

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
January 25, 2019

Present: Member Jacqueline Wong-Hernandez, Chairperson
Representative of the Director of the Department of Finance
Member Yvette Stowers
Representative of the State Controller, Vice Chairperson
Member Lee Adams
County Supervisor
Member Mark Hariri
Representative of the State Treasurer
Member Jeannie Lee
Representative of the Director of the Office of Planning and Research

Absent: Member Sarah Olsen
Public Member
Member Carmen Ramirez
City Council 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 Wong-Hernandez called the meeting to order at 10:02 a.m. and welcomed new Commission Member, Ms. Jeannie Lee, representative of Ms. Kate Gordon, the Director of the Governor's Office of Planning and Research. Executive Director Heather Halsey stated that Ms. Olsen and Ms. Ramirez would not be able to attend the hearing and called the roll.

ELECTION OF OFFICERS AND LITIGATION SUBCOMMITTEE APPOINTMENTS

Executive Director Heather Halsey recommended that Chairperson Wong-Hernandez conduct the elections of the chairperson and vice chairperson.

Chairperson Wong-Hernandez asked for nominations for chairperson. Member Adams nominated Keely Bosler, Director of Finance, as chairperson. With a second by Member Hariri, the Director of Finance was elected chairperson by a vote of 5-0 with Members Olsen and Ramirez absent.

Chairperson Wong-Hernandez then asked for nominations for vice-chairperson. Member Adams made a motion to nominate Fiona Ma, State Treasurer, as vice chairperson. Chairperson Wong-Hernandez stated that historically, the Commission rotated between the Treasurer and the Controller and nominated State Controller Betty Yee, as vice chairperson. Member Adams withdrew his nomination and the State Controller was elected vice chairperson by a vote of 5-0 with Members Olsen and Ramirez absent.

Executive Director Heather Halsey stated that that due to the departure of Members Alex and

Chivaro, both positions on the Litigation Subcommittee are currently vacant. Executive Director Halsey explained the duties of the subcommittee members, and recommended that either members nominate themselves or each other and that the Chairperson conduct the elections for the two positions.

Chairperson Wong-Hernandez asked for nominations or volunteers for the Litigation Subcommittee. Member Lee nominated herself, Member Adams nominated Member Ramirez, and both Member Lee and Member Ramirez were elected to the Litigation Subcommittee by a vote of 5-0 with Members Olsen and Ramirez absent.

APPROVAL OF MINUTES

Executive Director Halsey recommended that approval of the November 2018 Minutes be postponed until the next hearing because not enough members were present were able to vote on the matter due to the change in Commission membership. Chairperson Wong-Hernandez agreed.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

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

CONSENT CALENDAR

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLES 7 AND 8 (action)

ADOPTION OF PROPOSED RULEMAKING CALENDAR

Item 7* Proposed Rulemaking Calendar, 2019

Chairperson Wong-Hernandez asked if there was any objection to the Consent Calendar. No objection was made.

Member Stowers made a motion to adopt the Consent Calendar. With a second by Member Hariri, the Consent Calendar was adopted by a vote of 5-0 with Members Olsen and Ramirez absent.

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

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

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

Item 3 Appeal of Executive Director Decisions

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

TEST CLAIM

Item 4 *Central Basin Municipal Water District Governance Reform, 17-TC-02*
Water Code Sections 71265, 71266, and 71267;
Statutes 2016, Chapter 401 (AB 1794)

Central Basin Municipal Water District, Claimant

Executive Director Halsey stated that Item 4 has been postponed to the March hearing at the request of the claimant.

PARAMETERS AND GUIDELINES

- Item 5 *U Visa 918 Form, Victims of Crime: Nonimmigrant Status, 17-TC-01*
Penal Code Section 679.10; Statutes 2015, Chapter 721 (SB 674)
City of Claremont, Claimant

Commission Counsel Elena Wilson presented this item, and recommended that the Commission approve the requested activities which are consistent with the law and supported by the record, as reasonably necessary to implement the mandated activities and recommended denial of those proposed activities and additional language that go beyond the scope of the mandate, are inconsistent with the law, and not supported by the evidence in the record, and adopt the Proposed Decision and the Proposed Parameters and Guidelines.

Parties were represented as follows: Annette Chinn appeared on behalf of the claimant; Donna Ferebee appeared on behalf of the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Adams made a motion to adopt the staff recommendation. With a second by Member Stowers, the motion to adopt the Decision and Parameters and Guidelines was adopted by a vote of 5-0 with Members Olsen and Ramirez absent.

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

- Item 6 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

No applications were filed.

STAFF REPORTS

- Item 8 Legislative Update (info)

Executive Director Heather Halsey stated that there is nothing new to report.

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

Chief Legal Counsel Camille Shelton presented this item.

- Item 10 Executive Director: Workload Update, Workforce Plan Presentation (Tentative), and Tentative Agenda Items for the March and May 2019 Meetings (info)

Executive Director Heather Halsey presented this item and reported on the Commission’s pending caseload.

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

A. PENDING LITIGATION

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

Trial Courts:

1. ***On Remand from the Third District Court of Appeal, Case No. C070357***
State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al. (petition and cross-petition)
Sacramento County Superior Court Case No. 34-2010-80000604
[*Discharge of Stormwater Runoff*, Order No. R9-207-000 (07-TC-09), California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
2. *Fresno Unified School Dist. v. Commission on State Mandates*
Sacramento County Superior Court, Case No. 34-2017-80002768
[*Certificated School Employees – Parental Leave*, 16-TC-01]

Courts of Appeal:

1. *Coast Community College District, et al. v. Commission on State Mandates*,
Third District Court of Appeal, Case No. C080349
Sacramento County Superior Court, Case No. 34-2014-80001842
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5,

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2. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*
Third District Court of Appeal, Case No. C081929
Sacramento County Superior Court, Case No. 34-2015-80002016
[*Water Conservation* (10-TC-12/12-TC-01, adopted December 5, 2014), Water Code Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4 California Code of Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register 2012, No. 28.]
3. ***On Remand from California Supreme Court, Case No. S214855, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al*** (petition and cross-petition)
Second District Court of Appeal Case No. B292446
[Los Angeles County Superior Court, Case No. BS130730, Related Appeal from Second District Court of Appeal, Case No. B237153 [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

California Supreme Court:

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

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

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

B. PERSONNEL

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

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

RECOVENE IN PUBLIC SESSION

REPORT FROM CLOSED EXECUTIVE SESSION

At 10:48 a.m., the Commission reconvened in open session, and Chairperson Wong-Hernandez reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

ADJOURNMENT

Hearing no further business, Chairperson Wong-Hernandez requested a motion to adjourn the meeting. Member Adams made a motion to adjourn the meeting and the meeting was adjourned by a unanimous voice vote of the Commission at 10:48 a.m.



