Okay. All right. Now we
24 have a motion.

25 MEMBER PAHLAND: And I will second that.

1 CHAIRPERSON PERRAULT: And we have a second. Thank
2 you. All right.

3 Now may we call roll.

4 MS. GMUR: Yes, ma'am.

5 Mr. Adams.

6 MEMBER ADAMS: Aye.

7 MS. GMUR: Ms. Clark.

8 MEMBER CLARK: Aye.

9 MS. GMUR: Ms. Gallegos.

10 MEMBER GALLEGOS: Aye.

11 MS. GMUR: Ms. Greene Ross.

12 MEMBER GREENE ROSS: Aye.

13 MS. GMUR: Ms. Nash.

14 MEMBER NASH: Aye.

15 MS. GMUR: Mr. Pahlund.

16 MEMBER PAHLUND: Aye.

17 MS. GMUR: Ms. Perrault.

18 CHAIRPERSON PERRAULT: Aye.

19 Okay. That motion carries.

20 Let's see if we can do this next one a little
21 cleaner. I apologize.

22 MEMBER ADAMS: Madam Chair?

23 CHAIRPERSON PERRAULT: Yes.

24 MEMBER ADAMS: I would be happy to make a motion to
25 nominate Malia Cohen, the State Controller, as Vice

1 Chair. And that is a motion.

2 CHAIRPERSON PERRAULT: Thank you for clarifying. I
3 appreciate it.

4 Okay. So we do have a nomination and motion for
5 Vice Chairperson, that the State Controller be elected
6 as the new Vice Chairperson.

7 Okay. Are there any other nominations or motions?

8 (No response.)

9 CHAIRPERSON PERRAULT: Seeing none. Okay.

10 May we please call the roll.

11 MEMBER ADAMS: That is a motion.

12 (Unreportable cross-talk.)

13 CHAIRPERSON PERRAULT: Oh, do we need a second?

14 MEMBER NASH: I will second that.

15 CHAIRPERSON PERRAULT: I promise we are going to
16 get through this morning.

17 Thank you. We have a first and a second.

18 Now will you please call the roll?

19 MS. GMUR: Yes, ma'am.

20 Mr. Adams.

21 MEMBER ADAMS: Aye.

22 MS. GMUR: Ms. Clark.

23 MEMBER CLARK: Aye.

24 MS. GMUR: Ms. Gallegos.

25 MEMBER GALLEGOS: I guess there's only one vote I

1 can take here.

2 Aye.

3 MS. GMUR: Ms. Greene Ross.

4 MEMBER GREENE ROSS: Aye.

5 (Zoom/audio feedback.)

6 CHAIRPERSON PERRAULT: Hold on one second.

7 MEMBER ADAMS: I hope that's only one vote.

8 MEMBER GREENE ROSS: I only voted once, for the
9 record.

10 CHAIRPERSON PERRAULT: Okay. Great.

11 MS. GMUR: Ms. Nash.

12 MEMBER NASH: Aye.

13 MS. GMUR: Mr. Pahlund.

14 MEMBER PAHLAND: Aye.

15 MS. GMUR: Ms. Perrault.

16 CHAIRPERSON PERRAULT: Aye.

17 Okay.

18 MS. GMUR: Next we continue with Item 1 and the
19 subcommittee appointments.

20 Last January, the following subcommittee members
21 were elected:

22 Personnel Committee: Joe Stephenshaw, Director of
23 Department of Finance; and Fiona Ma, State Treasurer.

24 Legislation committee: Malia Cohen, State
25 Controller; and Lee Adams, County Supervisor; and Samuel

1 Assefa, Office of Land Use and Climate Innovation,
2 Alternate.

3 Litigation subcommittee: Fiona Ma, State
4 Treasurer; Renee Nash, school district board member; and
5 Malia Cohen, State Controller, Alternate.

6 This is an opportunity for members who wish to
7 serve on a subcommittee to volunteer to do so; and for
8 those who would like to switch or discontinue their
9 current roles, to do so.

10 Any member may volunteer and nominate themselves to
11 serve and, upon a vote of the Commission, may serve on
12 the subcommittee.

13 Nominations may be made and a vote taken. A
14 nomination does not require a second.

15 A motion may be made to elect a member for a
16 subcommittee. A motion requires a second.

17 Staff recommends that the members nominate
18 themselves to continue to serve or to be newly appointed
19 to the subcommittees upon approval of the Commission.

20 Staff further recommends that the Chairperson
21 conduct the elections for the positions on the
22 Personnel, Legislation, and Litigation Subcommittees.

23 The membership of the Commission's Personnel
24 Subcommittee for 2024:

25 Joe Stephenshaw, Director of the Department of

1 Finance; and Fiona Ma, State Treasurer.

2 CHAIRPERSON PERRAULT: Okay. So we'll take these
3 one at a time.

4 Okay. So are there any nominations for the
5 Personnel Subcommittee? And is there a motion for the
6 appointment of the Personnel Subcommittee members?

7 MEMBER PAHLAND: I guess I would nominate that the
8 Personnel Subcommittee -- I would nominate the Personnel
9 Subcommittee as stated by Executive Director Gmur.

10 CHAIRPERSON PERRAULT: Okay. A nomination.
11 Are there any other nominations?

12 (No response.)

13 CHAIRPERSON PERRAULT: Okay. Seeing none, is there
14 a motion?

15 MEMBER PAHLAND: I will move to elect the
16 subcommittee as stated.

17 MEMBER GREENE ROSS: Second.

18 CHAIRPERSON PERRAULT: We have a motion and a
19 second.

20 We can go ahead and call the roll.

21 MS. GMUR: Mr. Adams.

22 MEMBER ADAMS: Aye.

23 MS. GMUR: Ms. Clark.

24 MEMBER CLARK: Aye.

25 MS. GMUR: Ms. Gallegos.

1 MEMBER GALLEGOS: Aye.

2 MS. GMUR: Ms. Greene Ross.

3 MEMBER GREENE ROSS: Aye.

4 MS. GMUR: Ms. Nash.

5 MEMBER NASH: Aye.

6 MS. GMUR: Mr. Pahland.

7 MEMBER PAHLAND: Aye.

8 MS. GMUR: Ms. Perrault.

9 CHAIRPERSON PERRAULT: Aye.

10 Okay. That motion carries.

11 All right. We're going to move to the
12 legislative -- the Legislation, excuse me, Subcommittee
13 appointments.

14 Are there nominations to the Legislation
15 Subcommittee? And is there a motion for appointment?

16 MEMBER PAHLAND: I will nominate the Legislative
17 Subcommittee state as presented by Executive Director
18 Gmur.

19 MS. GMUR: For the record --

20 CHAIRPERSON PERRAULT: Thank you.

21 MS. GMUR: -- the 2024 Legislative Subcommittee is
22 Malia Cohen, State Controller; and Lee Adams, County
23 Supervisor; Samuel Assefa, Office of Land Use and
24 Climate Innovation, Alternate.

25 MEMBER ADAMS: I would second that motion.

1 MEMBER PAHLAND: Yeah. So you -- I haven't made a
2 motion, sir.

3 Would you like to make a motion?

4 MEMBER ADAMS: Sure. I will move that. Keep that
5 Legislation Subcommittee as it is.

6 MEMBER PAHLAND: And I will second that motion.

7 CHAIRPERSON PERRAULT: Okay. We have a first and
8 second.

9 Will you please call the roll.

10 MS. GMUR: Mr. Adams.

11 MEMBER ADAMS: Aye.

12 MS. GMUR: Ms. Clark.

13 MEMBER CLARK: Aye.

14 MS. GMUR: Ms. Gallegos.

15 MEMBER GALLEGOS: Aye.

16 MS. GMUR: Ms. Greene Ross.

17 MEMBER GREENE ROSS: Aye.

18 MS. GMUR: Ms. Nash.

19 MEMBER NASH: Aye.

20 MS. GMUR: Mr. Pahland.

21 MEMBER PAHLAND: Aye.

22 MS. GMUR: Ms. Perrault.

23 CHAIRPERSON PERRAULT: Aye.

24 Okay. That motion carries.

25 So, finally, we'll go ahead and move to the

1 Litigation Subcommittee.

2 Can you just remind us again who those current
3 members are?

4 MS. GMUR: Yes, ma'am.

5 The membership of the Commission's Litigation
6 Subcommittee for 2024: Fiona Ma, State Treasurer; and
7 Renee Nash, school district board member; Malia Cohen,
8 State Controller, Alternate.

9 CHAIRPERSON PERRAULT: Okay.

10 MEMBER PAHLAND: And I will nominate the Litigation
11 Subcommittee members as stated by Executive Director
12 Gmur.

13 MEMBER ADAMS: I would second.

14 CHAIRPERSON PERRAULT: Okay. So that was a
15 nomination. Are you making a motion also -- or just --
16 hold on.

17 Are there any other nominations?

18 (No response.)

19 CHAIRPERSON PERRAULT: Seeing none, do you want to
20 make that into a motion?

21 MEMBER PAHLAND: So yes. I will then make a motion
22 to nominate the Litigation Subcommittee as previously
23 stated.

24 CHAIRPERSON PERRAULT: And a second?

25 MEMBER ADAMS: We have a second.

1 CHAIRPERSON PERRAULT: Okay. We have a motion and
2 a second.

3 If we could call the roll.

4 MS. GMUR: Mr. Adams.

5 MEMBER ADAMS: Aye.

6 MS. GMUR: Ms. Clark.

7 MEMBER CLARK: Aye.

8 MS. GMUR: Ms. Gallegos.

9 MEMBER GALLEGOS: Aye.

10 MS. GMUR: Ms. Greene Ross.

11 MEMBER GREENE ROSS: Aye.

12 MS. GMUR: Ms. Nash.

13 MEMBER NASH: Aye.

14 MS. GMUR: Mr. Pahlund.

15 MEMBER PAHLAND: Aye.

16 MS. GMUR: Ms. Perrault.

17 CHAIRPERSON PERRAULT: Aye.

18 Okay. That motion carries.

19 And I think we got through that a little smoother
20 at the end.

21 Okay. We're going to go ahead now and move to
22 Item 2.

23 Are there any objections to or additional
24 corrections of the October 25th, 2024, minutes?

25 (No response.)

1 CHAIRPERSON PERRAULT: Seeing none, are there any
2 public comments for this item?

3 (No response.)

4 MR. SUPACHANA: I would also like to note for the
5 caller ending in 95, if you have any public comments on
6 any items, please hit #2 on your phone so that I can see
7 if there are any public comments.

8 (No response.)

9 CHAIRPERSON PERRAULT: Seeing none, there are no
10 public comments, Madam Chair.

11 CHAIRPERSON PERRAULT: Thank you very much.

12 Are there any questions from the members?

13 (No response.)

14 CHAIRPERSON PERRAULT: All right. Seeing none,
15 without further discussion, is there a motion on the
16 minutes?

17 MEMBER PAHLAND: I will move to approve the
18 minutes.

19 CHAIRPERSON PERRAULT: Okay. Do we have a second?

20 MEMBER NASH: Second.

21 CHAIRPERSON PERRAULT: Okay. We have a motion and
22 a second.

23 Go ahead and call the roll.

24 MS. GMUR: Mr. Adams.

25 MEMBER ADAMS: Aye.

1 MS. GMUR: Ms. Clark.

2 MEMBER CLARK: Aye.

3 MS. GMUR: Ms. Gallegos.

4 MEMBER GALLEGOS: Aye.

5 MS. GMUR: Ms. Greene Ross.

6 MEMBER GREENE ROSS: Aye.

7 MS. GMUR: Ms. Nash.

8 MEMBER NASH: Aye.

9 MS. GMUR: Mr. Pahlund.

10 MEMBER PAHLUND: Aye.

11 MS. GMUR: Ms. Perrault.

12 CHAIRPERSON PERRAULT: Aye.

13 Okay. That motion carries.

14 We're going to go ahead and move to Item 3, which
15 is our minutes from November 22nd, 2024.

16 Are there any objections to or additional
17 corrections to the November 22nd, 2024, minutes?

18 (No response.)

19 CHAIRPERSON PERRAULT: Seeing none, are there any
20 public comments?

21 MR. SUPACHANA: No public comments.

22 CHAIRPERSON PERRAULT: Okay. Is there any
23 discussion or questions from members?

24 (No response.)

25 CHAIRPERSON PERRAULT: Seeing none, is there a

1 motion?

2 MEMBER NASH: I will move approval of the
3 November 22nd, 2024, minutes.

4 CHAIRPERSON PERRAULT: Okay. Moved by Member Nash.
5 Do we have a second?

6 MEMBER ADAMS: I will second.

7 CHAIRPERSON PERRAULT: And a second.

8 We will then call the roll.

9 MS. GMUR: Mr. Adams.

10 MEMBER ADAMS: Aye.

11 MS. GMUR: Ms. Clark.

12 MEMBER CLARK: Aye.

13 MS. GMUR: Ms. Gallegos.

14 MEMBER GALLEGOS: Aye.

15 MS. GMUR: Ms. Greene Ross.

16 MEMBER GREENE ROSS: Aye.

17 MS. GMUR: Ms. Nash.

18 MEMBER NASH: Aye.

19 MS. GMUR: Mr. Pahlund.

20 MEMBER PAHLAND: Aye.

21 MS. GMUR: Ms. Perrault.

22 CHAIRPERSON PERRAULT: Aye.

23 Okay. That motion carries.

24 All right. We will move on now to public comment.

25 Juliana.

1 MS. GMUR: Thank you.

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

9 CHAIRPERSON PERRAULT: Okay. Thank you very much.

10 Is there any public comment for items not on the
11 agenda?

12 (No response.)

13 CHAIRPERSON PERRAULT: Seeing none in the room.

14 Is there any online?

15 MR. SUPACHANA: Madam Chair, there are no online --
16 any public comments.

17 CHAIRPERSON PERRAULT: Okay. All right.

18 So hearing no further public comment, we'll go
19 ahead and move now to the consent calendar.

20 MS. GMUR: Next is the proposed consent calendar.

21 Items 4, 6, and 7 are proposed for consent.

22 CHAIRPERSON PERRAULT: Thank you.

23 Are there any objections to the proposed consent
24 calendar from members?

25 (No response.)

1 CHAIRPERSON PERRAULT: Seeing none.

2 From members of the public?

3 (No response.)

4 MR. SUPACHANA: Madam Chair, I do not see any
5 online public comments.

6 CHAIRPERSON PERRAULT: Okay. Do we have a motion
7 to adopt the consent calendar?

8 MEMBER ADAMS: Madam Chair, I would move adoption
9 as presented.

10 CHAIRPERSON PERRAULT: Okay. A motion by
11 Mr. Adams.

12 MEMBER NASH: Second.

13 CHAIRPERSON PERRAULT: Second by Ms. Nash.
14 May we please have the roll call.

15 MS. GMUR: Mr. Adams.

16 MEMBER ADAMS: Aye.

17 MS. GMUR: Ms. Clark.

18 MEMBER CLARK: Aye.

19 MS. GMUR: Ms. Gallegos.

20 MEMBER GALLEGOS: Aye.

21 MS. GMUR: Ms. Greene Ross.

22 MEMBER GREENE ROSS: Aye.

23 MS. GMUR: Ms. Nash.

24 MEMBER NASH: Aye.

25 MS. GMUR: Mr. Pahland.

1 MEMBER PAHLAND: Aye.

2 MS. GMUR: Ms. Perrault.

3 CHAIRPERSON PERRAULT: Aye.

4 All right. That motion carries.

5 We'll go ahead and move now to swearing in.

6 MS. GMUR: Will the parties and witnesses for
7 Item 5, participating remotely, please be sure that both
8 your first and last names are listed on your Zoom window
9 for the benefit of the court reporter.

10 The parties and witnesses participating in person,
11 please approach the witness table.

12 And all parties and witnesses, please rise.

13 Beginning with the witnesses in the room for
14 Item 5, please state your names for the record.

15 MS. YOUNG: Shannan Young, City of Dublin.

16 MR. NEWMARK: Gregory Newmark, special counsel for
17 the City of Dublin and the Alameda Countywide Clean
18 Water Program.

19 MR. NARAYAN: Rajiv Narayan, County of Santa Clara.

20 MS. SABLAN: Teresita Sablan for the State Water
21 Board and the San Francisco Bay Regional Water Board.

22 MR. WADHWANI: Emel Wadhwani, State Water Board and
23 San Francisco Bay Regional Water Quality Control Board.

24 MS. GMUR: And will the witness appearing remotely
25 please state your names for the record?

1 MS. LASKOWSKA: Margo Laskowska appearing for the
2 City of San Jose.

3 MR. LICHTEN: Keith Lichten with the San Francisco
4 Bay Regional Water Board.

5 MS. FEREBEE: Donna Ferebee, Department of Finance.

6 MS. GMUR: Thank you.

7 (Parties/witnesses stood to be sworn or
8 affirmed.)

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

13 (Affirmative responses.)

14 MS. GMUR: Thank you.

15 Next is Item 5. Chief Legal Counsel Camille
16 Shelton will please present a proposed decision on
17 California Regional Water Quality Control Board, San
18 Francisco Region, Order Number R2-2009-0074, 10-TC-02,
19 10-TC-03, and 10-TC-05.

20 At this time, we invite the parties and witnesses
21 for Item 5, participating remotely, to please turn on
22 your video and unmute your microphone; and those
23 participating in person to please come to the table as
24 you are called.

25 Thank you.

1 MS. SHELTON: Good morning.

2 This test claim alleges reimbursable state-mandated
3 activities arising from the 2009 stormwater permit
4 issued by the San Francisco Bay Regional Water Quality
5 Control Board, which merges six prior regional permits
6 into one.

7 The following sections of the test claim permit
8 have been pled by the claimants:

9 Number 1, various provisions in section C.2,
10 addressing municipal maintenance activities.

11 Number 2, various provisions in section C.8,
12 addressing monitoring and reporting.

13 Number 3, various provisions in section C.10,
14 addressing the reduction of trash by 40 percent by 2014,
15 70 percent by 2017, and a hundred percent by 2022.

16 And, finally, the section C.11.f and C.12.f
17 addressing mercury and PCB diversion studies.

18 Staff recommends that the Commission adopt the
19 proposed decision to partially approve the test claim
20 from December 1st, 2009, through December 31st, 2017,
21 only for the activities identified in the conclusion,
22 which mandate a new program or higher level of service,
23 and results in increased costs mandated by the State.

24 Consistent with the Commission's prior decisions,
25 reimbursement is denied beginning January 1st, 2018,

1 because the claimants have the authority to impose
2 stormwater fees without the requirement to seek voter
3 approval. And, thus, there are no costs mandated by the
4 State pursuant to Government Code section 17556(d)
5 beginning on that date.

6 Staff further recommends that Commission authorize
7 staff to make technical, nonsubstantive changes to the
8 proposed decision following the hearing.

9 This item is complex. If you have any questions
10 during the proceedings, please don't hesitate to ask.

11 CHAIRPERSON PERRAULT: Okay. Thank you so much.

12 Okay. We will go ahead.

13 Parties and witnesses, as you are called up, if you
14 would please state your names for the record.

15 Mr. Newmark and Ms. Young for the Claimant, City of
16 Dublin, would you like to begin.

17 MS. YOUNG: This is where I'm supposed to sit?

18 CHAIRPERSON PERRAULT: Yes, please. Come on up to
19 the table. Thank you.

20 MS. YOUNG: Hi. My name is Shannan Young. I'm the
21 environmental sustainability manager for the claimant,
22 City of Dublin. Thank you for the opportunity to
23 present testimony today regarding this matter.

24 And thank you also to you all and to staff for your
25 hard work on the proposed decision. As already

1 mentioned, it is very complex, and I know a lot of
2 effort went into crafting this proposed decision.

3 I'm going to try to be brief here today and provide
4 some background information on me and some facts
5 relevant to this case.

6 So as mentioned, I work for the City of Dublin. I
7 started working in the City of Dublin in November 2015.

8 And as part of my responsibilities in the City of
9 Dublin, I manage all aspects of the municipal regional
10 stormwater permits.

11 And so examples of some of the programs and
12 activities required by that permit that I manage include
13 coordinating with our maintenance team on corp yard best
14 management practices and integrated pest management
15 programs; plan review for public and private projects
16 for new and redevelopment standards; managing our
17 stormwater inspection and illicit discharge response;
18 conducting creek cleanups; and also developing and
19 implementing our trash load reduction program.

20 Prior to working with the City of Dublin, I worked
21 for the City of Fremont for ten years. And in that
22 capacity there, I was primarily responsible for
23 implementing new and redevelopment programs, performance
24 programs.

25 So I also serve as the vice chair for the Alameda

1 Countywide Clean Water Program Policy and Management
2 Subcommittees. And so those are the main bodies that
3 help guide all the co-permittees in Alameda Countywide
4 Clean Water Program, which is a consortium of the
5 agencies and -- excuse me -- Alameda County that are
6 required to implement -- or they are co-permittees of
7 this permit.

8 And I'm also the chair of the Data Management
9 Subcommittee, which is a relatively newly-formed
10 committee that develops databases and tools for the
11 permittees to collect all of the data that's required
12 for the MRP.

13 So the City of Dublin is one of the co-permittees
14 and the municipal -- excuse me. I'm sorry. I've got a
15 little -- I'm trying to fight off something here.

16 One of the co-permittees in the Alameda
17 Countywide -- or the municipal regional stormwater
18 permit. This is the first regional permit. They used
19 to be countywide permits. And so that's why it is
20 called MRP1 in this test claim here.

21 And I have reviewed -- I'm familiar with the MRP1,
22 and I'm also familiar with the associated fact sheet.

23 So as mentioned, there are many issues in this
24 proposed decision. But I'm only going to focus on one
25 of them primarily, and that is the ability of cities to

1 levy fees after Prop 218 -- or, I mean, SB 231 was
2 passed in 2019.

3 The proposed decision states that the new mandated
4 requirements at issue here -- monitoring, trash, and
5 mercury and PCB diversion studies -- address waters and
6 areas within the regular -- regulatory control of the
7 permittees.

8 And that's on page 30 -- 389 in the proposed
9 decision.

10 So we disagree that we have the reg -- the
11 activities that are discussed here today are within our
12 regulatory control. I will provide some facts related
13 to that. And we hope that these facts will help
14 encourage the Commission to ask staff to revise this
15 portion of the proposed decision to address the -- thank
16 you so much.

17 MS. GMUR: You are quite welcome.

18 MS. YOUNG: To address the points I'm raising
19 today.

20 So first, I want to mention that provision C.11.f
21 and provision C.12.f in MRP1, they were included in the
22 permit to address total maximum daily loads for PCBs and
23 mercury in San Francisco Bay.

24 So those TMDLs for mercury and PCBs, they are in
25 Exhibits BB, Items 32 and 33, respectively.

1 So those activities are required to comply with the
2 provisions C.11.f and C.12.f -- do not address and do
3 not occur in waters in areas within the regularly --
4 regulatory control in the City of Dublin.

5 So according to the PCBs TMDL itself, it is
6 intended to address waters impacted by PCBs in the San
7 Francisco Bay. And those bodies of water included in
8 the TMDLs specifically include Sacramento-San Joaquin
9 Delta within Region 2, the water body -- the Regional
10 Water Quality Control Board Region 2, Suisun Bay,
11 Carquinez Strait, San Pablo Bay --

12 THE COURT REPORTER: Slow down, please.

13 MS. YOUNG: I'm sorry. Sorry.

14 Where did you leave off?

15 THE COURT REPORTER: Suisun Bay.

16 MS. YOUNG: Suisun Bay. Okay. Carquinez Strait,
17 San Pablo Bay, Richardson Bay, San Francisco Bay,
18 Mission Creek, Oakland Inner Harbor Fruitvale Site, and
19 Oakland Inner Harbor Pacific Dry Dock Yard. There's
20 also -- San Francisco Bay is separated in segments --
21 lower, central. But it's basically all of San Francisco
22 Bay.

23 So the programs that are required are intended to
24 address these water bodies that are impacted by PCBs and
25 mercury. And the program, as a government service, is

1 not immediately available to property owners in Dublin
2 and is imposed for general governmental service where
3 the services available to the public as -- at large as
4 much as it is to property owners in the city of Dublin.

5 To demonstrate this, we submitted a map that is
6 included in the documents that you received this week.
7 If you can show that exhibit, please. It is CC-1.

8 MS. GMUR: Husham?

9 MR. HAROUN: Yes.

10 MS. GMUR: Thank you. CC-1.

11 MS. YOUNG: If you could scroll down to the map,
12 please, on the next page.

13 So I asked our -- I asked our GIS coordinator to
14 create this map. As you can see here, you have got the
15 City of Dublin in the center of the map. We're an
16 inland community, and the water bodies highlighted in
17 blue are labeled in blue. Those are the water bodies
18 that are impacted by the TMDL -- PCBs TMDL.

19 So you can see that Dublin is not adjacent to any
20 of these water bodies, and, in fact, it would take me
21 about 30 minutes to reach the nearest TMDL-impacted
22 water body, driving from my office to that water body.
23 So we are not adjacent to any of these water bodies.

24 And so, therefore, any of the programs or
25 requirements that are implemented to meet this TMDL,

1 they don't benefit Dublin property owners any more than
2 they do the general public.

3 So also under MRP1, one of the activities we are
4 required to do was to implement pilot projects, a
5 diversion project, from diverting stormwater from the
6 storm drain system to a wastewater treatment plant; to
7 remove PCBs and mercury prior to discharge into the Bay,
8 to demonstrate the effectiveness of that at removing
9 those pollutants from the stormwater system.

10 So another exhibit that we provided this week. If
11 you could scroll to Exhibit CC-2, please.

12 The pilot project was conducted at that Ettie
13 Street pump station, which you may be able to see, is
14 the red point here. It's in Oakland. And that pump
15 station project did not treat any of the stormwater in
16 the City of Dublin. City of Dublin stormwater flows to
17 Alameda Creek, which you can see there by Fremont down
18 at the bottom of the page. And it's not -- none of the
19 stormwater in Dublin was managed through this pilot
20 project.

21 So, once again, the benefit is to the general
22 public as a whole and not to property owners
23 specifically in Dublin.

24 So provision C.12.f of MRP1 says, quote (as read),
25 "The knowledge and experience gaining through pilot

1 implementation will be used to determine the
2 implementation scope of urban runoff diversion in
3 subsequent permit terms."

4 So the water board is going to use the information
5 derived from the pilot projects throughout the region to
6 develop permit requirements for the region as a whole in
7 the next permit, MRP2.

8 And, once again, it is not directly related to
9 Dublin property owners, but it impacts the region as a
10 whole. So not specifically Dublin.

11 Also, on a related note, the PCBs TMDL itself
12 states (as read), "The TMDL is intended to achieve
13 protection of the commercial and sport fishing
14 beneficial use."

15 There is no sport fishing in Dublin, and there is
16 no commercial fisheries in Dublin.

17 And you can see, in Exhibit CC-3, we have provided
18 an excerpt of the California Department of Fish and
19 Wildlife's Freshwater Sport Fishing Regulations that --
20 that document says that Alameda Creek and all of its
21 tributaries are closed to all fishing all year. And any
22 of the exceptions provided in that document are not
23 anywhere near the city of Dublin. So that means that
24 there's no sport fishing that's legally permitted in
25 Dublin.

1 So when you take these two facts -- the fact that
2 the pilot projects were implemented in order to inform
3 the subsequent permit, MRP2, like, what regulations
4 would be included to address the TMDLs, and the fact
5 that there's no sport fishing in Dublin, this leads one
6 to believe that these programs are -- benefit the public
7 at large and not private property owners specifically in
8 Dublin.

9 So my last point:

10 All -- it is not related to T- -- or to PCBs. It
11 is related to the trash load reduction requirements in
12 MRP1; is that all of the requirements in the MRP --
13 nearly all of the requirements in the MRP1 are related
14 to and implemented in public -- publicly accessible
15 areas, such as the public right-of-way or city parks
16 that are available for the general public. And any
17 benefits related to the programs that we have
18 implemented are only incidentally benefiting the private
19 property owners.

20 So thank you. That concludes my comments. I
21 appreciate your time and attention listening to my
22 testimony.

23 And our counsel, Mr. Greg Newmark, is here also to
24 address these issues.

25 CHAIRPERSON PERRAULT: Thank you very much. I

1 appreciate that.

2 Mr. Newmark.

3 MR. NEWMARK: Good morning, Honorable Chair and
4 Members of the Commission.

5 My name is Gregory Newmark. I'm special counsel
6 for the City of Dublin and the Alameda Countywide Clean
7 Water Program.

8 I've been working on this MRP1 test claim permit
9 myself since 2010. So we're grateful for the
10 opportunity to have a hearing on these important issues
11 today.

12 Like Ms. Young, I appreciate staff's time,
13 attention, and careful analysis that's reflected in the
14 proposed decision.

15 We agree with the vast majority of the decision,
16 and we appreciate the proposal to grant the test claim
17 on numerous important requirements.

18 Our request, as you heard from Ms. Young, is to
19 postpone a decision on the test claim today to the March
20 meeting or later. We recognize there's been a lot of
21 hard work that's been put into this 400-plus-page
22 decision, but we believe a little more work is needed to
23 address some incorrect and unsupported critical
24 statements in the proposed decision that we'll be
25 discussing today.

1 We're going to focus on -- almost exclusively on
2 section 4.2 of the draft proposed decision and the
3 reimbursement denial after January 2018.

4 We would ask the Commission to direct your staff to
5 bring back a proposed decision revised to address the
6 evidence and arguments raised today.

7 So, first, we would like to point out that the
8 proposed decision improperly excuses state agencies from
9 carrying the burden, their burden, to show that the
10 permittees have fee authority.

11 Supreme Court and all lower court decisions require
12 the parties seeking an exception to the reimbursement
13 requirement bear the burden of proving that that
14 exception applies -- applies.

15 So those parties bearing the burden today are the
16 state agencies, the Department of Finance and the Water
17 Boards.

18 The Supreme Court said, quote (as read), "Here, the
19 State must explain why federal law mandated these
20 requirements, rather than forcing the operators to prove
21 the opposite," end quote.

22 Now, we don't have a federal mandates issue in this
23 case. The issue there was federal mandates exceptions.
24 Here, the issue is the fee authority exception.

25 But this burden on the party seeking to apply the

1 exception, as opposed to what the Constitution plainly
2 states, that where there's a new program or a higher
3 level of service imposed, that subvention is required by
4 the State.

5 So even the Third District Court of Appeal opinion
6 relied on by the proposed decision holds that, quote,
7 "We agree the State" --

8 THE COURT REPORTER: Excuse me. Sorry.

9 (The court reporter admonished in-room
10 participants.)

11 MR. NEWMARK: Even the Third District Court of
12 Appeal opinion relied upon by the proposed decision
13 holds that, quote (as read), "We agree the State has the
14 burden of establishing that the permittees have fee
15 authority," end quote.

16 So this procedural issue of burden of proof is
17 really important. The permittees have a -- and they're
18 residents and they're taxpayers and they're
19 businesses -- have a constitutional right that can only
20 be denied if the state agencies prove that it should be.

21 In this test claim, the proposed decision says only
22 that, quote (as read), "The Commission disagrees with
23 these contentions," end quote. Meaning that, Dublin and
24 the countywide program's contention.

25 Nowhere does the proposed decision set forth or

1 analyze what the state agencies claim about fee
2 authority, even though the Supreme Court demanded that
3 the state agencies must explain why an exception
4 applies. Indeed, the proposed decision is forcing the
5 operators to prove the opposite; exactly what the
6 Supreme Court rule cannot happen.

7 So in this test claim, the state agencies offer no
8 explanation for how Dublin allegedly can meet the
9 substantive requirements to impose a fee to pay for the
10 specific permit provisions at issue in this case.

11 There's no justification for excusing the state
12 agencies from their Supreme Court-imposed burden and
13 denying Dublin its constitutional right.

14 So we respectfully request that the Commission
15 direct staff to revise the proposed decision to state
16 either that the State did not explain how Dublin has fee
17 authority for the specific requirements at issue, and,
18 therefore, failed to carry its burden; or analyze the
19 State's explanation, if we hear one today. If we don't,
20 there hasn't been one; and include citations to the
21 record for the factual basis to show how there is fee
22 authority for the specific requirements that we're
23 talking about today that are listed in the draft
24 proposed decision.