Heather Halsey
Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

PUBLIC MEETING

RECEIVED

**FEB 15 2019
COMMISSION ON
STATE MANDATES**

FRIDAY, JANUARY 25, 2019

10:02 A.M.

STATE CAPITOL BUILDING
ROOM 447
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ORIGINAL

REPORTED BY:

KATHRYN S. SWANK
Certified Shorthand Reporter No. 13061
Registered Professional Reporter

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

KATHRYN S. SWANK, CSR (916) 390-7731

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A P P E A R A N C E S

COMMISSIONERS PRESENT

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

YVETTE STOWERS
Representative for BETTY T. YEE
State Controller
(Vice Chair of the Commission)

MARK HARIRI
Representative for FIONA MA
State Treasurer

JEANNIE LEE
Representative for KATE GORDON, Director
Office of Planning & Research

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

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COMMISSION STAFF

HEATHER A. HALSEY
Executive Director

HEIDI PALCHIK
Assistant Executive Director

ELENA WILSON
Commission Counsel

CAMILLE N. SHELTON
Chief Legal Counsel

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

PUBLIC PARTICIPANTS

ANNETTE CHINN
Cost Recovery Systems
for Claimant City of Claremont

DONNA FEREBEE
Department of Finance

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I N D E X

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SACRAMENTO, CALIFORNIA

FRIDAY, JANUARY 25, 2019, 10:02 A.M.

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CHAIRPERSON WONG-HERNANDEZ: Good morning. The meeting of the Commission on State Mandates will come to order. It's just after 10:00.

Please join me in welcoming a new Commission member, Ms. Jeannie Lee, senior counsel and Commission representative of the Director of the Governor's Office of Planning and Research, Ms. Kate Gordon.

So please join me in welcoming Jeannie. Thank you for being here.

MEMBER LEE: Thank you.

CHAIRPERSON WONG-HERNANDEZ: Heather, will you please call the roll.

MS. HALSEY: Sure.

Ms. Olsen and Ms. Ramirez contacted me to let me know they will be unable to attend today's hearing.

Mr. Adams.

MEMBER ADAMS: Here.

MS. HALSEY: Mr. Hariri.

MEMBER HARIRI: Here.

MS. HALSEY: Ms. Lee.

MEMBER LEE: Here.

MS. HALSEY: Ms. Stowers.

1 MEMBER STOWERS: Here.

2 MS. HALSEY: Ms. Wong-Hernandez.

3 CHAIRPERSON WONG-HERNANDEZ: Here.

4 MS. HALSEY: Thank you.

5 The first item this morning is the election of
6 officers and Litigation Subcommittee appointments, and
7 we'll start with the election of officers.

8 CHAIRPERSON WONG-HERNANDEZ: Great. Go ahead.

9 MS. HALSEY: At the January 26, 2018, meeting,
10 the Commission elected Michael Cohen, Director of
11 Finance, as the chairperson of the Commission, and John
12 Chiang, State Treasurer, as vice chairperson.
13 Commission members are, as defined by Government Code
14 section 17525 -- are eligible to be officers.

15 The Commission consists of seven members as
16 follows: The Controller, the Treasurer, the Director of
17 Finance, the Director of Planning and Research, a public
18 member with experience in public finance, a county
19 supervisor, and a city council member.

20 Commission regulations do not describe an
21 election procedure. However, the regulations specify
22 that Robert's Rules of Order are the Commission's
23 default rules. Under Robert's Rules, there are two ways
24 to hold the election: Nominations may be taken -- made
25 and a vote taken, and a nomination doesn't require a

1 second; or a motion may be made to elect a member,
2 chairperson, or vice chairperson, and a motion requires
3 a second.

4 Staff recommends that the current chairperson
5 conduct the elections of the chairperson and vice
6 chairperson.

7 CHAIRPERSON WONG-HERNANDEZ: Okay. Thank you.

8 Are there nominations for chairperson or a
9 motion for the election of a new chairperson?

10 MEMBER ADAMS: Madam Chair, I would nominate
11 Keely Bosler, the Director of Finance, as chair.

12 CHAIRPERSON WONG-HERNANDEZ: Okay.

13 MEMBER HARIRI: Second that.

14 CHAIRPERSON WONG-HERNANDEZ: Okay. We have a
15 second.

16 I know you told me I don't need a second, but I
17 have one.

18 MS. HALSEY: Okay. We'll take it.

19 CHAIRPERSON WONG-HERNANDEZ: Okay.

20 MS. HALSEY: Okay. Would you like me to call
21 the roll.

22 CHAIRPERSON WONG-HERNANDEZ: So Director of
23 Finance has been nominated for chairperson.

24 Are there any other nominations?

25 (No response)

1 CHAIRPERSON WONG-HERNANDEZ: Okay. The
2 nominations are closed.

3 All those in favor of electing Director of
4 Finance Keely Bosler as chairperson -- do we need a roll
5 or can we do voice vote?

6 MS. SHELTON: Voice vote.

7 CHAIRPERSON WONG-HERNANDEZ: Please indicate by
8 saying "aye."

9 (Ayes)

10 CHAIRPERSON WONG-HERNANDEZ: Those opposed?

11 (No response)

12 CHAIRPERSON WONG-HERNANDEZ: Okay. Director of
13 Finance has been elected chairperson.

14 Are there nominations for vice chairperson or
15 is there a motion?

16 MEMBER ADAMS: Madam Chair, I would nominate
17 Fiona Ma as the director -- as vice chair.

18 CHAIRPERSON WONG-HERNANDEZ: Okay. I will
19 nominate -- I believe that, historically, we've sort
20 of -- we've rotated between the Treasurer and the
21 Controller.