25 So even though the state agencies made no showing

1 to shift the burden, Dublin's evidence shows the
2 substantive requirements for a property-related fee
3 cannot be met.

4 So I want to note at the threshold that the
5 proposed decision, we recognize that lots of work went
6 into this, and especially that the comments in the draft
7 proposed decision, there wasn't a lot of time.

8 But it misstates Dublin and the countywide
9 program's position and misstates the text of the
10 Constitution. This is on page 386.

11 And I would ask if staff would please display
12 Exhibit CC-5.

13 MS. SHELTON: Are you talking about page 386 hard
14 page or PDF page?

15 MR. NEWMARK: It's -- I think the hard page would
16 be the page number at the bottom.

17 MS. SHELTON: So page 389 PDF.

18 MR. NEWMARK: If that's -- if that's what Counsel
19 says.

20 Okay. So this is just a chart that my office
21 created showing the specific text of the Constitution,
22 on the left, with the way that those same requirements
23 for a property-related fee are summarized in the draft
24 proposed decision.

25 And you will see, the first two are pretty close.

1 But the third one is the one we want to focus on.
2 And we believe the proposed decision seriously misstates
3 this requirement.

4 The Constitution prohibits the imposition of a
5 property-related fee without voter approval, quote (as
6 read), "where the service is available to the public at
7 large, in substantiality the same manner as it is to the
8 property owners," end quote.

9 And so you will see that the way the proposed
10 decision talks about it, it doesn't include the concept
11 of the differentiation between availability of the
12 service to the property owner versus the general public.
13 And it talks about imposing a fee on the general public
14 as opposed to the availability of the service.

15 So probably an inadvertent paraphrase of our
16 position in the Constitution, but we do believe it is an
17 important one.

18 And if nothing else, we believe the proposed
19 decision should be revised to accurately state the
20 requirements of the Constitution.

21 So the proposed decision also, we believe,
22 incorrectly states that, quote (as read), "Here, there's
23 no showing, as a matter of law or fact, that a fee
24 cannot meet the substantive requirements of Article XIII
25 D, section 6(b)." That's on page 389 of the proposed

1 decision.

2 Dublin and the countywide program submitted a
3 comment letter on October 28th of last year. That
4 comment did make legal and factual showings. The
5 factual showings were supported by a statement that they
6 were made under penalty of perjury, so there's no
7 evidentiary issue with them.

8 So it would be one thing to say that the showing
9 was insufficient somehow, but we don't believe it's
10 proper to act as if the showing didn't exist at all.
11 And we don't believe it's proper to omit any explanation
12 for why the legal and factual showing falls short, if
13 that's the staff's determination.

14 We also point out the proposed decision states
15 that, well, courts have found that local government has
16 the authority, i.e. the right and the power, to levy
17 property-related fees for stormwater services under
18 their police powers, end quote.

19 We believe that's incorrect as a categorical
20 statement the way it is set forth in the proposed
21 decision.

22 In fact, no appellate decision has applied the fee
23 authority exception to preclude reimbursement for all
24 stormwater permit requirements across the board, as the
25 proposed decision does after 2018.

1 The 2022 Third District Court of Appeal opinion --
2 which is the only authority cited in the proposed
3 decision for this across-the-board application for the
4 fee authority exception -- actually only applied the
5 exception -- well, denied fee authority for three of
6 eight permit requirements at issue in that case.

7 Reimbursement was required for the other five
8 permit requirements that were issued in that case, many
9 of which were permits that required regional efforts --
10 regional collaboration, development of regional plans --
11 very similar to the collaboration and regional efforts
12 you heard Ms. Young talk about for the mercury and PCB
13 diversion projects.

14 Similarly, the 2021 Second District Court of Appeal
15 decision opinion applied the fee authority exception for
16 only one of the two permitted requirements at issue in
17 that case.

18 And no appellate opinion has ever approved the
19 application of SB 231 to deny subvention, let alone
20 approving the across-the-board approach adopted in the
21 proposed decision.

22 The proposed decision incorrectly states that,
23 quote (as read), "The new mandated requirements at issue
24 here -- monitoring, trash, and mercury and PCB diversion
25 studies -- address waters in areas within the regulatory

1 control of the permittees," end quote.

2 And this is the portion that Ms. Young called out.

3 There's no evidence cited in the proposed decision
4 in support of this statement, which we submit is
5 incorrect.

6 And as you heard from Ms. Young, the only evidence
7 in the record demonstrates that these requirements do
8 not address waters in areas within the regulatory
9 control of the city of Dublin.

10 So the evidence and argument today show that the
11 mercury and PCB diversion studies cannot be funded with
12 property-related fees.

13 So I -- I'd ask that you look back at Exhibit CC-5
14 and remember that the Constitution prohibits the
15 imposition of a property-related fee without voter
16 approval, where the service is available to the public
17 at large in substantially the same manner it is to the
18 general public.

19 The service provided in connection with the mercury
20 and PCB diversion studies is available to the public at
21 large in substantially the same manner as it is to
22 Dublin property owners. There's been no argument to the
23 contrary.

24 So a fee to pay for that service cannot be imposed
25 without voter approval, so there's no fee authority for

1 these requirements, and reimbursement is required.

2 We would like to note that the arguments we have
3 raised today do apply to some of the other permit
4 provisions at issue.

5 We focused on the mercury and PCB diversion studies
6 due to the time constraints on this hearing. And it's a
7 400-page decision and so we're trying to be targeted
8 here.

9 We note that section C.10, trash load reduction
10 provisions, in the permit also fail to meet the
11 substantive requirements for property-related fees.

12 Dublin and the countywide program submitted Exhibit
13 CC-4 to show that evidence produced by the California
14 Department of Transportation shows that a very
15 substantial amount of trash on roadways comes from
16 passing vehicles.

17 I would ask Commission staff to display the third
18 page of Exhibit CC-4, if possible.

19 If I could go to the last paragraph on the third
20 page.

21 There we go. It's at the top. Well, it's top of
22 this.

23 Oh, no. Sorry. You were right. I was looking at
24 the second page.

25 Okay. There.

1 You will see this as, "The sources of trash are
2 many. Yes, garbage is thoughtlessly tossed out of car
3 windows or dumped in vacated spots. However, most of
4 the litter comes from loads that are improperly tarped
5 or tied down."

6 This is evidence that a lot of the trash on busy
7 Dublin streets does not come from adjacent properties,
8 and they cannot -- those properties cannot be assessed a
9 property-related fee for litter discarded by the general
10 public passing through.

11 So I would like to thank you for your careful
12 attention to our testimony. There is a lot that's very
13 good in the proposed decision, but we respectfully ask
14 that you direct staff to make revisions to address the
15 mistakes that we identified today, and adopt a final
16 decision at a future Commission hearing.

17 I would like to reserve the right to make some
18 rebuttal comments, to the extent necessary, from my
19 remarks made by the state agencies.

20 If there's no questions, I will take my seat at the
21 back.

22 CHAIRPERSON PERRAULT: Yeah. We'll go ahead and
23 take up questions at the end, after we have heard from
24 all of our witnesses.

25 MR. NEWMARK: Thank you very much.

1 CHAIRPERSON PERRAULT: Thank you.

2 Okay. And I'm going to apologize now if I
3 mispronounce names.

4 So Mr. Narayan.

5 MR. NARAYAN: Narayan.

6 CHAIRPERSON PERRAULT: Narayan -- thank you. I
7 knew I was going to say that wrong -- for the Claimant,
8 County of Santa Clara.

9 Do you have any comments?

10 MR. NARAYAN: Yes.

11 CHAIRPERSON PERRAULT: Thank you.

12 MR. NARAYAN: Good morning, Honorable Chair,
13 commissioners gathered here with us in Sacramento, and
14 commissioners joining us virtually.

15 My name is Rajiv Narayan. I'm a deputy county
16 counsel for the County of Santa Clara. And I'm here
17 today to talk about 10-TC-03, one of the three test
18 claim permits that's currently before the Commission on
19 State Mandates.

20 Right at the outset, I would like to agree with the
21 comments of my colleague, Mr. Newmark, that we really
22 appreciate the incredibly complicated and diligent work
23 that the Commission on State Mandates staff have done on
24 this test claim. It is behemoth work. And we're really
25 grateful for the careful analysis that allowed us the

1 opportunity to engage.

2 It is important for the County of Santa Clara, in
3 making comments today, to reassert the analysis and
4 arguments that we provided in our rebuttal comments,
5 which is to say that although we agree with many
6 elements of the draft decision, we do not believe that
7 the draft decision is supported by substantial evidence
8 as to several provisions: Those include C.8.b, C.8.c,
9 and C.8.d.i, and C.8.d.ii. And I will be talking about
10 those in my testimony today.

11 Overall, we encourage and strongly urge the
12 Commission on State Mandates to direct staff to revise
13 the draft decision consistent with the comments that we
14 provided in our rebuttal previously.

15 And we would like to join the comments and oral
16 testimony provided by our peer test claimants from the
17 City of Dublin, Alameda County, and the City of San
18 Jose, as they are relevant to the reimbursement
19 provisions offered by the County of Santa Clara as well.

20 My testimony today will be focusing on whether the
21 provisions I just cited meet the core legal standard
22 that applies to the analysis of unfunded mandates. That
23 is, whether these legal provisions impose a new program
24 or a higher level of service on the test claimants; in
25 particular, the County of Santa Clara.

1 As to each of these four provisions, the draft
2 decision finds and determines that none of them impose a
3 new program or a higher level of service.

4 What that means in practical terms: When courts
5 analyze these issues is they compare the preexisting
6 legal requirements in place up to the point where the
7 test claim statute or executive order imposed new legal
8 obligations on the test claim permittee, which, in this
9 case, again, is the County of Santa Clara.

10 So in our analysis, we'll start with comparing what
11 legal requirements existed in the new permit, the test
12 claim permit, and compare those to what legal
13 requirements existed prior.

14 In each case, the County of Santa Clara argues that
15 the test claim permit issued in 2009 imposes, as to
16 these four provisions, new programs or higher levels of
17 service.

18 To be clear, I won't go into the nitty-gritty
19 details of every single one of these four test claim
20 provisions. We encourage you to refer back to the
21 comments that we submitted previously. But I will be
22 focusing on the high level principles that play in these
23 arguments for the benefit of the Commission.

24 To start with C.8.b -- and for those that would
25 like to follow in person or online -- that begins at

1 page 188 in the hard copy of the draft decision.

2 Section C.8.b requires that the permittees shall
3 participate in implementing an estuary receiving water
4 monitoring program, at a minimum equivalent to the San
5 Francisco Estuary Regional Monitoring Program for trace
6 substances, or the RMP, by contributing their fair share
7 financially on an annual basis.

8 That's the clause that we're going to focus on
9 today. It's this new requirement, a new program or a
10 higher level of service, for the County to contribute
11 its fair share financially to the RMP on an annual
12 basis.

13 So that's what the 2009 permit says.

14 What does the 2001 permit say; the permit that
15 preceded the 2019 permit?

16 Rather than impose a requirement on permittees like
17 the County to contribute their fair share financially,
18 the 2001 permit, which you can see quoted on page 189 of
19 the draft decision, requires permittees only to
20 participate in the RMP or an acceptable alternative
21 monitoring program.

22 So what we have here is a comparison of two
23 provisions: One that says permittees shall participate
24 by contributing their fair share financially on an
25 annual basis; and a prior permit provision that merely

1 says that permittees shall participate in the RMP or an
2 acceptable alternative monitoring program.

3 That's the starting point for our analysis. We
4 claim that this 2009 permit imposes a new requirement to
5 contribute financially.

6 The draft decision, of course, disagrees with that
7 analysis. And it says that, in fact, there was a
8 preexisting legal requirement for the County and other
9 permittees to contribute financially to the RMP. The
10 draft decision does not claim that that requirement was
11 in the 2001 permit. To be clear, there's no dispute
12 about that.

13 Instead, the draft decision points us to four
14 different legal documents saying that one of these
15 probably imposed a legal requirement or reflects a legal
16 requirement for the County to contribute financially to
17 the RMP.

18 We explained in the rebuttal why we believe that
19 none of these appropriately evidence a preexisting legal
20 obligation for the County to contribute financially to
21 the RMP.

22 For example, one of these documents is a 1992
23 resolution adopted by the regional board. The argument
24 of the County of Santa Clara is that this is a document
25 that imposes obligations on the executive director of

1 the regional board, not on permittees.

2 Then we're pointed to a memorandum of understanding
3 between the regional board and the predecessor to the
4 San Francisco Estuary Institute.

5 Here, too, we claim that in general, this is a
6 legal instrument between the regional board and the San
7 Francisco Estuary Institute. It doesn't impose an
8 obligation on permittees. It doesn't evidence the legal
9 text that would create an enforceable requirement for
10 the County or other permittees to contribute financially
11 to the RMP.

12 Then, the draft decision points to a 1997 Santa
13 Clara Valley Urban Regional Management Plan, which we
14 would claim represents, at most, a voluntary commitment
15 by the County and permittees to contribute financially
16 to the RMP. And likely only reflects a summary or a
17 description of actions taken in the past and does not
18 itself, in the sections quoted, impose a legal
19 requirement on the County or other permittees to
20 contribute financially to the RMP.

21 The draft decision also references a 2007 basis --
22 Basin Plan. But we make the argument that this makes
23 historical reference to a legal obligation and does not
24 itself impose that legal requirement to contribute to
25 the RMP financially.

1 Why are we swearing these details? You know, we're
2 looking for the exact legal texts. And we're
3 frustrating. You know, we are nitpicking the documents
4 that are provided in the draft decision.

5 The reason is, because it is our firm belief that
6 if there is a prior legal obligation for the County or
7 other permittees to contribute financially to the RMP,
8 we have a right to see the actual legal text imposing
9 that legal obligation on the County.

10 And we want this because that's core to the
11 analysis of whether there's a new program or a higher
12 level of service. It is the analysis and standard that
13 courts have turned to time and again, including the
14 decisions that specifically reference water permits.

15 So to bring this back, consider a hypothetical
16 example: You live in a county and the county, a tax
17 collector, is imposing a tax collection on your
18 property. It is out of the tax collection season.

19 You ask, what is the tax for? It doesn't seem to
20 reflect your normal property taxes that's being
21 collected outside of the normal period.

22 The county tax collector tells you, well, this is
23 for a new recreation center. Sounds great. Recreation
24 centers are fantastic. You have used that rec center in
25 the past.

1 But you also know that taxes imposed by a county
2 have to be done through a ballot measure. So you ask
3 for the text of that ballot measure. The county tax
4 collector says, okay, here is a 1992 resolution from the
5 board of supervisors saying that we'll explore a ballot
6 measure to impose a tax.

7 Sounds like a reasonable thing for a board of
8 supervisors to do, but it is not the legal obligation
9 itself.

10 So you go back to the tax collector and say, hey, I
11 would like to see the ballot that was -- the ballot
12 measure that was passed imposing this taxing instrument
13 on my property.

14 The tax collector comes back and says, hey, here's
15 an MOU between the developer and the rec center, saying
16 that the County will try to impose a tax on properties
17 in the area of the rec center.

18 You say okay. That sounds like a step that the
19 County will take to explore the tax, but it's not the
20 tax itself. Can you show me the actual language of the
21 tax that I'm required to pay under law?

22 So then the tax collector says, okay. How about
23 you take a look at the membership fees that you have
24 paid to attend this rec center in the past?

25 And you say, okay, I understand that I voluntarily

1 paid membership fees to this recreation center. But
2 that's not the same thing as a tax or a ballot measure
3 imposing a tax. I would like to see the actual legal
4 text of the ballot measure imposing a tax on my
5 property.

6 At no point is the tax collector able to show you
7 the actual legal text, the legal instrument imposing a
8 tax on your parcel.

9 If you wouldn't pay that tax, we believe that you
10 shouldn't accept the analysis in the draft decision as
11 to the financial contribution requirements in the RMP.
12 Respectfully, we disagree with that provision of the
13 draft decision.