22 And I would also like to nominate State
23 Controller Betty Yee as vice chairperson.

24 So what do I do in this situation?

25 MS. HALSEY: You could make a motion.

1 MEMBER ADAMS: I would withdraw my nomination.

2 MS. HALSEY: Okay.

3 CHAIRPERSON WONG-HERNANDEZ: Is that --

4 MS. SHELTON: That's fine.

5 CHAIRPERSON WONG-HERNANDEZ: All right. Then
6 thank you, Mr. Adams.

7 Are there any other nominations?

8 (No response)

9 CHAIRPERSON WONG-HERNANDEZ: Okay. Then
10 without objection, nominations are closed.

11 All those in favor of electing State Controller
12 Betty Yee as vice chairperson for this year, please
13 indicate by saying "aye."

14 (Ayes)

15 CHAIRPERSON WONG-HERNANDEZ: Those opposed?

16 (No response)

17 CHAIRPERSON WONG-HERNANDEZ: All right. State
18 Controller has been elected vice chairperson.

19 MS. HALSEY: Thank you.

20 And then for the Litigation Subcommittee
21 appointments, due to the departure of Members Richard
22 Chivaro and Ken Alex, both positions on the Litigation
23 Subcommittee of the Commission are currently vacant.
24 State law allows the Commission to authorize a committee
25 composed of one or more members to hold hearings at any

1 time and place it may deem proper. The duties of the
2 subcommittee members are to investigate and report to
3 the Commission on any matter within the scope of the
4 purposes of the Commission or to form advisory groups to
5 assist the Commission or its subcommittees in fulfilling
6 their purposes.

7 And for Commission subcommittees, because of
8 the size of the Commission, these are -- committees are
9 limited to two people, consistent with Bagley-Keene.

10 Staff recommends that the members nominate
11 themselves to serve upon approval of the Commission, or
12 if a member is not present, you could nominate them in
13 absentia, and then staff further recommends that the
14 Commission -- or that the chairperson conduct the
15 elections for the two positions on the Litigation
16 Subcommittee.

17 CHAIRPERSON WONG-HERNANDEZ: Okay. Is there
18 anyone who would like to nominate themselves/volunteer
19 for the Litigation Subcommittee?

20 MEMBER LEE: Madam Chair, I self-nominate for
21 the Litigation Subcommittee.

22 CHAIRPERSON WONG-HERNANDEZ: Thank you,
23 Ms. Lee. We appreciate that.

24 And have the -- either of the two board members
25 who are not present indicated any interest --

1 MS. HALSEY: You know, I haven't --

2 CHAIRPERSON WONG-HERNANDEZ: -- to you or --

3 MS. HALSEY: I haven't gotten to speak to
4 Ms. Ramirez.

5 CHAIRPERSON WONG-HERNANDEZ: Okay.

6 MS. HALSEY: But I -- I think that she would be
7 interested.

8 CHAIRPERSON WONG-HERNANDEZ: Okay.

9 MEMBER ADAMS: I would nominate Carmen Ramirez
10 as well.

11 CHAIRPERSON WONG-HERNANDEZ: Okay. Great.

12 MEMBER ADAMS: She can always say no.

13 CHAIRPERSON WONG-HERNANDEZ: Right. She can
14 always remove herself later.

15 Okay. So Ms. Lee and Ms. Ramirez have been
16 nominated for appointment to the Litigation
17 Subcommittee.

18 Are there any other nominations?

19 (No response)

20 CHAIRPERSON WONG-HERNANDEZ: Okay. Then
21 without objection, nominations are closed.

22 All those in favor of electing Ms. Lee and
23 Ms. Ramirez to the Litigation Subcommittee, please
24 indicate by saying "aye."

25 (Ayes)

1 CHAIRPERSON WONG-HERNANDEZ: Those opposed?

2 (No response)

3 CHAIRPERSON WONG-HERNANDEZ: Hearing none,
4 Ms. Lee and Ms. Ramirez have been appointed to the
5 Litigation Subcommittee.

6 Thank you.

7 The next is Item 2. Any -- oh, you know what?
8 Item 2 has had a change, right?

9 MS. HALSEY: We're recommending to hold off on
10 Item 2 till the next hearing because we don't have
11 enough members who are able to vote on this matter.

12 CHAIRPERSON WONG-HERNANDEZ: For the public,
13 this is just the minutes but we don't have enough --

14 MS. HALSEY: Because of the change in
15 membership.

16 CHAIRPERSON WONG-HERNANDEZ: Right.

17 MS. HALSEY: We have a quorum, but not
18 sufficient votes for this particular item.

19 CHAIRPERSON WONG-HERNANDEZ: So we'll take them
20 up at the next meeting.

21 Okay. Well, then moving along.

22 MS. HALSEY: So now we will take up public
23 comment for matters not on the agenda. Please note that
24 the Commission cannot take action on items not on the
25 agenda. However, it can schedule issues raised by the

1 public for consideration at future meetings.

2 CHAIRPERSON WONG-HERNANDEZ: Okay. Is there
3 any public comment?

4 (No response)

5 CHAIRPERSON WONG-HERNANDEZ: Okay. Seeing
6 none, we'll move to the next item.

7 MS. HALSEY: Item 7 is proposed for consent.

8 CHAIRPERSON WONG-HERNANDEZ: Are there any
9 objections to the proposed consent calendar?

10 (No response)

11 CHAIRPERSON WONG-HERNANDEZ: Then can I have a
12 motion to adopt the proposed consent calendar?

13 MEMBER STOWERS: Move to adopt the calendar.

14 CHAIRPERSON WONG-HERNANDEZ: Ms. Stowers moves.
15 Is there a second?

16 MEMBER HARIRI: I second.

17 CHAIRPERSON WONG-HERNANDEZ: Okay. Second,
18 Mr. Hariri.

19 Thank you.

20 The motion to -- oh, I have already indicated
21 who made that motion.

22 Please, all those in favor, please say "aye."

23 (Ayes)

24 CHAIRPERSON WONG-HERNANDEZ: All opposed?

25 (No response)

1 CHAIRPERSON WONG-HERNANDEZ: None.

2 Motion carries.

3 MS. HALSEY: Let's move to the Article 7
4 portion of the hearing.

5 Will the witnesses and parties for Item 5
6 please rise.

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

9 MS. HALSEY: Thank you.

10 Item 3 is reserved for appeals of executive
11 director decisions. There are no appeals to consider
12 for this hearing.