14 I want to turn now to provision C.8.c of the draft
15 decision, which begins at page 198 of the hard copy.

16 Provision C.8.c concerns status monitoring for
17 water quality objectives.

18 We showed that the 2009 permit greatly increases
19 the sites and parameters for measuring water quality
20 objectives. We do this in our rebuttal comment, as well
21 as our test claim and test claim comments, by
22 identifying specific conditions of permit compliance
23 that were not present in the prior permit. These
24 include, among other things, in the 2009 permit, 20 more
25 sites for eligible bioassessment; 23 more sites for

1 chlorine samples; eight more sites for temperature
2 samples; seven more sites for other nutrient samples;
3 and six more sites for stream surveys.

4 The draft decision does not claim that any of these
5 particular sites exist in the prior permit in 2001 or in
6 any other instrument. It says, instead, at a high
7 level, that prior legal obligations existed for the
8 County and other permittees to meet the same level of
9 service. And for that reason, the 2009 permit doesn't
10 impose, quote, a new program or a higher level of
11 service.

12 We also dis- -- we also respectfully disagree with
13 that determination. The reasoning is because it is the
14 burden of the regional board and the draft decision to
15 show, by substantial evidence, that the difference, the
16 delta, between that 2001 permit and 2009 permit includes
17 the many additional sites and parameters that I just
18 noted.

19 If the draft decision can't show you that those 20
20 additional sites were for eligible bioassessment existed
21 in the prior permit or other legal obligations, if the
22 draft decision can't show you that those 23 additional
23 sites existed for chlorine samples, then what we're left
24 with is the factual finding that there are, in fact,
25 a -- several new or, rather, several new requirements

1 that impose a new program or a higher level of service,
2 which entitled the County and other permittees to
3 reimbursement under the State Constitution.

4 We want to focus on this requirement in part
5 because the analysis here, the one provided in the draft
6 decision, we contend is exactly the same as was rejected
7 by the court of appeal in 2022.

8 To its credit, the draft decision does engage with
9 that argument. But, again, we respectfully disagree
10 with that. We thought it would be helpful for the
11 Commission to explain the core principle underlying the
12 court of appeal's analysis.

13 What the court of appeal argued in 2022 -- and this
14 was a decision also about water permits -- is that if
15 you accept the reasoning that a new or higher level of
16 service, a new program or higher level of service,
17 requires us to analyze a very high level of the same
18 standard, no water permit would ever impose an unfunded
19 mandate. And that's because water permits, by their
20 nature, are always meeting the same requirements.

21 The point of a water permit is for counties,
22 cities, and other kinds of local government agencies to
23 meet certain water quality objectives so that they can
24 discharge into these waters.

25 What water permits do from time to time with each

1 permit is vary the conditions, and we create different,
2 specific conditions for meeting that same requirement.

3 The reason why these are unfunded mandates at a
4 high level is because changing those specific
5 requirements creates new programs or higher levels of
6 service.

7 And so here we demonstrate how those conditions are
8 changed. We show that there are 20 more sites for algal
9 bioassessment; 23 more sites for chlorine samples; six
10 more sites for stream surveys --

11 THE COURT REPORTER: Slow down, please.

12 MR. NARAYAN: Sorry.

13 THE COURT REPORTER: You're just listing them and
14 you're going fast.

15 Start over with the number part.

16 MR. NARAYAN: Yeah. Of course.

17 So we show that there are 20 more sites for algal
18 bioassessment; 23 more sites for chlorine samples; six
19 more sites for stream surveys.

20 We are specific in our analysis about what's
21 different between the existing obligations and the ones
22 imposed by the 2009 permit.

23 And for that reason, we believe that the 2009
24 permit, as to provision C.8.c, imposes a new program or
25 higher level of service requiring reimbursement under

1 this new Constitution.

2 I want to turn now to provision C.8.d.ii, which
3 begins at page 224 of the hard copy of the draft
4 decision.

5 We also respectfully disagree with the
6 determination reached here in the draft decision.

7 So provision C.8.d.ii concerns the use of best
8 management practices for stormwater treatment or
9 hydrograph modification control.

10 The high-level argument of the County is that we
11 previously had more discretion to choose which best
12 management practice to use under the 2001 permit and
13 prior legal obligations.

14 In 2009, the permit specified, it narrowed our
15 discretion to choosing a best management practice for
16 stormwater treatment in hydrograph modification control.
17 For the same reasons I just provided as to provision
18 C.8.c, by changing the specific condition, by narrowing
19 the County's discretion, the 2009 permit creates a new
20 program or higher level of service.

21 I won't belabor that point much more. But to say
22 that it reflects, in many ways, the analysis I just
23 provided under provision C.8.c.

24 I want to conclude by talking about an issue that
25 isn't immediately before the Commission, but I think

1 concerns all of us as we talk about this particular test
2 claim, which is the challenges that we have all
3 experienced in the time delay here. And I want to be
4 very clear that at no point is it the intention of the
5 County to criticize the Commission itself. If anything,
6 we see and are concerned for the amount of work that you
7 are required to do under the budget that you are given
8 and the resources. And we want to make sure that we
9 state into the record that the County of Santa Clara
10 believes that this system should work better for
11 everyone involved: The Commission, importantly; the
12 County, of course, and other permittees; and including
13 the Water Board and the Department of Finance.

14 It is hard for us to understand how our rights and
15 interests across the board have vindicated when the
16 Commission on State Mandates isn't provided the
17 resources it needs to render effective and quick
18 decisions on test claim statutes and executive orders.

19 To that end, we wanted to note a couple of
20 Government Code provisions that are of some concern to
21 us.

22 These include Government Code 17553, which provides
23 the Commission on State Mandates one year from filing --
24 from the filing of the test claim to adopt a statewide
25 cost estimate.

1 Of course this permit was issued in 2009. The test
2 claim was originally filed by my predecessor in the
3 County, along with Mr. Newmark in 2010.

4 The Commission certified the test claim complete in
5 2017.

6 A hearing was scheduled for 2018.

7 And the draft proposed decision was issued seven
8 years later in 2024;

9 With the hearing, of course, happening in 2025.

10 Suffice it to say, that one-year deadline won't be
11 met in this circumstance. Again, not the fault of the
12 Commission itself, but something of great concern to us
13 in this process. And something that we're committed to
14 working on with the folks in this room and with the
15 legislature.

16 Among the many challenges at play, I think folks
17 are well aware that if a test claim decision takes as
18 long as it does in this case, it imposes institutional
19 knowledge challenges. In this case, many generations of
20 attorneys in my office have worked on this test claim.
21 I mean that literally. I was 19 when the -- when the
22 permit was issued. And I'm now the one providing oral
23 testimony on behalf of the County of Santa Clara.

24 But in addition to the generational challenges
25 here, we also note that there are mechanisms that --

1 that, in the state statute, recognize the challenges of
2 time delays for the fiscal burdens they impose on local
3 governments because we, of course, have to front and
4 advance the money for these permit conditions all the
5 while that, you know, determination is being made by the
6 Commission on State Mandates.

7 Government Code 17561.5, for example, provides that
8 interest shall accrue to be paid to the test claimant in
9 the initial reimbursement claim. But that interest only
10 accrues after the statewide cost estimate is adopted.
11 Here, the statewide cost estimate has not yet been
12 adopted, even though the state statutory scheme
13 contemplates that that adoption should take about a
14 year.

15 So it is a concern to us that the system isn't
16 working the way it's designed to, even though it's very
17 clear to us that everybody within the system is working
18 very hard. There's an old adage in law, a core
19 principle, that there are no rights without remedies.
20 We just want to make sure there's an effective way for
21 the County and other test claimants to effectively
22 vindicate our rights under the State Constitution.
23 We're committed to working with everyone to do that.

24 Thank you.

25 CHAIRPERSON PERRAULT: Thank you. Okay.

1 We will go ahead. And, again, I apologize. I know
2 I'm going to mispronounce your name.

3 But Ms. "Laskowski"? Laskowska? Did I say that
4 wrong? I'm sure. From the City of San Jose.

5 MS. LASKOWSKA: You are correct.

6 CHAIRPERSON PERRAULT: Okay.

7 MS. LASKOWSKA: Yes. Thank you very much.

8 Good morning, Honorable Commissioners. My name is
9 Margo Laskowska. I'm a senior deputy city attorney for
10 the City Attorney's Office for the City of Jose. And I
11 represent the claimant, City of San Jose.

12 The City of San Jose joins in the testimony,
13 comments, and arguments provided by the County of Santa
14 Clara, City of Dublin, and Alameda Countywide Clean
15 Water Program.

16 And San Jose's arguments will focus on provisions
17 related to provision C.2, which is unique to San Jose
18 claims -- the San Jose claim.

19 It concerns municipal operations, and provisions of
20 section C.2 direct the City of San Jose to control and
21 reduce nonstormwater discharges and polluted stormwater
22 to storm drains and water courses during a, quote,
23 operation, inspection, and routine repair and
24 maintenance activities of municipal facilities and
25 infrastructure, closed quote.

1 Sections C.2.b, C.2.c, C.2.e, and C.2.f, at issue,
2 are unfunded mandates because public entities are
3 legally and practically compelled to construct and
4 maintain their public property and because these
5 provisions create new or higher level -- levels of
6 services.

7 The City does not voluntarily participate in the
8 program.

9 For stormwater infrastructure, courts rejected the
10 State's argument, that's included in the proposed
11 decision, that by owning and maintaining a storm
12 drainage system, public entities voluntarily
13 participated in the permit system.

14 That's in the case of the Department of Finance
15 versus the Commission on State Mandates. The real party
16 was the County of Los Angeles. In 2021, the citation is
17 59 Cal.App.5th 564 at page 560.

18 The Court there stated that, I quote, "In urbanized
19 cities and counties, deciding not to provide a
20 stormwater drainage system is no alternative at all.
21 The drainage of a city in the interest -- in the
22 interest of public health and welfare is one of the most
23 important purposes for which the police power can be
24 exercised. The alternative to not obtaining an NPDES
25 permit was for permittees not to provide a stormwater

1 drainage system. Permittees do not voluntarily
2 participate in applying for a permit to operate their
3 stormwater drainage system. They were required to do so
4 under state and federal law," closed quote.

5 And that same principle applies here. Similarly,
6 construction and maintenance of public works is an
7 essential function of local government. And it is
8 necessary for public health, safety, and welfare. The
9 City cannot simply choose not to construct a new road or
10 allowed -- or allow existing facilities to fall into
11 disrepair.

12 Like a stormwater system, deciding not to provide
13 new public works or not to maintain existing -- existing
14 public works is so far beyond practical reality that
15 public entities are compelled to act. And this cannot
16 be deemed voluntary participation in the -- in the
17 program.

18 Failure to maintain infrastructure may expose
19 public entities, local public entities, to legal
20 liability for a dangerous condition of public property
21 under Government Code section 835.

22 This case is not like the current high school
23 district case relied on by the proposed decision.
24 It's -- the case name is Department of Finance versus
25 Commission on State Mandates. The real party was Kern

1 High School District. And citation is 30 Cal.4th 727.
2 It is a 2003 decision.

3 That case involved requirements for participating
4 in a voluntary grant in a program -- in a voluntary
5 program funded by a grant. Here, there are no grant
6 funds proposed for construction and maintenance of
7 public infrastructure.

8 And, indeed, this -- the Kern case was
9 distinguished by the Court in Department of Finance
10 versus Commission on State Mandates. The real property
11 was County of Los Angeles. The case was decided in
12 2021. And the citation is 59 Cal.App.5th 546. The
13 relevant citation -- the relevant pincite is page 561.

14 And there, the County of LA Court distinguished the
15 current decision by stating that the Kern holding does
16 not apply where -- and I quote (as read) -- "The local
17 governments are required, under federal and state law,
18 to obtain a permit for any discharge from a municipal
19 storm sewer system serving a population of 100,000 or
20 more."

21 The County of LA Court was quoting the Supreme
22 Court decision in Department of Finance versus the
23 Commission; another County of LA case. The pincite --
24 the citation is 1 Cal.5th 749. The pincite is page 757.
25 It's a 2016 decision.

1 So on the basis of those two cases, and contrary to
2 the Commission's current decision, the Kern case does
3 not apply here.

4 It is not practical for a public agency to function
5 without using its constitutional powers to construct and
6 maintain public infrastructure, because, otherwise,
7 public infrastructure would otherwise -- would be either
8 unavailable or in disrepair. So a public entity
9 realistically may not choose not to construct or
10 maintain public property.

11 In sum, public entities do not voluntarily
12 participate in the program when they construct, expand,
13 or maintain public property.

14 The second part of my argument is that section C.2
15 is a new program or a higher level of service.

16 Unlike the prior permit, the permit at issue does
17 not contain the language, quote, "to the maximum extent
18 practical," closed quote -- closed quote.

19 As stated by the court in the County of San Diego
20 case, which is Department of Finance versus Commission
21 on State Mandates; the real property, County of San
22 Diego. 18 Cal.App.5th 661. It was a 2017 case -- year
23 case.

24 So as stated by the Court in that County of San
25 Diego case, the maximum extent practical -- practicable

1 gives the local government, quote (as read), "discretion
2 to make a choice such as to determine which specific
3 controls were necessary to meet that standard," closed
4 quote.

5 But the permit at issue here removed the "maximum
6 extent practicable" language. Therefore, instead of
7 allowing the City discretion in how to comply with it,
8 the permit mandates certain implementation levels and
9 reporting levels.

10 This conclusion is consistent with the analysis in
11 the County of San Diego case that I just mentioned.
12 Consequently, in section C.2, the permit at issue
13 contains a new and expanded scope of responsibility.

14 In conclusion of my remarks, section C.2 and
15 subsections -- subsections b, c, e, and f -- are state
16 mandates requiring reimbursement. And the City of San
17 Jose respectfully requests the Commission to modify the
18 proposed final decision accordingly.

19 Thank you.

20 CHAIRPERSON PERRAULT: Thank you very much.

21 Okay. Mrs. -- Ms. Ferebee from the Department of
22 Finance, do you have any comments?

23 You are muted, Ms. Ferebee. You are still muted.

24 MS. FEREBEE: Sorry.

25 CHAIRPERSON PERRAULT: That's okay.

1 MS. FEREBEE: I would respectfully ask to speak
2 after the Water Boards have a chance to testify, please.

3 CHAIRPERSON PERRAULT: Okay.

4 Okay. All right. Then we will go ahead and move
5 forward.

6 And Ms. Sablan, Mr. -- I'm going to say this wrong.
7 Mr. Lichten, who I think is on the monitor, and
8 Mr. Wadhvani -- Ms. Wadhvani -- I'm so sorry, for the
9 State Water Resources Control Board and San Francisco
10 Bay Regional Water Quality Control Board, if you have
11 any comments. I'm not sure if -- if Water Resources
12 wants to go first or --

13 THE COURT REPORTER: I'd like to say, if these
14 people are going to be as long as those folks --

15 CHAIRPERSON PERRAULT: Yes.

16 THE COURT REPORTER: -- it would be good for me to
17 have a break now.

18 CHAIRPERSON PERRAULT: Are your comments lengthy?

19 MS. WADHWANI: We don't anticipate it being as long
20 as with theirs.

21 CHAIRPERSON PERRAULT: It's 11:23 and we will
22 reconvene back at 11:28.

23 (Break taken in proceedings:

24 11:23 a.m. to 11:34 a.m.)

25 CHAIRPERSON PERRAULT: We'll go ahead and

1 reconvene.

2 And we'll go ahead and hear from the California
3 Regional Water Quality Control Board.

4 Now we're ready.

5 MS. SABLAN: Good morning, Commission Members. It
6 is afternoon. Commission Members and staff.

7 I'm Teresita Sablan from the Office of Chief
8 Counsel at the State Water Resources Control Board.

9 Also here with me today is Emel Wadhvani, Assistant
10 Chief Counsel. And we also have -- from the San
11 Francisco Bay Water Board, we have Keith Lichten, the
12 division manager for our stormwater program.

13 I will start off with the claimants -- where the
14 claimants also stated that we commend staff on all the
15 work they put into this giant, giant proposed order. A
16 lot of thought went into it. And while we don't agree
17 with everything in the order, we have stated our
18 objections in our written comments so we won't restate
19 those here.

20 We agree with the proposed conclusions that would
21 deny reimbursement, including staff's analysis of the
22 objections claimants made in their written comments on
23 the proposed draft decision and the testimony they
24 provided today.

25 We don't think of the testimony provided today

1 warrants any changes to the draft proposed decision.

2 Staff's analysis in the draft proposed decision
3 addresses the objections while insufficiently.

4 Specific to Dublin's testimony today, Dublin has a
5 waste load allocation under the mercury -- mercury and
6 PCB TMDLs. The pilot studies implement the waste load
7 allocations and the requirements imposed on the
8 permittees as part of their stormwater sewer service
9 operation, a service provided to property owners in
10 their respective jurisdictions.

11 The permittees have fee authority for stormwater
12 sewer services. We agree with the Commission staff's
13 analysis in the proposed draft decision that the State
14 doesn't have the burden of making the factual showing
15 that the requirements of Article XIII D, section 6, are
16 met.

17 As the appellate court said in the 2022 Department
18 of Finance decision, we just have to meet the legal
19 burden. And the permittees have legal authority to
20 impose fees for stormwater sewer services.

21 And with that, you don't have to dig into the
22 factual matters that were brought up today to find that
23 the subvention exemption in Government Code section
24 7556(d) [sic] applies here today.

25 While we don't think the facts raised in Dublin's

1 testimony are at issue here, we do have Keith Lichten on
2 Zoom, who can provide some background on those facts
3 from the Water Board's perspective.

4 CHAIRPERSON PERRAULT: Thank you.

5 MS. SABLAN: Thank you.

6 CHAIRPERSON PERRAULT: All right. Mr. Lichten.

7 MS. SHELTON: I don't think he heard you.

8 CHAIRPERSON PERRAULT: Oh, sorry.

9 Go ahead. Yes, Mr. Lichten. Go ahead.

10 MR. LICHTEN: Thank you. I wasn't sure if that was
11 my cue.

12 Thank you. Thank you for the time this morning.

13 As Teresita mentioned, I'm Keith Lichten, division
14 manager at the Regional Water Board, and I manage our
15 region's municipal stormwater program.

16 I will offer key thoughts.

17 First, just noting that San Francisco Bay is our
18 region's crown jewel and this is a reason why people
19 move to and live in the Bay Area. There is a benefit to
20 the general public. But there's a separate benefit to
21 property owners, whose property values are affected in
22 part by the Bay's health and by the health of creeks
23 discharging to the Bay and the communities that that --
24 that those make possible.

25 This morning, and in Mr. Newmark's communication

1 dated January 22nd, 2025, Dublin raises a question about
2 the role of MRP1-required PCBs and mercury pilot
3 studies, looking at the diversion of stormwater runoff
4 to the sanitary sewer; provision C.11.f and C.12.f. The
5 idea is that there's not a benefit to Dublin property
6 owners.

7 And so I'll just offer a few notes on that.

8 The idea -- excuse me. A subset of private
9 property owners is a source of PCBs: Those who have
10 PCBs containing building materials or businesses that
11 may have materials with PCBs; or those who have had
12 historical discharges of PCBs on their properties.

13 And most or all property owners are significant
14 sources of mercury urban runoff that discharges to the
15 storm drain, in part, because a significant source of
16 mercury is in aerial deposition.

17 In some cases, those discharges, you know, will
18 happen or are happening in other cases. Like for PCBs,
19 they are historical. And the PCBs are now distributed
20 on the broader landscape. So that's to say, these
21 pollutants are not simply coming from public property.

22 Now, MRP permittees, through their local
23 ordinances, could require private property owners to
24 address the pollutants directly.

25 And, in fact, the City of Dublin's stormwater

1 ordinance, at section 7.784.790, prohibits the discharge
2 of nonstormwater, like mercury and PCBs, to the storm
3 drain. And the City's stormwater ordinance subsequently
4 states, in section 7.74.110, that liability for such
5 discharges is the responsibility of the person causing
6 the discharge.

7 As such, property owners have and have had a
8 responsibility to prevent the discharge of materials
9 other than stormwater, including PCBs and mercury, to
10 the storm drain.

11 With that said, though, that's not necessarily the
12 most cost-efficient or cost-effective approach to serve
13 by property owner by property owner requirements. And
14 so the MRP, instead -- in getting to the testimony in
15 the letter, the MRP steps up a framework where
16 permittees implement actions that make sense to address
17 discharges of PCBs and mercury.

18 In some cases, such as for significantly
19 contaminated sites, permittees, or we, the Department of
20 Toxic Substances Control or US EPA, do impose
21 requirements directly on individual property owners, for
22 example, that are requiring site clean-up, control of
23 PCBs during demolition, or implementation of other best
24 management practices to control pollutants, like street
25 sweeping, housekeeping, to get them out of that conveyor

1 belt of runoff that goes to storm drain, creeks, and the
2 bay.

3 And that's because those are the measures that make
4 sense given the relative concentrations and loads of
5 those pollutants.

6 But a -- excuse me. A broader range of controls is
7 appropriate to officially control those impairing
8 pollutants, as they are distributed across the landscape
9 and given that loads and concentrations that they're
10 present at. And a benefit is accruing to property
11 owners who otherwise would be expected to control the
12 pollutants.

13 So let's go back to that pilot program for
14 diverting urban runoff to the sanitary sewer. The
15 program was part and parcel of implementing the PCBs and
16 mercury TMDLs. And it was part of the overall program
17 of implementation as explained in the MRP1 fact sheet.

18 And so that was, you know, starting with pilot
19 testing, going to focused implementation in areas where
20 benefits are most likely to increase in places that had
21 more pollutants; or more bang for the buck. And then
22 full-scale implementation throughout the region.

23 And the idea with this approach is good government.
24 The idea behind pilot projects. So here, like with the
25 permit's monitoring requirements, permittees are

1 collectively doing work over time and collectively
2 learning from it, rather than each permittee doing --
3 repeating the work independently.

4 So there's a question: Are the pilot studies
5 applicable to Dublin? They are because while PCBs and
6 mercury are present at relatively low concentrations and
7 urban runoff, they are --

8 THE COURT REPORTER: I need to interrupt. Excuse
9 me, Mr. Lichten. This is the court reporter. I think
10 you're speaking too quickly so I cannot understand every
11 word you're saying. So could you start your sentence
12 over, please. Or that paragraph.

13 MR. LICHTEN: I will. And will I slow down. I'm
14 close to the end as well. Thank you for letting me
15 know.

16 THE COURT REPORTER: Thank you.

17 MR. LICHTEN: So are the pilot studies applicable
18 to Dublin? They are. And that's because while
19 pollutants, PCBs, and mercury are present at relatively
20 low concentrations in urban runoff, they are
21 conservative. They don't -- they don't degrade over
22 time. So their cumulative load over time is
23 significant.

24 And as I mentioned, properties in Dublin, as well
25 as public, private -- and public are sources of mercury

1 from atmospheric deposition or, you know, broken mercury
2 switches, and during car accidents, that kind of thing.
3 And a likely source of PCBs from PCBs in building
4 materials or certain kinds of metals, business
5 materials, that -- are being mobilized or historically
6 were mobilized into the landscape in the past.

7 And so -- basically, so yeah. There are mercury
8 and PCBs in Dublin. And then over time, those will
9 transport downstream through storm drains into the
10 Arroyo de Laguna, Alameda Creek through Niles Canyon,
11 and then into the Bay.

12 And I will just note that under MRP2 and MRP3
13 subsequent permits, permittees have the option to
14 exclude themselves from a separate program to control
15 PCBs -- the Building, Demolition, Debris Control
16 Program -- if they don't have buildings, at least, that
17 are sources of PCBs.

18 We do have a couple of permittees who have done
19 that, including Clayton. Basically folks who have wood
20 frame structures that were not constructed at the time
21 when PCBs were present. We have approved those. And we
22 didn't receive a request from Dublin appropriately to
23 exclude them from that program, further indicating that,
24 you know, this is an area where there are PCBs.

25 So I think that that -- this concludes my remarks

1 so I'm going to finish at this time.

2 CHAIRPERSON PERRAULT: Thank you so much.

3 MS. SABLAN: And I would just add the Water Boards
4 do not advocate for delaying the decision on this. But
5 if the Commission is inclined to change their decision
6 based on the testimony heard by claimants today, we
7 would just ask that we get an opportunity to brief the
8 issues as well.

9 But, again, we think staff got it right with this
10 decision.

11 Thank you.

12 CHAIRPERSON PERRAULT: Thank you so much.

13 MR. WADHWANI: No additional.

14 CHAIRPERSON PERRAULT: No additional. Okay. All
15 right.

16 With that, we'll go ahead and turn back to
17 Ms. Ferebee from Department of Finance.

18 Do you have comments?

19 MS. FEREBEE: Yes. Thank you. Donna Ferebee,
20 Department of Finance.

21 The Department of Finance concurs with the Water
22 Board's comments and the testimony you heard today. And
23 we would urge the Commission to deny claimants' request
24 to revise the proposed decision.

25 Thank you.

1 CHAIRPERSON PERRAULT: Thank you.

2 Okay. With that, I'm going to go ahead and turn
3 back to Ms. Shelton to provide any additional comments.

4 MS. SHELTON: Sure. Just to go over some of the
5 points that were raised:

6 One, let me address the timing of this valid
7 concerns with the late proposal with this decision. It
8 was filed in 2010, these test claims. The parties then
9 did ask for this matter to be stayed pending resolution
10 of the Supreme Court matter on whether stormwater
11 permits generally were mandated by state or federal law.
12 And that decision came down in 2016.

13 We then took it off the inactive status at that
14 point. There were several requests for continuances by
15 the parties.

16 On our end, we had three experienced attorneys
17 start these -- this particular analysis and move on and
18 quit. So we have had, you know, three people start and
19 stop.

20 I did take it over to draft, and these are very
21 lengthy. The record, of which you received a part of,
22 is only 20,000 pages. But the full thing that we got
23 was over 200,000 pages. We are talking about six prior
24 permits being merged into one. Many stormwater
25 management plans, annual work plans, that were made

1 enforceable by the prior permits, had to be reviewed.

2 For me alone -- and I consider myself pretty quick
3 doing these -- it took me almost a year to get it done.

4 So these are very difficult test claims and they
5 are not the typical test claim that the Commission
6 receives.

7 So that is the information on the timing.

8 On the fee authority issue, I want to make it clear
9 that what they are really getting at is anything after
10 January 1, 2018, because at any point before that, this
11 decision is finding there are costs mandated by the
12 State.

13 So the testimony regarding the fee authority issues
14 are really not that relevant until you are talking about
15 January 1st, 2018.

16 A lot of the requirements here are one-time
17 requirements; are requirements that should have been
18 done before January 1, 2018, including the mercury and
19 PCB studies.

20 Because if you look on the PDF, page 359, they had
21 to summarize the results of those feasibility
22 evaluations in their 2010 annual report. And in the
23 2014 integrated monitoring report, they had to report
24 the results. So that should be done and there should be
25 no issue with regard to fee authority for those

1 particular activities.

2 But getting to the other activities -- and I would
3 say that it most likely addresses the citizen monitoring
4 for Vallejo, which is ongoing, the monitor and reporting
5 electronically, the notice to the public regarding
6 monitoring reports, maintenance of full trash capture
7 devices, and some of the activities approved -- or
8 suggested for approval for hotspot assessments and
9 reporting. Those are ongoing, and those would be
10 affected by -- by the fee authority.

11 I do not recommend that you have us take that back
12 because I do think it's a little bit misleading to say
13 that there are mistakes or inaccuracies in the analysis.
14 We have everything there.

15 For example, on PDF, page 390, we lay out the whole
16 analysis by two courts on the substantive requirements
17 of Prop 218. The first one was the 2021 decision by the
18 Second District Court of Appeal. That case is
19 distinguishable from the facts at issue here. There,
20 the LA County permit directed the permittees to place
21 trash receptacles on public transit stops.

22 And the Court there found there was no fee
23 authority to -- they didn't have authority to impose
24 fees on the transit authorities.

25 And so then the argument was made that they could

1 impose a fee on the property owners.

2 And in that case, the Second District Court of
3 Appeal did find that this is generally benefiting the
4 public at large; the placement of trash receptacles at
5 transit, because you have the public using the transit
6 facilities.

7 The next case was the 2022 Department of Finance
8 case where -- addressed by the Third District Court of
9 Appeal. Same type of arguments made there, but it was
10 dealing with street sweeping, where there was a BMP
11 requirement that they street sweep all the streets in
12 the region, not just in the residential areas, but all
13 in the region.

14 And there, the claimant was making the argument
15 that it also didn't meet the substantive requirements of
16 Prop 218. The Court completely disagreed with that and
17 also found that the State -- even though the argument
18 was made that the State had the burden of proof on
19 exceptions arguments, that they -- in here were the --
20 that that burden did not apply with issues here, like
21 that type of fee authority, which is regular -- which is
22 usually a regulatory function of local government to
23 establish the proportionality of the fees and the amount
24 of the fee.

25 Here, the Court said (as read), "...requiring the

1 State to show affirmatively how permittees can create a
2 fee that meets the substantive requirements, where no
3 fee yet exists, requires the State to effectively engage
4 in the rulemaking process itself, and asks the State to
5 do more than established permittees have a lawful
6 authority to an active fee," which is the sole issue
7 under Government Code 17556(d).

8 The Court held that unless there is a showing that
9 a fee cannot meet the substantive requirements of
10 Article XIII D, section 6(b), as a matter of law or
11 undisputed fact, then the finding that a fee would meet
12 the substantive requirements is implicit in the
13 determination that permittees have the right or power to
14 levy a fee.

15 Here, by statute, in SB 231, they have the right or
16 power to impose a stormwater fee. That's also been
17 determined by the courts to exist based on their police
18 powers provided in the California Constitution.

19 So all of the case law is there.

20 In addition, we have -- if you go to page 392, you
21 have -- the California Stormwater Quality Association
22 has provided a lot of information to local agencies on
23 how they can properly develop property-related
24 stormwater fees under Article -- or, excuse me, under
25 Section XIII D of the California Constitution, and how

1 to meet that proportionality requirement for property
2 owners.

3 You have also several entities that have passed
4 stormwater fees for the region:

5 We have mentioned the 1994 fee, stormwater fee,
6 passed by Alameda County;

7 The City of San Jose passed one in 2011;

8 The City of Palo Alto had adopted a voter-approved
9 stormwater fee, which included reimbursement for trash
10 capture devices;

11 We have stormwater fees passed by the Vallejo
12 Sanitation and Flood Control District.

13 So based on all of this information, yes, we
14 believe they have fee authority to provide -- pay for
15 the costs of the new programs or higher levels of
16 service.

17 So that's on the fee authority.

18 On monitoring, there seems to be a big issue. What
19 the claimants are wanting to do is just compare the
20 plain language of the prior permit to the current
21 permit. And that's it; and stop.

22 The problem is, the plain language of the prior
23 permit makes enforceable their stormwater management
24 plans, and, in fact, the board has taken some -- imposed
25 some civil liability violations when they fail to comply

1 with the stormwater management plans.

2 Those prior permits are quasi-judicial orders. The
3 plain language makes those prior stormwater management
4 plans enforceable as law. And so you cannot ignore
5 those stormwater management plans.

6 So with respect to the C.2 maintenance activities
7 raised by the City of San Jose, all of those activities
8 were contained in the stormwater management plans, and
9 so none of them are new. They are just not new.

10 I agree that they are specifically imposed by the
11 State, but they are -- when you look back at the prior
12 stormwater management plans, they are all listed there.
13 They are all enforceable. And so, therefore, they do
14 not impose a new program or higher level of service.

15 With respect to monitoring, I think the County of
16 Santa Clara brought up status monitoring, probably
17 long-term monitoring.

18 Those requirements are more spelled out in this
19 permit but, again, the monitoring is spelled out in
20 their stormwater management plans, in their monitoring
21 plans all made enforceable by the prior permit.

22 They had to monitor for the pollutants. They may
23 have increased costs now, but increased costs alone do
24 not make for a reimbursable state-mandated program. The
25 activities are not new. Both federal law, prior permits

1 require them to monitor for biological, chemical, and
2 physical parameters. They had to monitor for those
3 pollutants. Monitor to ensure that they were meeting
4 the water quality standards that are identified in the
5 Basin Plan, which had narrative and numeric effluent
6 limits for all the pollutants that are -- that are
7 identified in the permit. And they had to comply with
8 the California Toxics Rule, which also is at issue here.