13 And Item 4 has been postponed to the March
14 Commission hearing at the request of the claimant.

15 Commission Counsel Elena Wilson will present
16 Item 5, Parameters and Guidelines on U Visa 918 Form,
17 Victims of Crime: Nonimmigrant Status.

18 MS. WILSON: Good morning. This Parameters and
19 Guidelines address the state-mandated activities which
20 require certifying officials from local agencies the
21 full and complete and signed Federal U Visa
22 Certification Form for cooperative immigrant victims for
23 qualifying criminal activities, seeking temporary
24 immigration benefits under federal law, when requested
25 by a victim or the victim's family, and require local

1 agencies that receive U Visa certification requests to
2 submit annual reports to the legislature.

3 The claimant proposes a number of changes and
4 additional activities alleged to be reasonably necessary
5 to comply with the mandated activities.

6 Staff recommends that the Commission approve
7 the requested activities, which are consistent with the
8 law and supported by the record, as reasonably necessary
9 to implement the mandated activities.

10 However, staff recommends denial of those
11 proposed activities and additional language that go
12 beyond the scope of the mandate, are inconsistent of the
13 law, and not supported by the evidence in the record.

14 Accordingly, the staff recommends the
15 Commission adopt the proposed decision and the proposed
16 Parameters and Guidelines and request that the
17 Commission authorize the staff to make any technical,
18 nonsubstantive changes to the documents following the
19 hearing.

20 Will the parties and the witnesses please state
21 your name for the record.

22 MS. CHINN: Annette Chinn, Cost Recovery
23 Systems for the City of Claremont.

24 MS. FEREBEE: Donna Ferebee, Department of
25 Finance.

1 CHAIRPERSON WONG-HERNANDEZ: Okay. Would you
2 all like to -- are there specific things you want to say
3 or are you here mostly for questions?

4 MS. CHINN: We have a couple of comments and
5 requests for some changes to the Parameters and
6 Guidelines.

7 So our first issue -- and, first, I want to
8 thank staff for all their time and help and analysis on
9 the issue.

10 And I guess the first thing that we're
11 concerned about is, under the ongoing activities, there
12 is the component to review the information for law
13 enforcement to determine if the information that's being
14 provided complies with the requirements to submit the U
15 Visa for the illegal immigrant party.

16 And in the staff's recommendation -- and,
17 specifically, we're looking at activity B.1.b. So in
18 that component, the review of the information, staff
19 seems to suggest that all of the records and
20 documentation that law enforcement has to review is
21 being provided by the victim themselves, so that it
22 seems like the staff is saying the department does not
23 have to go back and pull those records and files for
24 their independent review and verification.

25 And we disagree with that because law

1 enforcement can't just assume that the records that were
2 provided by the victim are authentic, that they haven't
3 been altered in any way. So they are still required to
4 go into the records and do the location, the research,
5 and gathering of those files. So we disagree with staff
6 analysis that the time to do that research and data
7 collection is not eligible for reimbursement.

8 So I have two statements to support this: The
9 law enforcement staff was not able to be here,
10 unfortunately, today, but the Declaration of Lieutenant
11 Mike Ciszek specifies that when they review their U Visa
12 applications, many of the times, not all of the forms
13 are attached to the -- to the application, so they are
14 required to do the location of those forms. So if --
15 you know, staff's recommendation goes through, we
16 wouldn't be allowed to get that.

17 Also, the -- the victims are not always given a
18 copy of all of the documents that are needed for the law
19 enforcement to do the review.

20 So under Public Records Act, they do get a copy
21 of the incident report, and on that report, it has basic
22 information, like the name, address, involved people,
23 witnesses, description -- description of property
24 involved, dates, times, locations of the incident,
25 diagrams, but they don't get the full supplemental

1 reports. They don't get the investigative reports and
2 notes. They don't get the audio and if there are video
3 recordings.

4 So there's still additional work that needs to
5 be done on the side of law enforcement to gather all the
6 necessary pieces of information for them to do this
7 review and analysis.

8 So we would like to make sure that that's
9 included in the parameters.

10 And I don't know if we want to discuss things
11 one by one or if you want me to just kind of go through
12 my whole list.

13 CHAIRPERSON WONG-HERNANDEZ: So I'm not sure
14 either. I have questions about that but I also -- if
15 someone else is -- wants to weigh in on this exact
16 topic, I can certainly hold those until the end.

17 MS. SHELTON: I just wanted to make it clear.
18 I'm not sure if Ms. Ferebee got copies. Ms. Chinn did
19 provide additional documentation today at the hearing,
20 which we just received this morning and which I believe
21 all of you have. Did you receive --

22 MS. FEREBEE: No.

23 MS. SHELTON: I think she needs an opportunity
24 to review the information.

25 MS. CHINN: Oh, absolutely. Yes.

1 MS. SHELTON: Thank you.

2 CHAIRPERSON WONG-HERNANDEZ: Well, then, I am
3 going to jump in with a question at this point and --
4 either for you, Ms. Chinn or Ms. Wilson or both of you.

5 So I understand what you are saying in terms of
6 that there may not be complete -- that victims may come
7 with incomplete records.

8 In this Commission, we have to determine what's
9 being specifically required of law enforcement, versus
10 what people may be doing, you know, to be helpful.

11 Is there a reason why law enforcement couldn't
12 tell victims, "You are missing these things"? Like, is
13 there -- is there a requirement in the law, that I am
14 missing, that somebody can point me to, that law
15 enforcement is responsible for finding the, sort of,
16 missing documentation? Because as I read it, it seemed
17 like the onus was on the victim who is making the claim.