9 And if they -- if they did discover an exceedance
10 of those pollutants in their runoff, they were required
11 to report that information to the Water Board. They
12 were required to determine the pollutant and the source
13 of the pollutant using the particular studies that are
14 identified here. And they had to show that they would
15 perform additional monitoring, as required, to meet
16 water quality standards.

17 So the prior permits required any additional
18 monitoring -- monitoring necessary to meet those
19 standards, and that's no different than what they are
20 doing now.

21 And so we propose, on that particular issue, that
22 there is just simply not a mandated new program or
23 higher level of service.

24 And I believe that's it for it substantively,
25 unless you have questions.

1 CHAIRPERSON PERRAULT: Thank you. I appreciate
2 that.

3 Okay. All right. I believe we have heard from all
4 of the claimants and our witnesses on this matter.

5 So before I move it to our members, let me just
6 check to see if there's any public comment.

7 MR. NEWMARK: We also wanted to have a few moments
8 of rebuttal.

9 CHAIRPERSON PERRAULT: I will allow it, but if you
10 would please not restate anything that's already been
11 addressed, and keep your comments just to anything new,
12 we would appreciate it.

13 MR. NEWMARK: Sure.

14 CHAIRPERSON PERRAULT: Yes.

15 MR. NEWMARK: Would you like to have public comment
16 first or me?

17 CHAIRPERSON PERRAULT: Why don't you go ahead and
18 come on up, and then we will move to public comment.

19 MR. SUPACHANA: Madam Chair, there are no online
20 public comments.

21 CHAIRPERSON PERRAULT: Thank you, Dennis. I
22 appreciate that.

23 MR. NEWMARK: Once again, Gregory Newmark for the
24 City of Dublin and the Alameda Countywide Clean Water
25 Program.

1 Just briefly, we heard -- I think it was
2 Mr. Lichten from the Water Board talk about the San
3 Francisco Bay being the crown jewel of the Bay Area.
4 That is one of the reasons that people move there. It
5 is an important part -- critical part of the regional
6 economy.

7 Dublin and all the members of the Alameda
8 Countywide Clean Water Program are -- it is literally
9 their job to try to devote their efforts to try to
10 improve and enhance the water quality of the Bay. They
11 care deeply about it.

12 This is not about not wanting to support or improve
13 water quality. It is about trying to have the funding
14 available to support those efforts, where the cities
15 need the ability to generate revenue to do it.

16 Our point in the fee authority issue was that the
17 Constitution -- there's this allegation that a
18 property-related fee could be applied to pay for these
19 debts; the basis for the fee authority claim.

20 We urged you today to consider whether the City of
21 Dublin benefits in any way by -- we just chose the PCB
22 diversion study as an example -- in any way differently
23 from the general public or the Water Board itself.

24 We agree with Mr. Lichten that the region-wide
25 effort is a good government.

1 Where the Water Boards and the regulatory agencies
2 know about particular properties that are contaminated
3 with PCBs, as we heard, they do take action for those
4 particular properties. And the issue is, we don't know
5 where all the different minute sources of PCBs might be.

6 I heard Mr. Lichten say that there are PCBs in
7 Dublin and there's mercury in Dublin.

8 There's PCBs in building materials, in blinds, and
9 things like that from way back. They are ubiquitous
10 contaminants. So there's probably PCBs in any --
11 technically in any urban area.

12 But we're not aware of PCBs being detected in any
13 sample of stormwater coming from Dublin. So the fact
14 that the PCBs might exist somewhere in a transformer up
15 on a power pole somewhere in Dublin, inside the
16 transformer, doesn't really have anything to do with
17 whether there's PCBs in the stormwater coming out of
18 Dublin.

19 So I just want to make sure that the Commission
20 appreciates that distinction. We didn't hear anything
21 that there's actually been detections of PCBs in
22 stormwater from Dublin.

23 So we laud the regional approach. We appreciate
24 the collaboration to try to develop these diversion
25 studies. But we would just submit, if you think about

1 the diversion studies in particular, it will help guide
2 better regional approaches, better smart government, but
3 that benefits the Water Boards themselves and everybody
4 who lives in the Bay Area, not just property owners in
5 Dublin. They all benefit the same way. And, therefore,
6 it's a general public -- a general -- a service to the
7 general public that needs to be funded that way. And so
8 property-related fees are available for that.

9 With regard to Ms. Shelton's comments on our
10 arguments regarding the requirement that the state
11 agencies bear the burden of proving the exception, I
12 didn't hear any dispute with the quote that we provided
13 from the Third District Court of Appeal. The Third
14 District Court of Appeal said we agree that the State
15 agencies bear the burden to explain why there's fee
16 authority.

17 And so the dispute is, as Ms. Shelton correctly
18 pointed out, that there's a split of authority between
19 the Second District Court of Appeal, which said the
20 state agencies need to prove all the substantive
21 elements of the claim.

22 And the Third District Court of Appeal said, well,
23 we think that would be pretty hard for the state
24 agencies to develop the specific proportionality and
25 requirements and things like that.

1 There was an acknowledge to be an obligation that
2 they have the burden, but not necessarily to prove all
3 the elements of a property-related fee as if the Water
4 Board were adopting the fee itself.

5 But, unfortunately, I'm concerned that the proposed
6 decision goes too far such that it does relieve the
7 state agencies of their burden entirely. They still
8 need to explain how the specific requirements at
9 issue -- and that's how the Commission has generally
10 done this and generally how the courts have weighed
11 these things: You look at the specific requirement.

12 In the Third District Court of Appeal case, as I
13 said, there's no dispute that that Court didn't say
14 agencies have fee authority to pay for everything in
15 their stormwater program so we are just going to deny
16 all the subvention requirements.

17 No. It denied subvention for three of eight
18 requirements.

19 Five, it proved -- it approved the Commission's
20 decision and required subvention for those requirements.
21 The five that were approved were for regional
22 collaboration programs.

23 Two of the ones that were disapproved were for,
24 like, development-related projects. Right? So you had
25 the ability to charge the developer to pay for their

1 low-impact development programs.

2 And then there was the street sweeping/trash
3 removal, where it was not based on SB 231. This was
4 based upon another specific constitutional provision
5 that says, you know, property-related fees still need to
6 go to the voters unless it's for sewer, water, or refuse
7 removal.

8 And so the idea there was that street sweeping was
9 for refuse removal. There wasn't an argument below that
10 the refuse removal claim shouldn't apply to street
11 sweeping. The Court thought that sounds like handling
12 refuse so -- so we'll apply that exception.

13 But it is not the sweeping "we have authority to
14 impose fees for any and every stormwater program."

15 Ms. Shelton further commented that there are some
16 guidance in the record, some other stormwater fees have
17 been imposed. So I guess the imposition is, look, if
18 some of these agencies have been able to impose
19 stormwater fees, then they must all be able to do it.

20 A couple of -- the cask of guidance is for
21 developing any kind of fee, including developing a fee
22 to take to the voters. Even if you take a fee to the
23 voters, you still have to have correct proportionality
24 for the burden of -- you know, imposed on a particular
25 property.

1 So it is a very guidance that, again, will depend
2 upon the particular mechanism by which it's going to be
3 pursued and the particular activities that are to be
4 funded by the assessment.

5 The 1994 Alameda County assessment, I would note,
6 that was in 1994. Proposition 218 was approved by the
7 voters in 1996. So the fact that there was a fee
8 approved before Prop 218, we don't think is very
9 pertinent.

10 I think one of the other examples mentioned in the
11 proposed decision is a voter-approved fee. There's no
12 dispute that if somebody goes to the voters, the voters
13 can, of course, approve -- you know, decide to take
14 themselves.

15 So there's no dispute that the proposed decision,
16 as drafted right now, does misstate the constitutional
17 requirement. There's no dispute that the Third District
18 Court of Appeal approval does not give sort of
19 categorical authority to impose stormwater fees.

20 And there's no dispute that the actual areas
21 covered by the specific PCBs diversion requirements at
22 issue here took place in Oakland, took place in
23 stormwater that didn't come from Dublin, took place --
24 so the statement that they applied to areas and waters
25 within the regulatory control of the permittees and here

1 in Dublin is not accurate.

2 So we would, once again, appreciate the reasonable
3 arguments from our colleagues, but ask the Commission to
4 please direct staff to reconsider the evidence we have
5 got here and at least address the points that we have
6 raised.

7 Thank you for indulging my rebuttal comments.

8 CHAIRPERSON PERRAULT: Of course. Thank you.

9 With that -- with that, let me just double-check
10 there are no public comments.

11 MR. SUPACHANA: Madam Chair, I do not see any
12 online public comments.

13 CHAIRPERSON PERRAULT: Okay. Thank you.

14 Then I'm going to go ahead and bring this back to
15 the members of the Commission.

16 Members, questions? Comments?

17 MEMBER PAHLAND: I do have questions.

18 CHAIRPERSON PERRAULT: All right. Go ahead,
19 Mr. Pahlund.

20 MEMBER PAHLAND: Kind of a scattershot variety of
21 questions.

22 CHAIRPERSON PERRAULT: Of course.

23 MEMBER PAHLAND: Is there any argument to be made?
24 There's no hydraulic connection between the storm sewer
25 system in the various jurisdictions the claimants

1 represent and the San Francisco Bay?

2 MS. SHELTON: You guys need to come to the table, I
3 think.

4 MS. SABLAN: I'll defer to --

5 MEMBER PAHLAND: Well, no. But I'm asking the
6 claimants.

7 MS. SABLAN: Oh, okay.

8 MEMBER PAHLAND: So are any of them saying there's
9 no hydraulic connection between our water -- our
10 stormwater conveyance systems and the San Francisco Bay?

11 MR. NEWMARK: Thank you, Commissioner.

12 There's -- I think the map that -- if we could look
13 at the map; I think it was CC-1.

14 There's no dispute that the stormwater that falls
15 in Dublin does go into tributaries to Alameda Creek and
16 does ultimately reach the Bay. And so the Bay is a
17 large resource. That's our point, is the Bay is a
18 regional resource enjoyed by the entire public.

19 So yeah. We don't --

20 MEMBER PAHLAND: I understand your point.

21 I just want to make sure that no one is saying, you
22 know, there's an insufficient -- this isn't like the
23 cases from 2010, where people were saying there's not
24 sufficient hydraulic connection between the properties
25 seeking to be regulated and the, you know, waters under

1 the, you know, jurisdiction of the United States. It's
2 nothing similar to that.

3 MR. NEWMARK: We're not making that argument.

4 MEMBER PAHLAND: There's a -- there's a direct
5 connection between pollutants on property to the
6 stormwater system to the San Francisco Bay.

7 MR. NEWMARK: Very generally.

8 MEMBER PAHLAND: Okay.

9 MR. NEWMARK: Fortunately for all of us, the
10 legislature organized the regional boards along
11 watershed lines.

12 So the San Francisco Bay Regional Board is all
13 comprised of a watershed that --

14 MEMBER PAHLAND: Okay.

15 MR. NEWMARK: -- drains to the Bay.

16 MEMBER PAHLAND: And I -- since you are here, I did
17 hear your argument that -- your position that there's no
18 evidence of PCBs generated on Dublin properties making
19 their way into the San Francisco Bay.

20 Did I hear that correctly?

21 MR. NEWMARK: We have not located PCBs in any
22 waters pulled from stormwater in Dublin.

23 And so we heard the Water Board say while there's a
24 regulatory waste load allocation assigned to Dublin,
25 along with every other MS4, but that is a general

1 regulatory planning document.

2 And, again, we need to be very specific as to the
3 specific activities.

4 MEMBER PAHLAND: Has Dublin indeed tested for PCBs
5 and its stormwater system?

6 MR. NEWMARK: That is true, and, otherwise, I
7 wouldn't be able to say we hadn't found it.

8 CHAIRPERSON PERRAULT: Right.

9 Well, are you informed as to how long ago the
10 testing was performed and the frequency and its recency?

11 MR. NEWMARK: I would probably have to ask --

12 MS. YOUNG: I can.

13 MR. NEWMARK: Yeah.

14 MS. YOUNG: So as part of implementing the various
15 municipal regional stormwater permits, I can say that I
16 don't recall when the last time the PCBs were actually
17 monitored from creeks.

18 But I can say that the one area that we had
19 considered partnering -- so in Dublin, there's a federal
20 facility, Camp Parks, and we could consider that that
21 was probably the most likely location for PCBs in
22 Dublin.

23 And the facility -- there was a project that the
24 facility had reached out to the City to coordinate on.
25 And we analyzed the soil samples and everything where we

1 thought there was going to be PCBs maybe at Camp Parks.
2 And we found nothing. So that is like -- was -- is the
3 most likely source of PCBs in Dublin.

4 We didn't find anything. Dublin is a relatively
5 new community. It was incorporated in 1980. Now I'm
6 blanking if it was 1985 or 1982. So -- and PCBs, as we
7 know, were used in building materials between --
8 generally between 1950 and 1980.

9 So the likelihood that there are very many PCBs in
10 Dublin, outside of maybe, like, the transformers that
11 Greg -- Mr. Newmark -- just mentioned, is low.

12 MEMBER PAHLAND: Okay. But the water, being
13 discharged itself, has not been tested, if I'm
14 understanding what you're saying.

15 MS. YOUNG: From debris, creek, and tributary in
16 Dublin, no.

17 CHAIRPERSON PERRAULT: From any creek.

18 Because what I heard you said -- the most likely
19 area was this corner of Dublin, and you tested the soil,
20 and you found no presence of PCBs in the soil in that
21 area. But that doesn't mean that the entire stormwater
22 system isn't collecting that pollutant somewhere else
23 and funneling it ultimately to the Bay.

24 So I'm wondering specifically, has the stormwater
25 been tested in Dublin? And if so, what's the frequency

1 and recency?

2 MS. YOUNG: Like I said, I -- we haven't tested
3 every tributary and every storm drain in Dublin for
4 PCBs.

5 MEMBER PAHLAND: But have you tested any?

6 MS. YOUNG: Yes. But -- through the regional
7 monitoring program, I believe so.

8 MEMBER PAHLAND: But you are not --

9 MS. YOUNG: We have not detected any PCBs.

10 MEMBER PAHLAND: Okay. And you are not -- but you
11 are not here today certain. I mean, I heard you say you
12 believe so --

13 MS. YOUNG: I am not here today -- I cannot say a
14 hundred percent certain.

15 MEMBER PAHLAND: Okay.

16 MS. YOUNG: I can tell you what -- the experience
17 that I have had thus far.

18 MEMBER PAHLAND: And I'm sorry. I cannot recall
19 your last name.

20 MS. SABLAN: Sablan.

21 MEMBER PAHLAND: "Sabran"?

22 MS. SABLAN: Sablan.

23 MEMBER PAHLAND: Sablan. Ms. Sablan, do you have a
24 response to what you have heard from Dublin?

25 MS. SABLAN: I would defer to Keith Lichten.

1 But I will also note, the pilot studies apply to
2 both PCBs and mercury. And so we haven't heard anything
3 from --

4 MEMBER PAHLAND: Yeah. I was just focusing on
5 PCBs. Not -- I mean, I know there are other --

6 MS. SABLAN: Yeah.

7 MEMBER PAHLAND: -- other pollutants at issue here.
8 I was focusing on the one where Dublin had said
9 there aren't any.

10 MS. SABLAN: Yeah.

11 MEMBER PAHLAND: And I want to hear a direct
12 response. You know, potentially -- I didn't hear Dublin
13 say, as to all the other pollutants, there aren't any
14 either. So that's --

15 MR. NEWMARK: I can explain as to the mercury and
16 PCBs distinction.

17 The issue is that the PCBs thresholds, the load
18 reductions that are targeted, are much, much lower than
19 the mercury reduction goals.

20 And so in the MRP permit, it is anticipated and
21 stated, and the permittees agree, that if you undertake
22 load reduction projects and you achieve the PCB load
23 reduction targets, you will have long since taken care
24 of the mercury reduction targets, because they are much
25 more -- they have to be more aggressive to take out more

1 water, treat more water, to achieve the PCBs load
2 reductions.

3 MEMBER PAHLAND: Okay.

4 MR. NEWMARK: Hopefully that helps.

5 MEMBER PAHLAND: The treat -- yeah. Maybe.

6 I don't know enough about the treatment of those
7 chemicals and water to say the treatment of one points
8 to treatment of the other.

9 So I'm just reserving judgment there.

10 MR. NEWMARK: This would be something for
11 Mr. Lichten.

12 But I do believe, like, the thresholds that we're
13 looking at and we're targeting for PCBs are often, like,
14 the parts per trillion; whereas, in mercury, we're often
15 shooting for parts per billion. So there's an order of
16 magnitude.

17 MEMBER PAHLAND: Sure. I understand that.

18 If you have two similar compounds and you are
19 trying to treat one to a parts-per-trillion and another
20 to a parts-per-billion standard, and they're similar in
21 the method of treatment, would eliminate by billion by
22 eliminating the trillion.

23 However, I don't know enough about these compounds
24 to say that the treatment method used to address one
25 also treats the other. It could have been. I flat-out

1 have no idea.

2 But that -- that's -- I'm more interested in
3 hearing the Water Board's response to your positions
4 with respect to, you know, PCBs generally and -- because
5 that's been the topic of conversation here.

6 MS. SABLAN: And I will defer to Keith Lichten.

7 MR. LICHTEN: Great. Thank you.

8 So today, I'm not in a position to speak
9 specifically to monitoring work that has been done
10 within the city of Dublin or -- just don't have that
11 information immediately at hand.

12 But let me speak to the overall framework of PCBs
13 load reduction in the Bay Area.

14 We tend to divide the Bay Area into land uses,
15 which we refer to as old industrial, old urban, new
16 urban. And so you can imagine that I'm coming to you
17 here from -- from Oakland, which we would think of as
18 both old industrial and old urban. So those are -- in
19 order, those are relatively higher concentrations of
20 PCBs.

21 As to the Claimant City of Dublin and other folks
22 have noted this morning, there are PCBs present in newer
23 urban, just at lower concentrations.

24 So what that suggests, from the Water Board's
25 perspective, is the control measures to reduce PCBs and

1 we need to see an 80 to 90 percent reduction according
2 to the TMDL of PCB in urban runoff. But those measures
3 to reduce PCBs are likely to be more focused in the
4 areas with higher loads and concentrations in the old
5 industrial and old urban parts of the Bay.

6 But that's not to say that they are also not needed
7 because of the substantial reductions required in other
8 locations that have PCBs.

9 In fact, next week we're meeting with PG&E to look
10 at its transformers and the reduction over time --
11 potential discharge of PCBs in its system.

12 Let me shift gears briefly to speak to the question
13 of PCBs versus mercury. And, appropriately, we note in
14 the fact sheet that mercury -- I don't want to say it
15 sort of rides along with PCBs, but PCBs tend to be
16 particulate-associated. And so measures that reduce
17 PCBs also tend to reduce mercury.

18 The only challenge -- or you can imagine, in some
19 cases, we're just taking that load right out of runoff
20 through street sweeping where the solids are disposed of
21 at an appropriate location; or, you know diversion to a
22 sanitary sewer, that kind of thing. So that's gone.

23 In some cases, we have treatment controls like rain
24 gardens or bioretention cells that are using soil and
25 plants as a filter. Those tend also to remove both PCBs

1 and mercury. There's a little bit of a complication
2 because mercury can be transformed in those controls
3 depending on -- well, we don't need to go into the
4 details. So it could subsequently be released.

5 So there's a little bit more work to be done as we
6 go forth and -- but as we note, because the mercury
7 reductions are, you know, closer to half of the load, we
8 would think if we achieved the merc- -- the PCBs
9 reductions, which are more significant, that we will
10 also get the mercury.

11 MEMBER PAHLAND: Okay.

12 MR. LICHTEN: A couple of quick notes there.

13 MEMBER PAHLAND: Okay. Another question for the
14 claimants generally.

15 If you know, what proportion of the water load in
16 the storm sewer system comes from municipal property
17 versus privately-owned property?

18 MR. NEWMARK: I'm not going to be able to recall
19 that precisely. I did think -- I am reaching back into
20 my memory, wondering about that issue. And basically,
21 when you look at the city, there's -- the largest land
22 area that is owned publicly are the rights of way. So,
23 you know, the streets --

24 MEMBER PAHLAND: The streets, right.

25 MR. NEWMARK: -- crisscrossing --

1 MEMBER PAHLAND: They are going to be a quarter of
2 the property in any city that is serving -- you know.

3 MR. NEWMARK: My recollection. It was something
4 in, like, the 15/20 percent area. But that's not far
5 off of --

6 MEMBER PAHLAND: Okay. I'm guessing. Right?
7 Yeah.

8 MR. NEWMARK: -- what you were thinking.

9 And so that again, like we're -- we're talking
10 about a lot of these estimations, policy-level
11 determinations that we heard from Mr. Lichten about, we
12 don't really know where all the PCBs loads are coming
13 from, but we know it is more likely in old industrial.

14 And so we're doing these region-wide planning
15 programs, and so that doesn't lend itself to the
16 specific property-based availability of a service,
17 burden imposed by a property, that would be required for
18 a property-related fee.

19 MEMBER PAHLAND: I guess what I'm ultimately
20 wondering about is, at the end of the day, the claimants
21 are seeking a sum of money, right? They want the State
22 to pay them a sum of money for what they say is an
23 unfair burden to remediate for these chemicals, given
24 this very short shrift, you know, based on my rough
25 understanding.

1 But the City itself own -- or the municipals in
2 this case own -- themselves own a chunk of property.
3 And seems like, at a minimum, they shouldn't be seeking
4 reimbursement for having to treat chemicals on their own
5 property.

6 Has there been any division in the claim between,
7 you know, treatment necessitated by municipal-owned
8 property and treatment necessitated by privately-owned
9 property?

10 MR. NEWMARK: So I guess a little background.
11 The -- this gets a little bit to the practical
12 compulsion argument that we heard.

13 Municipalities have to provide flood control and
14 drainage, right? It is one of the most basic things the
15 municipality has to do.

16 They -- most of these MS4s were largely constructed
17 in, like, the 1930s by the Army Corps of Engineers. And
18 the goal was to provide flood protection to save lives
19 and property, to get the water out of there as soon as
20 possible. So that happened in the '30s to the '50s,
21 '60s.

22 Clean Water Act was passed in 1975. 1987, it's
23 amended to add more specific requirements regulating
24 stormwater.

25 So now, decades after these systems were

1 constructed, they are going to be regulated under the
2 Clean Water Act.

3 So we're also -- the basic functions of operating
4 these storm drain systems are really not at issue in
5 this -- in this test claim, because there have been
6 permits, you know, regulatory controls beginning in '87,
7 and then permits issued prior to this MRP1, that were
8 comprehensive programs. We saw the State talking about,
9 there was a lot of paperwork to sort through for all the
10 stormwater controls that were already imposed prior to
11 the adoption of MRP1.

12 So we're only asking for the reimbursement to help
13 pay for these programs. It is not like we're asking for
14 a blank check. This all goes to the same general fund.
15 That -- the taxpayers don't have a choice but to comply
16 with these requirements. And it has to pay for the same
17 police, fire, libraries, everything else.

18 So we're asking for help. And the only issue here
19 is not like the really basic flood management and street
20 sweeping. It is not an issue in this case. We're not
21 seeking subvention for street sweeping.

22 It's these new programs and higher levels of
23 service that began with the 2009 permit.

24 MEMBER PAHLAND: Sure. I get that.

25 But I guess what I'm wondering, are you -- does

1 your claim include the impact of municipal-owned
2 property?

3 MR. NEWMARK: I think that -- for example, like
4 trash load reduction from public rights of way, that we
5 are required to maintain open to the public, not just
6 from people of Dublin, but anywhere, from anywhere in
7 the world, that wants to traverse those from rights of
8 way and have litter come out in the street, like, those
9 are included within what -- that's a service to the
10 general public that we're asking for help to pay for,
11 that's not appropriately visited upon the -- just the
12 adjacent properties.

13 MEMBER PAHLAND: What about the potential for PCBs
14 to be generated or emanating from municipal property?

15 MR. NEWMARK: So if -- if there's like a
16 corporations yard or a municipal manufacturing facility,
17 those are regulated largely like any other industrial
18 facility.

19 They have to get -- enroll in the industrial
20 general stormwater permit, which is administered by the
21 State Water Resources Control Board, and is helped to be
22 enforced by the Regional Water Quality Control Board.
23 And so that has specific pollution control requirements
24 for industrial facilities.

25 So when the -- when the municipalities operate an

1 industrial facility, they will -- or if they are doing a
2 construction site, there's a separate general
3 industrial -- there's a construction general permit to
4 control stormwater runoff from construction sites. If
5 there's a municipal construction project that meets the
6 acreage thresholds for that construction permit, they
7 comply with that too, just like any other developer
8 does. And so those costs are not what we're seeking
9 here.

10 What we're seeking here is to run the general
11 program that provides the benefits to the entire region
12 that, you know, we agree are great assets to the Bay
13 Area community, as Mr. Lichten said.

14 MEMBER PAHLAND: Another question for all
15 claimants.

16 Is your storm sewer system funded out of the --
17 your respective general funds?

18 MR. NEWMARK: Ms. Shelton has been very, very
19 careful -- and we will be in -- in future segments of
20 this test claim -- that we can only seek subvention for
21 activities that are paid for out of taxpayer revenue.

22 So there sometimes are other sources of revenue.
23 Similar agencies have been -- in the history of, like, a
24 lot of regional and even national collaboration, they
25 have sought funding anywhere they can. They did get,

1 you know, during the Great Recession, American Recovery
2 Act funds, you know, from the federal government.

3 We're not seeking to double-recover from funds that
4 we have gotten elsewhere. We can only seek to recover
5 for these programs that are paid for out of the general
6 fund.

7 MEMBER PAHLAND: Okay.

8 MS. SHELTON: On that note, let me just say that
9 what the record showed was declarations showing that
10 they did use their proceeds of taxes to pay for this
11 program.

12 The record also indicated some grant funding, and
13 then there's certainly some funding from fee authority.
14 To the extent they received that money, the fee
15 authority or the grant funding or anything that's not
16 defined as their proceeds of tax, that would have to be
17 deducted as an offset.

18 MEMBER PAHLAND: Okay. I'm wondering perhaps
19 there's some type of special assessment on real
20 property --

21 MS. SHELTON: Right.

22 MEMBER PAHLAND: -- that's funding the storm sewer
23 system.

24 MR. NEWMARK: Like, for example, the Alameda County
25 assessment from 1994, which predated Prop 218, that's

1 still on the books. It was probably insufficient to pay
2 for the cost of the stormwater program before we got
3 these subsequent permits increasing the stringency of
4 the requirements.

5 But where we're getting that -- that money already,
6 we're not seek -- A, it was fully committed prior to
7 this adoption of the stormwater permit. It would be --
8 it's a source of revenue.

9 And, again, we're really not trying to
10 double-recover. These are programs where the people are
11 trying to do the best they can for the public. And
12 there have been studies at the public policy -- and
13 since we're going extra record. Something like Public
14 Policy Institute of California adopted a study --
15 published a study called "Paying for Water in
16 California." There were a couple of serious -- they
17 included analyses by, like, my old law school professor
18 as to how the Constitution would apply and are there
19 funding gaps.

20 Municipal stormwater was a multibillion-dollar
21 funding gap. One of the others was, like small systems
22 and contaminated water supplies in the Central Valley.

23 THE COURT REPORTER: Sorry. Others were?

24 MR. NEWMARK: Small water systems in the Central
25 Valley where they have -- maybe they need like

1 \$5 million treatment plant, but there's 60 connections.

2 And so we don't have a good solution for that right
3 now.

4 MEMBER PAHLAND: Could --

5 CHAIRPERSON PERRAULT: Keep going.

6 MS. SHELTON: Only to the extent they used any of
7 that money. Even if it was 1994 approval of the -- or
8 adoption of the fee, then that would not be
9 reimbursable.

10 MEMBER PAHLAND: No.

11 MS. SHELTON: Okay.

12 MEMBER PAHLAND: So I have specific questions for
13 you, Camille. It's probably covered -- or Ms. Shelton.
14 Sorry.

15 MS. SHELTON: It's okay.

16 MEMBER PAHLAND: It's probably covered in the
17 voluminous record.

18 Why does -- why is the conclusion that
19 reimbursements are appropriate before 2018 but not
20 after? What happened in 2018 that changed?

21 MS. SHELTON: So this is dealing with a fee
22 authority issue, just as -- if you remember, there were
23 two court cases that dealt with Prop 218 on the
24 procedural requirements. Whether something needed a
25 voter approval or the voters protest.

1 Before 2018, we were bound by the Howard Jarvis v.
2 City of Salinas case. In that case, the City of Salinas
3 tried to impose a stormwater fee, and they were sued
4 because the argument was that you -- they did not
5 receive the voters' approval.

6 And the City argued, well, it fell under the
7 exemption for voters' approval, and it should fall under
8 the exemption for sewer, water, and refuse.

9 And the Court held, no, that's not part of the
10 definition of "sewer."

11 So we were bound by that decision before.

12 Then in 2018, the legislature enacted -- or amended
13 the Prop 218 implementation statutes to overrule the
14 Howard Jarvis case --

15 MEMBER PAHLAND: Okay.

16 MS. SHELTON: -- and disagreed with it. And then
17 redefined "sewer" to include the definition -- to
18 include, within that definition, storm drains.

19 That issue was raised in the 2022 Department of
20 Finance case, although it wasn't included in the
21 Commission's decision because it occurred after the
22 Commission decided the case. The Legislature enacted
23 that legislation after.

24 The Court still addressed it and held that SB 231
25 is prospective only. And that for our standpoint, we're

1 required by the California Constitution to deem that
2 statute constitutional. So -- and we have to apply it.

3 So that's the difference.

4 So from July -- or January 1, 2018, then they only
5 need -- only have to have a voter protest procedure for
6 those fees.

7 We know, from Paradise Irrigation District, the
8 Third District Court of Appeal found that when voter
9 protests were required, then you still have fee
10 authority sufficient as matter of law, within the
11 meaning of Government Code section 17556(d); and that
12 there are no costs mandated by the State after that
13 date.

14 MEMBER PAHLAND: Another question.

15 There's been a lot of argument from the claimant
16 here today.

17 Are any of them -- are any of those arguments --
18 are any of those arguments that were not raised in the
19 claimants' papers?

20 MS. SHELTON: No. I did not hear anything new
21 today --

22 MEMBER PAHLAND: Okay.

23 MS. SHELTON: -- that would make me want to take
24 anything back. No.

25 MEMBER PAHLAND: Well, no. But did you hear

1 anything new today, period?

2 MS. SHELTON: Just, you know, some of the
3 discussion about your maps. I mean, that certainly
4 needed, you know, a little bit more discussion. From
5 what the declaration was, I couldn't tell what you were
6 trying to say from, you know, the submittal of the maps.
7 But otherwise, no.

8 MEMBER PAHLAND: No new legal arguments?

9 MS. SHELTON: No.

10 MEMBER PAHLAND: Okay.

11 I guess a -- my last question. Then I will cede
12 the tables for the Water Board.

13 The claimants are taking the position that they do
14 not have Prop 218 authority to, you know, levy any fees
15 on property owners for this work mandated.

16 You are saying that's wrong.

17 What is your position?

18 MS. SABLAN: So we agree with staff's analysis that
19 the State doesn't have the burden of showing they can
20 meet the Article XIII D, section 6, requirements. Under
21 SB 231, they do have authority to impose fees for the
22 stormwater systems.

23 MEMBER PAHLAND: To me -- to me, that's the
24 fundamental conflict.

25 They are saying we don't have authority; we can't

1 impose fees on these guys. This is just a general
2 benefit for the public. I can't, you know, impose a fee
3 on the specific property owners for it.

4 You are saying, yes, they can.

5 So they have spent, you know, a good amount of time
6 arguing why they can't.

7 And what -- what is your argument for their ability
8 to do so?

9 MS. SABLAN: Well, we -- we think we don't have to
10 meet the burden of showing the Article XIII D, section
11 6, requirements of proportionality and general services.