18 MS. CHINN: I'm not in law enforcement, but
19 based on what the lieutenants that I work with have told
20 me, they have stated that even when the victim comes and
21 requests the records, they don't get all of the records.
22 They don't get investigative notes. And I don't think
23 that some of those things are disclosable to the public
24 or, perhaps, you know, I think laws are changing. Like
25 there's no legislation now that says audio, a tape

1 recordings, and things like that, are now subject to
2 public records request, whereas, in the past, they
3 weren't. So I think there's also an issue of changing
4 requirements on the Public Records Act.

5 So this test claim covers the period of 16/17,
6 17/18, which wouldn't include any of the changed laws if
7 there were changes to the Public Records Act. So I
8 think that it still needs to be addressed that some of
9 the information that law enforcement requires to make
10 their determinations come in the form of reviewing
11 investigative reports, notes, and also audio and visual
12 recordings of those incidents and the interviews with
13 the victims and parties.

14 So not everything is disclosable under Public
15 Records Act, as it seems like staff is suggesting that
16 the victim comes with everything. And even if they came
17 with everything, law enforcement can't trust -- you
18 know, they have to sign under the penalty of perjury
19 that this is now all true and correct, and they have to
20 go back and independently verify that this is all true
21 and correct. You know, things could have been altered.
22 They have to verify the authenticity of all those
23 documents.

24 CHAIRPERSON WONG-HERNANDEZ: And that
25 independent verification is part of the law, as you read

1 it, from them.

2 MS. CHINN: Correct.

3 CHAIRPERSON WONG-HERNANDEZ: Okay.

4 MS. CHINN: Yeah. We think that's a critical
5 part of the process of making these determinations is
6 reviewing all the materials in the documents.

7 CHAIRPERSON WONG-HERNANDEZ: Okay. Ms. Wilson,
8 did you want to say something?

9 MS. WILSON: Sure. First of all, I would like
10 to clarify what exactly we're talking about right now,
11 because the claimant requested additional activities
12 that, kind of, have led to different stages of this U
13 Visa processing, U Visa Certification processing.

14 And the staff recommends granting some of them
15 and denying some of them.

16 But, for example, the one that requested the
17 review of the petition by the -- by the victim and all
18 the documents that they will bring, they are suggesting
19 to grant that because that's obviously necessary.

20 The second is the review on -- location and
21 review of documents to determine that the certifying
22 agency's required to grant -- to grant the petition.

23 And the third one is to review the documents --
24 locate and review the documents in order to fill out the
25 petition.

1 So those are two separate instances, because
2 the test claim statute does not require any additional
3 documents, that the claimant is suggesting, in order to
4 determine that the certifying agency is the -- has to
5 grant the certification. All that's required -- all
6 that the test claim statute says is that the certifying
7 official has to certify the helpfulness of the victims
8 on the form, U Visa Certification form, when the victim
9 was the victim of qualifying criminal activity and has
10 been -- is being helpful and is likely to be helpful in
11 detection, investigation, or prosecution of that
12 qualifying criminal activity.

13 Now, this is -- this does not require that the
14 certifying agency either investigates the crimes,
15 either -- locates the documents. All that's required --
16 all what is determined, in what stage is, you know, the
17 criminal investigation is, at this point -- all that is
18 required, that there was the fact of criminal activity
19 that was determined and the victim is the victim of that
20 qualifying criminal activity. And the helpfulness is
21 presumed under the test claim statute.

22 So what is really needed, at this point in
23 time, is the fact that the criminal activity was --
24 happened. So -- and under the Public Records Act, the
25 victim has full ability to receive enough documents

1 that -- you know, that confirm that there was a criminal
2 activity and the victim was the victim. And that's --
3 at this point, that's all that's required.

4 Now, if the victim does not have those
5 documents and -- and they come without documents,
6 there's nothing -- nothing in the law that says that
7 they can't request, under the Public Records Act, those
8 documents from -- from the agency.

9 And under federal law, the U Visa law is -- the
10 burden is on the victim to provide all the documentation
11 that they were the victim of the qualifying criminal
12 activity and were helpful.

13 So we don't see why this -- at this stage that
14 they would need all this additional documentation.

15 Now, on the other side, when the victim -- when
16 they already determined that they have to certify, then
17 we recommend granting this additional research that --
18 so they can get additional information that maybe the
19 victim doesn't have, because the U Visa certification
20 form itself requires providing some additional
21 information the victim may not have. For example -- or
22 may not wanting to bring it. Like, for example, an
23 instance where the victim didn't cooperate. So we feel
24 justified that the certifying official can get
25 information from the agency, because all that's needed

1 is the -- whatever agency is determined in the regular
2 course of the law enforcement duties, they can look at
3 that information and see what -- what they have.

4 And, of course, they do have to certify under
5 penalty of perjury, so this is not a reason why the
6 staff feel that we need to grant at that point.

7 CHAIRPERSON WONG-HERNANDEZ: Okay. So you look
8 like -- did you want to say something, Camille?

9 MS. SHELTON: No.

10 CHAIRPERSON WONG-HERNANDEZ: Okay. So where --
11 sorry -- so tell me -- can somebody specify for me, what
12 is it, Ms. Chinn, that you think should be included
13 that's not being included in the staff recommendation on
14 the Parameters and Guidelines?

15 MS. CHINN: So one of the things, I guess, is
16 partially this confusion of -- in part of the analysis,
17 it says that law enforcement has the duty to verify with
18 their own records, independently, that the information
19 that's being provided is true and correct and meets all
20 of the requirements and specifications of this
21 requirement -- or of this law.

22 But then, in other parts of the analysis, as
23 Elena that was explaining, she was -- it says that
24 locating the records is reimbursable when you are
25 filling out the form, but not when you are reviewing the

1 form for completeness.

2 Is that correct, Ms. Wilson?

3 MS. WILSON: I'm not sure your --

4 MS. CHINN: So in the description here, it
5 says, (as read), "Review the request for the U Visa
6 Certification and all documents provided by the victim
7 or the victim's family members to confirm that the
8 victim was a victim of a qualifying criminal activity
9 and to determine if they are being helpful or likely to
10 be helpful in the detection of the investigation or the
11 prosecution of that criminal activity."

12 So here, it suggests that when law enforcement
13 is reviewing the applications, they are only reviewing
14 the information provided by the victim and the victim's
15 family members, and that they are not allowed to gather
16 their own documents to verify that what the victim is
17 providing is actually true, correct, and hasn't been
18 altered in any way.