12 They have legal authority, and I think that ends
13 the inquiry is they do have legal authority, so
14 Government Code section 17556(d) does apply to exempt
15 them from subvention.

16 MEMBER PAHLAND: Okay. So I have got no further
17 questions. I will cede the table.

18 MR. NEWMARK: May I --

19 CHAIRPERSON PERRAULT: I'm going to go to members.

20 MEMBER PAHLAND: Yeah.

21 CHAIRPERSON PERRAULT: I apologize.

22 But we've been -- yeah, I feel like -- are there
23 other members who have -- or commissioners have
24 questions?

25 Mr. Adams?

1 MEMBER ADAMS: Just a comment --

2 CHAIRPERSON PERRAULT: Yes.

3 MEMBER ADAMS: -- that I appreciate my colleague's
4 questions. He covered a couple of the points I was.
5 Thanks.

6 CHAIRPERSON PERRAULT: Excellent.

7 MEMBER GREENE ROSS: Ditto on that.

8 CHAIRPERSON PERRAULT: Any others?

9 (No response.)

10 CHAIRPERSON PERRAULT: Okay. And seeing none from
11 my commissioners online.

12 MEMBER GREENE ROSS: I would like to hear the
13 response on --

14 CHAIRPERSON PERRAULT: Okay. Briefly.

15 MR. NEWMARK: Sure. I don't think it's fair to
16 characterize our position that we, as police power
17 entities, don't have the ability to levy
18 property-related fees.

19 I think that it's somewhat of a circular inquiry.
20 We have the authority to levy property-related fees but
21 only if it meets the requirements of a property-related
22 fee. So to use the refuse removal exception, like, even
23 a property-related fee has to go to the voters unless
24 it's for water, sewer, or refuse removal.

25 I would submit that, like, the garbage that I

1 generate on my property and that I put out at the bins,
2 I could be properly charged a property-related fee to
3 pick up that garbage.

4 But if I live on Main Street and the City keeps
5 having parades and parties in front of my house, and the
6 general public comes from the entire region and leaves a
7 bunch of garbage in front of my house, I don't think it
8 is appropriate for cleaning up all that garbage. To
9 claim that, well, that's refuse removal, any sort of
10 refuse removal is automatically a property-related fee,
11 the voters intended, and the legislature has required,
12 there to be a consideration of -- of the specifics.
13 Right?

14 So that's what we're getting at here. And I think
15 that that's some of the explanation that we believe the
16 Water Boards do need to require, rather than just
17 saying, well, you have fee authority. You are a police
18 power. You can adopt a fee. It really does depend on
19 the specific nature of the activity that we are
20 requiring.

21 And we think that while, you know, there's a
22 general ability to do it for these requirements, and we
23 tried to be judicious in not asking for reimbursement
24 for everything in the permit, we tried to really pick
25 the things that were new and that we didn't have fee

1 authority for. We feel like these are benefits to the
2 general public, not appropriately funded through fee
3 authority on the property owners.

4 CHAIRPERSON PERRAULT: Thank you.

5 Other comments or questions from commissioners?

6 (No response.)

7 CHAIRPERSON PERRAULT: Seeing none, do we have a
8 motion then either for staff recommendation or other
9 ones?

10 MEMBER PAHLAND: I have got perhaps a proposed
11 motion that's not going to make anybody very happy
12 except for maybe the board.

13 But this is a very weighty and -- very weighty,
14 very complex, very hard to get our hands around. And I
15 feel unequipped to make a decision at this time.

16 And so what I would like -- and it is a bit of a
17 punt. But what I would like is to give the claimants an
18 opportunity to provide briefing of a certain amount on
19 the points raised today and the points raised today
20 only. Nothing else. Because the argument -- 400 pages
21 got honed down to an hour and a half of discussion.

22 So I would like the claimants to provide briefing
23 on their discussion within, you know, some specific
24 time.

25 I would like, then, the respondents to provide

1 their rebuttal.

2 And then give staff time to come up with a proposed
3 decision or a revised proposed decision, if necessary.

4 I mean, staff could say no after reading all this
5 and standing by what we have determined initially.

6 But for my -- for me to help decide it, I would
7 like to see further argument honing in on the points
8 raised today. And that's my preference. I am one of
9 seven; I'm about 14 percent of the board. So,
10 certainly, people could vote against me.

11 MEMBER GALLEGOS: Madam Perrault, I would concur
12 with that recommendation. I'm not sure how that would
13 take the form of a --

14 CHAIRPERSON PERRAULT: -- motion?

15 MEMBER GALLEGOS: -- a motion.

16 MEMBER PAHLAND: I can craft -- I can craft the
17 motion roughly.

18 CHAIRPERSON PERRAULT: So are we just -- are you
19 just moving for a continuance?

20 MEMBER PAHLAND: So yeah. I'm moving for a
21 continuance but asking for briefing in the interim.

22 CHAIRPERSON PERRAULT: Okay.

23 MEMBER PAHLAND: And so, right now, we're
24 discussing the notion. And if the notion is acceptable
25 to board members, and nobody out there on that side of

1 the table raises their arguments why it's a bad idea,
2 then I can craft the motion to vote on it.

3 CHAIRPERSON PERRAULT: Can I ask a clarification?

4 MEMBER PAHLAND: Of course.

5 CHAIRPERSON PERRAULT: So that we don't find
6 ourselves, one month from now, having the same points
7 and conversation raised, is there a way to narrow,
8 perhaps, from the Commission what further information we
9 really are asking staff and claimants to address?

10 MEMBER PAHLAND: Yeah. I guess I would like --
11 what I would suggest are no more than five -- is the
12 briefing here done on pleading paper or is it done
13 just --

14 MS. SHELTON: No. Comments. It's a letter format.

15 MEMBER PAHLAND: Okay. So no more than 5,000 words
16 on the points raised today; the points raised today
17 only.

18 MS. SHELTON: I do have a question about that.

19 MEMBER PAHLAND: Sure.

20 MS. SHELTON: The points raised today are addressed
21 in the proposed decision.

22 So that opens up everything, because you are -- we
23 had testimony today on the C.2 municipal facilities; on
24 the C.8 monitoring provisions; on the C.10 trash
25 provisions; on the C.11 and C.12 --

1 MEMBER PAHLAND: Right. They are not -- they are
2 not covering the -- well, one, I would like elaboration
3 on the -- I would like a statement in writing of their
4 arguments raised today.

5 And the proposed decision is a lot broader than
6 what we talked about here today. We picked out a couple
7 of pieces of it, if I'm remembering correctly.

8 MS. SHELTON: The only thing that may have been
9 narrowed would be the fee authority issue, and it is all
10 laid out legally in the proposed decision.

11 But if you want to get more information on that...

12 MEMBER PAHLAND: Yeah. I guess I would like just
13 to see more pointed argument on that topic.

14 MS. SHELTON: On fee authority. Because --

15 MEMBER PAHLAND: And --

16 MS. SHELTON: -- everything else is --

17 MEMBER PAHLAND: Okay.

18 MS. SHELTON: Nothing is new. Everything is
19 fully addressed in the proposed decision.

20 MEMBER PAHLAND: Fair enough.

21 CHAIRPERSON PERRAULT: I just want to --

22 MEMBER PAHLAND: That's fair enough.

23 CHAIRPERSON PERRAULT: I want to make sure that if
24 we are asking -- if we are going to do a continuance --

25 MEMBER PAHLAND: Yeah.

1 CHAIRPERSON PERRAULT: -- and we're asking for both
2 staff and claimants to come back, that it -- that it
3 would be helpful for us to provide them some --

4 MEMBER PAHLAND: Yeah. Okay. Right.

5 CHAIRPERSON PERRAULT: -- guidance on what
6 specifically we feel is still missing.

7 MEMBER PAHLAND: Very fair point.

8 So yeah. Narrow on fee authority. I would say
9 2,000 words, then, probably maximum.

10 So we come back in two months, right?

11 CHAIRPERSON PERRAULT: Two months. Sorry. I don't
12 know. I don't have my --

13 MS. GMUR: March hearing.

14 CHAIRPERSON PERRAULT: Yeah. March hearing.

15 MEMBER PAHLAND: March which?

16 MS. GMUR: March hearing.

17 MEMBER PAHLAND: But it's like March? Do you know
18 the date?

19 MS. SHELTON: The 28th, I think.

20 CHAIRPERSON PERRAULT: Before we -- before I have
21 you craft that into an actual motion -- and I know that
22 Commissioner Gallegos also was supportive of potentially
23 moving in this direction, I believe Commissioner Adams
24 may have had a comment or a question.

25 MEMBER ADAMS: Yeah. I realize this is a

1 complicated matter. You know, we have seen the 18,000
2 pages. I understand there's a lot that we haven't seen.
3 This has gone on for 15, 16 years.

4 Obviously, I will acquiesce to the majority of my
5 colleagues. But I have heard nothing today that would
6 not get me to vote for the staff recommendation right
7 now.

8 CHAIRPERSON PERRAULT: Okay. Other comments?

9 (No response.)

10 CHAIRPERSON PERRAULT: So what we would need to do
11 is take the motions up -- oh, sorry. I'm sorry,
12 Commissioner Clark. Go right ahead.

13 MEMBER CLARK: Sorry. It took me a moment to
14 unmute.

15 I just -- I just wanted to second Commissioner
16 Adams's point. I -- it is unclear to me what -- what
17 specifically we're asking additional briefing on and
18 what it would further illuminate at this point in time.

19 CHAIRPERSON PERRAULT: Okay. Thank you,
20 Commissioner.

21 All right. So what I think we need to do is we
22 need to take up the motions in orders.

23 MEMBER PAHLAND: Start with his because if it
24 passes then --

25 CHAIRPERSON PERRAULT: Okay. I'm just deferring to

1 you since you brought it up first. I wanted to -- okay.
2 So Commissioner Adams, are you moving the motion to
3 adopt the staff recommendation?

4 MEMBER ADAMS: I will.

5 CHAIRPERSON PERRAULT: Okay. Do we have a second
6 to move staff recommendations?

7 MEMBER NASH: I will make a second.

8 CHAIRPERSON PERRAULT: Okay. We have a second.
9 If we can go ahead and do a roll call, please.

10 MS. GMUR: Mr. Adams.

11 MEMBER ADAMS: Aye.

12 MS. GMUR: Ms. Clark.

13 MEMBER CLARK: Aye.

14 MS. GMUR: Ms. Gallegos.

15 MEMBER GALLEGOS: Abstain.

16 MS. GMUR: Ms. Greene Ross.

17 MEMBER GREENE ROSS: Are we voting on approving the
18 staff recommendation?

19 CHAIRPERSON PERRAULT: Correct.

20 MEMBER GREENE ROSS: I am abstaining because I
21 am -- I have only been on this board three months. I
22 appreciate all the historical information and I don't
23 feel like I have enough information and experience,
24 depth of experience, given the history, to make a
25 decision.

1 CHAIRPERSON PERRAULT: Okay. So abstain.
2 Abstention.

3 MS. GMUR: Ms. Nash.

4 MEMBER NASH: Aye.

5 MS. GMUR: Mr. Pahlund.

6 MEMBER PAHLAND: Abstain.

7 MS. GMUR: Ms. Perrault.

8 CHAIRPERSON PERRAULT: Aye.

9 MS. GMUR: That's four.

10 MS. SHELTON: Motion carries.

11 CHAIRPERSON PERRAULT: Thank you so much. I
12 appreciate that.

13 Again, I note this was both from our claimants as
14 well as our staff, a very, very long road to get here
15 and appreciate all of the hard work that went into it.

16 So with that, we will go ahead and move on now to
17 our next items.

18 Those individuals who are here for Item 6, if you
19 were remote, you may go ahead and please turn off your
20 video and mute your microphones.

21 MS. GMUR: Madam Chair, Items 6 and 7 were passed
22 on the consent calendar.

23 Moving to Item 8.

24 On January 6, the legislature reconvened the
25 2025/2026 legislative session. Staff will monitor for

1 any legislation that affects the mandates process.

2 Next, Chief Legal Counsel Camille Shelton will
3 please present Item 9, Chief Legal Counsel Report.

4 MS. SHELTON: Good afternoon.

5 We have no pending litigation at that -- at this
6 time, so I have nothing to report today.

7 Thank you.

8 MS. GMUR: Thank you, Camille.

9 Item 10 is the Executive Director Report. I have
10 four information items.

11 The Commission's 2025/2026 budget. The Governor
12 introduced this proposed budget on January 10, which
13 includes the Commission's operating budget of
14 \$3.438 million. This is a decrease of \$124,000 from
15 last budget after adjustments for salaries and benefits.

16 The Governor's budget also included 91.46 --
17 .456 million dollars for local assistance or local
18 agency-mandated programs. This is a decrease of
19 40 million -- \$40.771 million.

20 Regulations. The subject of our 2025 rulemaking
21 will be a full review and update of the Commission's
22 regulations. Staff has prepared a draft -- staff has
23 proposed draft proposed amendments, which will be
24 reviewed and discussed with local and state agencies at
25 an informal conference, which will be set in February.

1 After reviewing the informal conference feedback
2 and making any necessary changes, staff will have the
3 proposed language and the order to initiate rulemaking
4 package for the Commission's consideration at the March
5 hearing.

6 Workload. As of January 1, 2025, there are 37
7 pending test claims, 35 of which are regarding
8 stormwater NPDES permits. There's one parameters and
9 guidelines and five statewide cost estimates pending.

10 Tentative agenda items. This is a reminder to
11 please check the tentative agenda items on the Executive
12 Director's Report or use the pending caseload documents
13 on the Commission's website, which are updated at least
14 bimonthly, to see when something is tentatively set for
15 a hearing.

16 Draft proposed decisions on all test claims and IRC
17 matters are issued for review and comment at least eight
18 weeks prior to the hearing date; and a proposed decision
19 approximately two weeks before the hearing.

20 Madam Chair, that's all I have.

21 CHAIRPERSON PERRAULT: Thank you so much. I
22 appreciate that.

23 Okay. So that -- that go ahead -- that moves us
24 to -- excuse me -- now to our closed session. The
25 Commission will meet in closed executive session

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

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

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

11 We'll go ahead and clear the room.

12 Thank you.

13 (Closed session was held:
14 12:43 p.m. to 12:55 p.m.)

15 CHAIRPERSON PERRAULT: Thank you.

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

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

25 With no further business to discuss, I will

1 entertain a motion to adjourn.

2 MEMBER NASH: So moved.

3 CHAIRPERSON PERRAULT: All right. It has been
4 moved by Ms. -- Commissioner Nash.

5 MEMBER GREENE ROSS: Second.

6 CHAIRPERSON PERRAULT: Okay. And a second by
7 Ms. Greene Ross.

8 Okay. Would you please call the roll.

9 MS. GMUR: Yes, ma'am.

10 Mr. Adams.

11 MEMBER ADAMS: Aye.

12 MS. GMUR: Ms. Clark.

13 MEMBER CLARK: Aye.

14 MS. GMUR: Ms. Gallegos.

15 MEMBER GALLEGOS: Aye.

16 MS. GMUR: Ms. Greene Ross.

17 MEMBER GREENE ROSS: Aye.

18 MS. GMUR: Ms. Nash.

19 MEMBER NASH: Aye.

20 MS. GMUR: Mr. Pahlant.

21 MEMBER PAHLANT: Aye.

22 MS. GMUR: Ms. Perrault.

23 CHAIRPERSON PERRAULT: Aye.

24 //

25 //

1 This meeting is adjourned. Thank you so much for
2 everybody's participation today.

3 (Proceedings concluded at 12:57 p.m.)

4 ---o0o---

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

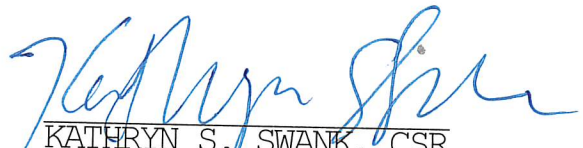
1 CERTIFICATE OF REPORTER

2
3 I, KATHRYN S. SWANK, a Certified Shorthand Reporter
4 of the State of California, do hereby certify:

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

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

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 21st day of February 2025.

16
17 
18 KATHRYN S. SWANK, CSR
19 Certified Shorthand Reporter
License No. 13061

20 ---o0o---