19 So our request is that we want to make sure
20 that when we're being -- you know, filing our claims and
21 being reimbursed for this component, that we're not
22 limited to just reviewing the information provided by
23 the victim, because law enforcement is required, and it
24 has to certify under the penalty of perjury that all of
25 this information is true and correct. They have to

1 verify that the person that's presenting all this is the
2 actual victim.

3 So to rely just on the forms that are obtained
4 through Public Records Act requests by the victim, which
5 may or may not be complete, which may or may not be
6 authentic and correct, is what we have an issue with.
7 We want to be allowed the time to actually locate and
8 review those records as a part of the eligible
9 component.

10 MS. HALSEY: I just wanted to clarify that
11 there are multiple activities in this process. Activity
12 B is one activity and Activity C is another activity.
13 And Activity B is essentially like a prima facie
14 showing. The victim brings the packet. It shows they
15 were a victim of a crime and that they have been
16 helpful. And you don't need anything else. Yes, you
17 have to go fill the form.

18 Then you go to Activity C, and Activity C, you
19 are allowed to research your own documents.

20 So I think what the claimant is requesting is
21 to do this research twice. And one -- to possibly to
22 defeat the helpfulness of the victim, but that's not
23 required by the law. The helpfulness is presumed.

24 MS. SHELTON: So under the law, it's a very low
25 threshold that triggers the requirement to complete this

1 form. It's just whatever the victim comes forward
2 (verbatim). Also, federal law makes it very clear that
3 an investigation never had to have ever occurred. The
4 victim can come forward without having ever reported the
5 investigation -- the crime before and start the process
6 that way. So the standard is very low.

7 MS. CHINN: If -- if that's true, and local
8 agencies are entitled for the cost of location and
9 determining -- getting all of those reports
10 independently, then we're fine with that. But it
11 doesn't seem like it clearly states that.

12 So here, under Activity C, for example, one of
13 the other issues that we have an issue with is that it
14 doesn't really specify the actual time for law
15 enforcement to research and make the determinations of
16 whether or whether or not these applications should be
17 approved or not approved.

18 So it -- the way it reads, it says, (as read),
19 "When it is determined that the victim was a victim of a
20 qualifying criminal activity and has been helpful, is
21 being helpful, or likely to be helpful to the detection,
22 investigation, prosecution of that activity, then the
23 time to fully complete and sign the forms is
24 reimbursable."

25 So we just want to make sure that our research

1 time is included. And also, the way that this is
2 worded, how -- how would a city include time, for
3 example, to contact the District Attorney's Office?
4 That's one of the activities that law enforcement has
5 said. So you are saying that's not eligible for
6 reimbursement?

7 MS. SHELTON: No.

8 MS. CHINN: So how do they determine if they
9 were helpful in the prosecution of a crime?

10 MS. SHELTON: Being helpful is presumed, and
11 that's a legal standard. You -- the victim has the
12 burden of proof. If there's no showing that they were
13 not helpful, then it's presumed they were helpful,
14 period. And I'm going to let Elena finish up.

15 MS. WILSON: Yeah. And I also want to clarify
16 that the agency that is the certifying agency for this
17 particular victim, that took part in the investigation
18 or detection of the crime, they are stand-alone agency.
19 If the victim wants to get certification from another
20 agency that investigated that crime, that's up to the
21 victim.

22 And, overall, the federal government will
23 determine whether to give -- you know, whether there's
24 enough evidence. They are not requiring the certifying
25 agency to do the overall research for all over the

1 country and determine whether the victim was ever
2 helpful or ever refused. That's not what the -- all
3 they can certify is that what happened within the
4 agency, within the investigation, that part.

5 CHAIRPERSON WONG-HERNANDEZ: So what I am --
6 what I am hearing, what I think I am hearing from you,
7 Ms. Chinn, is that the -- that your client specifically
8 think that there's a level of due diligence that they
9 would like to do in -- as part of implementing this new
10 law, relatively new law; and that you think that they
11 should be -- that those should be reimbursable
12 activities.

13 And then what I am hearing from Commission
14 staff is, letter of the law, those are not required
15 activities, that there is a threshold and that there is
16 a legal standard for -- for what is presumed to be
17 helpful unless, sort of -- sorry, do you --

18 MS. SHELTON: And those activities are proposed
19 for reimbursement --

20 CHAIRPERSON WONG-HERNANDEZ: Right.

21 MS. SHELTON: -- to complete the form.

22 CHAIRPERSON WONG-HERNANDEZ: Right.

23 MS. SHELTON: Yes.

24 When -- when the victim makes the initial
25 threshold showing, the initial prima facie case, which

1 is a very low standard, then, yes, at that point, you go
2 back and take a look at your records, verify, look at
3 them, locate them, and fill out the form.

4 CHAIRPERSON WONG-HERNANDEZ: But it's not
5 before.

6 MS. SHELTON: Yes. But it's not before.

7 CHAIRPERSON WONG-HERNANDEZ: Okay.

8 MS. CHINN: So if that's the case then, it
9 seems, after section E, where it says reimbursement is
10 not required for the following activities -- so, okay,
11 detection of a crime, investigation of a crime,
12 prosecution of a crime, research, or review of records,
13 that are --

14 MS. SHELTON: Not identified in sections --

15 CHAIRPERSON WONG-HERNANDEZ: Okay.

16 MS. SHELTON: -- B or C.

17 MS. CHINN: So if the agency is reviewing their
18 own independent reports and crime reports, that's all
19 eligible. All that -- location is includible.

20 MS. SHELTON: In C.

21 MS. CHINN: Under C. Okay.

22 Then maybe our concerns are addressed.

23 It -- it just seems confusing you know where it
24 says it's not eligible, and then here it is eligible.

25 So that was my concern. And I don't know if there's any

1 way to make this more clear for test claimants when they
2 are preparing this claim. Obviously, if I'm confused,
3 and I'm the test claimant and I'm involved in this
4 process, imagine what it will be like for cities and
5 agencies who are trying to prepare their claims
6 themselves. It just --

7 MS. SHELTON: So it is a legal standard. We do
8 encourage clients to read the decision that's adopted,
9 because that lays out the reasoning for how the Ps and
10 Gs are identified.

11 MS. CHINN: Yeah. I mean, I read those as
12 well, but I needed this narrative to clarify things.

13 So, I mean, my clients will be clear. But I
14 just don't know if -- if people who are reading this
15 independently will be able to grasp all the -- you know,
16 it's eligible under this component but not this
17 component. And when it says it's eligible and, later,
18 it says it's not reimbursable, it just is confusing. So
19 I don't know if there's a way to make that more simple
20 and straightforward. I think it would --

21 MS. WILSON: I am just looking at a declaration
22 of Mr. Ciszek, and he is saying that they contacted
23 District Attorney's Office in order to determine the
24 status of the case, to decide whether they need to fill
25 out the U Visa Certification.

1 And this is actually what the test claim
2 statute is made to change, because now they are not --
3 not only not required to do it. The test claim statute
4 specifically says that it does not matter what is the
5 status of the case. You have to grant the U Visa
6 Certification.

7 MS. CHINN: But --

8 MS. WILSON: So it's -- it's not just not
9 required. It's basically prohibited.

10 MS. CHINN: But -- but they -- they are not
11 asking if the case is being prosecuted. Their question
12 to the DA is, "Were these victims helpful in the
13 litigation of the case?"

14 So when the lieutenant is calling the District
15 Attorney's Office, his question is, "Was that victim
16 helpful?"

17 MS. WILSON: Right.

18 MS. HALSEY: Not his job.

19 MS. SHELTON: Yeah. Madam Chair, just to make
20 it clear, the helpfulness is presumed.

21 CHAIRPERSON WONG-HERNANDEZ: Right.

22 MS. SHELTON: So no investigation of that
23 component is required by law.

24 MS. HALSEY: And also, it goes to the
25 helpfulness to the certifying entity. So it is not --

1 it is not within the realm of the certifying agency to
2 be going and checking with other agencies whether the
3 victim's been helpful to those agencies. That's not
4 their -- that's not required or their job in this
5 process.

6 MS. WILSON: Right. They can certify -- they
7 don't have the knowledge. They can only, you know, make
8 calls around and ask. But this is not what they
9 experience, what's within their particular
10 investigation, and that's what federal laws requires
11 them to do. Not requires -- the federal law requires
12 once they started filling out that form.

13 CHAIRPERSON WONG-HERNANDEZ: And it seems to me
14 that the supporting documentation, as you look at, kind
15 of, the file of the legislative record, was that the
16 intention was very much to presume that there was a
17 helpfulness, to make it as easy as possible for the
18 victims.

19 And I understand if people feel like they need
20 to do a level of due diligence, but that's
21 specifically -- I would agree, that's specifically not
22 what the law requires and what the law was intended
23 to -- I don't want to say prevent, but was intended to
24 say, you know, we're going to start from a place of,
25 these are victims, and then we'll -- you know, if it's

1 refutable under certain circumstances and with certain
2 types of evidence.

3 I have completely monopolized this conversation
4 of the board.

5 Are there any other questions or comments from
6 other board members on this?

7 Ms. Ferebee, we haven't even --

8 MS. FEREBEE: Thank you.

9 The Department of Finance agrees with the
10 proposed Parameters and Guidelines. We believe they are
11 consistent with the test claim statutes and the test
12 claim decision.

13 Thank you.

14 CHAIRPERSON WONG-HERNANDEZ: Thank you.

15 Okay. Do I have any public comment on this
16 item?

17 Ms. Chinn, do you have anything?

18 MS. CHINN: The only other -- it was like a
19 real small detail -- was the issue of the photocopying.
20 And in staff analysis, it says that photocopying costs
21 to attach the reports to the document is not eligible
22 for reimbursement.

23 And again, we're citing Public Records Act
24 requests. And, again, my question is, well, what if the
25 documents that are being attached and copied are not

1 subject to the Public Records Act request, that there
2 are investigative reports or other things that the
3 victim did not obtain through the Public Records Act
4 process. So should not those reports be eligible for
5 copying?

6 MS. WILSON: Well, if -- the Public Records
7 request -- Public Records Act does not prohibit the use
8 of the investigative -- whatever the law enforcement
9 agency -- to provide those reports. If they are willing
10 to provide what's not required in the public records,
11 they can provide it under public records request.

12 MS. SHELTON: It becomes a public record. Once
13 they provide it, it becomes a public record under the
14 Public Records Act.

15 MS. CHINN: Okay.

16 MS. SHELTON: And, typically, the statute -- or
17 the instructions to the form only request attachment of
18 documents that detail the criminal activity being
19 investigated or prosecuted and the involvement of the
20 victim, and any reports may be containing a description
21 of the injury to the victim. So it's limited; it's not
22 everything.

23 CHAIRPERSON WONG-HERNANDEZ: Thank you,
24 Ms. Shelton.

25 Okay. Is there any further discussion?

1 (No response)

2 CHAIRPERSON WONG-HERNANDEZ: Okay.

3 MEMBER ADAMS: Madam Chair, I would just make a
4 comment.

5 CHAIRPERSON WONG-HERNANDEZ: Please.

6 MEMBER ADAMS: I appreciate the position of the
7 claimant of what is required and what's not. And I have
8 noticed, on the lieutenant's declaration that he has, he
9 was required to do certain things. And I would submit
10 that the agency appears -- feels they are required to do
11 it, but under the law they are really not, they are
12 opting to go farther than they necessarily need to go.

13 And, you know, maybe as this moves forward,
14 maybe there will be flaws in the public policy and
15 things will change, but for right now, we're really,
16 sort of, required to go with what the law requires, not
17 what we think would be good public policy or better
18 public policy.

19 CHAIRPERSON WONG-HERNANDEZ: Mr. Adams, I
20 really appreciate that comment.

21 And I -- just to follow up on that, in reading
22 the declaration, I also noticed the "I was required,"
23 without kind of specifying by who. I believe that the
24 lieutenant was required to do these things by the
25 department, and if there needs to be some clarification,

1 I think that, you know, that the solution is possibly a
2 legislative solution, but that within the purview of
3 this Commission, we're looking at what was required in
4 statute and what, you know, under mandates law, is
5 reimbursable.

6 MS. CHINN: Thank you for your clarification.
7 I really appreciate it.

8 And it's good for them to know, as well, that
9 if they are going above and beyond, they don't need to
10 spend extra time and resources doing things that they
11 think is required of them if it's not. So this is good
12 to let them know as well, so that they are not wasting
13 time and resources as well.

14 MEMBER ADAMS: Just a follow-up to that.

15 CHAIRPERSON WONG-HERNANDEZ: Please.

16 MEMBER ADAMS: The other thing is, time will
17 tell whether people are fabricating and if, you know,
18 public policy determines that, hey, people are doing
19 things they shouldn't, then this may or may not get
20 tightened. But, again, as the Chair said, I think
21 that's through the legislative process.

22 MS. CHINN: Thank you.

23 CHAIRPERSON WONG-HERNANDEZ: Okay. Is there a
24 motion?

25 MEMBER ADAMS: I would so move the staff

1 recommendation.

2 CHAIRPERSON WONG-HERNANDEZ: Mr. Adams moves
3 the staff recommendation.

4 MEMBER STOWERS: Second.

5 CHAIRPERSON WONG-HERNANDEZ: Second from
6 Ms. Stowers.

7 Let's go roll call on this.

8 MS. HALSEY: Mr. Adams.

9 MEMBER ADAMS: Aye.

10 MS. HALSEY: Mr. Hariri.

11 MEMBER HARIRI: Aye.

12 MS. HALSEY: Ms. Lee.

13 MEMBER LEE: Aye.

14 MS. HALSEY: Ms. Stowers.

15 MEMBER STOWERS: Aye.

16 MS. HALSEY: Ms. Wong-Hernandez.

17 CHAIRPERSON WONG-HERNANDEZ: Aye.

18 MS. HALSEY: Thank you.

19 MS. CHINN: Thank you.

20 CHAIRPERSON WONG-HERNANDEZ: Thank you.

21 Motion carries.

22 MS. HALSEY: Item 6 is reserved for county
23 applications for a finding of significant financial
24 distress, or SB 1033 applications.

25 No SB 1033 applications have been filed.

1 Item 7 was the consent calendar.

2 Item 8 is the legislative update, and there is
3 nothing new to report at this time.

4 Chief Legal Counsel Camille Shelton will
5 present Item 9, the Chief Legal Counsel Report.

6 MS. SHELTON: Good morning.

7 I don't have a lot to report. There have not
8 been any new filings since the last Commission hearing.

9 We are still waiting for the decision in the
10 water conservation case from the Third District Court of
11 Appeal.

12 And then, finally, the remand of the discharge
13 of stormwater runoff test claim, which is currently
14 pending in the Sacramento County Superior Court has been
15 moved from February 8th to June 7th.

16 And that's all I've got.

17 CHAIRPERSON WONG-HERNANDEZ: Thank you.

18 MS. HALSEY: Item 10 is the Executive
19 Director's Report.

20 And after this hearing, there are 43 pending
21 test claims, 38 of which are regarding stormwater NPDES
22 permits, so that number has gone up significantly.
23 We've had a lot of new filings.

24 One Parameters and Guidelines regarding
25 stormwater NPDES permits and four statewide cost

1 estimates, including one regarding stormwater NPDES
2 permits, are pending. And those NPDES matters are on
3 inactive status pending the outcome of litigation
4 regarding the test claim decisions underlying those
5 matters.

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

11 Finally, we have five IRCs pending. As of
12 today, the Commission staff expects to complete all
13 currently pending test claims and IRCs by approximately
14 the December 2020 Commission meeting, possibly earlier
15 if some of those test claims are consolidated for
16 hearing. And that is dependent on staffing and other
17 workload.

18 With regard to administrative workload,
19 Commission staff is in the process of implementing
20 compliance measures and has prepared and submitted a
21 report of compliance in response to the SPB audit of our
22 personnel practices since we last met.

23 And Commission staff are also in the process of
24 completing the workforce planning process and are
25 creating a plan for the Commission's future workforce

1 which will -- we will present at a Commission meeting in
2 the near future.

3 Please check the tentative agenda items on my
4 report to see if your item, or an item you are
5 interested in, is coming up over the course of the next
6 few hearings. And you can also use pending caseload
7 documents on the Commission's website, and those are
8 updated at least bimonthly, to get an idea of when
9 something is tentatively expected to be heard.

10 Please expect to receive draft proposed
11 decisions on all test claims and IRCs for your review
12 and comment at least eight weeks prior to the hearing
13 date and a proposed decision approximately two weeks
14 before the hearing.

15 That's all I have.

16 CHAIRPERSON WONG-HERNANDEZ: Thank you.

17 Any questions from board members?

18 (No response)

19 CHAIRPERSON WONG-HERNANDEZ: Okay. Then I'm
20 going to move on to closed session.

21 The Commission will meet in closed executive
22 session, pursuant to Government Code section 11126(e),
23 to confer with and receive advice from legal counsel for
24 consideration and action, as necessary and appropriate,
25 upon the pending litigation listed on the published

1 notice and agenda; and to confer with and receive advice
2 from legal counsel regarding potential litigation. The
3 Commission will also confer on personnel matters
4 pursuant to Government Code section 11126(a)(1). We
5 will reconvene in open session in approximately 15
6 minutes.

7 So if you are not a part of closed session,
8 please give us 15 minutes, and we'll come and get folks
9 outside.

10 (Closed session was held from
11 10:42 a.m. to 10:48 a.m.)

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

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

24 MEMBER ADAMS: So move.

25 CHAIRPERSON WONG-HERNANDEZ: Okay. Mr. Adams,

1 thanks.

2 All those in favor of adjourning, say "aye."

3 (Ayes)

4 CHAIRPERSON WONG-HERNANDEZ: All those opposed,

5 say no.

6 (No response)

7 CHAIRPERSON WONG-HERNANDEZ: This meeting is

8 adjourned.

9 Thank you.

10 (Proceedings concluded at 10:48 a.m.)

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CERTIFICATE OF REPORTER

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of February 2019.


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