

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 126
State Capitol, Sacramento, California
March 22, 2019

Present: Member Keely Bosler, Chairperson
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
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 Bosler called the meeting to order at 10:01 a.m. and Executive Director Heather Halsey called the roll.

APPROVAL OF MINUTES

Chairperson Bosler asked if there were any objections or corrections to the November 30, 2018 minutes. Member Adams made a motion to adopt the minutes. With a second by Member Hariri, the November 30, 2018 hearing minutes were adopted by a vote of 5-0 with Members Olsen and Ramirez abstaining. Chairperson Bosler asked if there were any objections or corrections to the January 25, 2019 minutes. Member Adams made a motion to adopt the minutes. With a second by Member Stowers, the January 25, 2019 minutes were adopted by a vote of 5-0 with Members Olsen and Ramirez abstaining.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

The Chairperson asked if there was any public comment. Dillon Gibbons, California Special Districts Association requested that the Commission revise its website to include the Designees of Commission Members. The Chairperson asked if there were any other comments. There was no response.

CONSENT CALENDAR

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

STATEWIDE COST ESTIMATE

Item 7* *Cal Grant: Opt-Out Notice and Grade Point Average Submission, 16-TC-02*

Education Code Section 69432.9(d), Statutes 2014, Chapter 679 (AB 2160); and Education Code Sections 69432.9(c)(2) and (d)(1), Statutes 2016, Chapter 82 (AB 2908)

Fairfield-Suisun Unified School District, Claimant

Executive Director Halsey stated that Item 7 was proposed for consent. Chairperson Bosler noted that it was a cost estimate and asked if there were any questions regarding the Consent Calendar. There was no response and no objection was made.

Member Olsen made a motion to adopt the Consent Calendar. With a second by Member Ramirez, the Consent Calendar was adopted by a vote of 7-0.

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

Permit Amendment No. 2017PA-SCHOOLS, City of San Diego Public Water System No. 3710020, effective January 18, 2017

City of San Diego, Claimant

Executive Director Halsey stated that Item 5 would be heard first to accommodate a witness. Senior Commission Counsel Matt Jones presented this item and recommended that the Commission deny this Test Claim.

Parties were represented as follows: Raymond Palmucci and Tom Zeleny appeared on behalf of the claimant. Kurt Souza and David Rice appeared on behalf of the State Water Resources Control Board. Chris Hill appeared on behalf of the Department of Finance but did not sit at the witness table, state his name for the record, or provide testimony on this item.

Following a presentation by the claimant and discussion among the Commission members, staff, and parties, Member Ramirez made a motion to adopt the staff recommendation. With a second by Member Stowers, the motion to deny this Test Claim was adopted by a vote of 6-1 with Member Olsen voting no.

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

Senior Commission Counsel Raj Dixit presented this item and recommended that the Commission deny this Test Claim.

Parties were represented as follows: Kevin Hunt appeared on behalf of the claimant. Chris Hill 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 Hariri, the motion to deny this Test Claim was adopted by a vote of 7-0.

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

Program Analyst Kerry Ortman presented this item and described three bills that the Commission is tracking: SB 287, AB 400, and AB 1471.

With respect to AB 1471, which would provide mandate subvention for “a revenue loss that an underprivileged or disadvantaged local agency sustains after January 1, 2020, as a result of the delayed implementation of a state action,” Member Olsen asked if there was a definition of “underprivileged” or “disadvantaged.” Executive Director Halsey stated that the bill has not been analyzed by any legislative committee yet and read aloud the definitions for these terms provided in the bill.

Dillon Gibbons, on behalf of the California Special Districts Association, stated that the Association is the sponsor of SB 287 to change the Government Code with respect to the statute of limitations for filing test claims to reflect the language provided in the Commission’s pre-2017 regulations and explained the reasons why this change was being sought.

Following discussion among Commission members, staff and Mr. Gibbons, Chairperson Bosler thanked Mr. Gibbons and asked if there were any other questions or comments. There was no response.

- 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 and Tentative Agenda Items for the May and July 2019 Meetings (info)

Executive Director Halsey presented this item, reported on the Commission's pending caseload, and stated that parties and interested parties planning to participate in upcoming hearings must notify Commission staff not later than the Wednesday prior to a hearing of the names of the people who will be speaking for inclusion on the witness list. Executive Director Halsey noted that staff will no longer be sending reminder emails.

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. ***On Remand from the California Supreme Court, Case No. S239907***
Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL
Fourth District Court of Appeal, Division One, Case No. D068657
[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]

Courts of Appeal:

1. *Coast Community College District, et al. v. Commission on State Mandates*, Third District Court of Appeal, Case No. C080349
Sacramento County Superior Court, Case No. 34-2014-80001842
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes

1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]

2. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*
Third District Court of Appeal, Case No. C081929
Sacramento County Superior Court, Case No. 34-2015-80002016
[*Water Conservation* (10-TC-12/12-TC-01, adopted December 5, 2014), Water Code Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4 California Code of Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register 2012, No. 28.]
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. *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 11:21 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 11:34 a.m., the Commission reconvened in open session, and Chairperson Bosler 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 Bosler requested a motion to adjourn the meeting. Member Olsen made a motion to adjourn the meeting. With a second by Member Ramirez the March 22, 2019 meeting was adjourned by a vote of 7-0 at 11:35 a.m.


Heather Halsey
Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

RECEIVED

PUBLIC MEETING

APR 12 2019

**COMMISSION ON
STATE MANDATES**

FRIDAY, MARCH 22, 2019

10:01 A.M.

STATE CAPITOL BUILDING

ROOM 126

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ORIGINAL

REPORTED BY:

KATHRYN S. SWANK

Certified Shorthand Reporter No. 13061

Registered Professional Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

KEELY BOSLER
Department of Finance, Director
(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

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member
Local Agency Member

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COMMISSION STAFF

HEATHER A. HALSEY
Executive Director

HEIDI PALCHIK
Assistant Executive Director

RAJ DIXIT
Senior Commission 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

MATTHEW B. JONES
Senior Commission Counsel

KERRY ORTMAN
Program Analyst

CAMILLE N. SHELTON
Chief Legal Counsel

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PUBLIC PARTICIPANTS

DILLON GIBBONS
California Special Districts Association

CHRIS HILL
California Department of Finance

KEVIN HUNT
Claimant Central Basin Municipal Water District

RAYMOND PALMUCCI
Claimant City of San Diego

DAVID RICE
California State Water Resources Control Board

KURT SOUZA
California State Water Resources Control Board

TOM ZELENY
Claimant City of San Diego

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SACRAMENTO, CALIFORNIA

FRIDAY, MARCH 22, 2019, 10:01 A.M.

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CHAIRPERSON BOSLER: Good morning, everyone.

Welcome. The meeting on the commission -- the Commission on State Mandates will come to order.

First, I just have a few housekeeping items that our staff have put together for me. On that table -- on the table in the back of the room there are copies of the meeting notice, agenda, new filings, witness lists, and the electronic and public hearing record is also located on your laptop.

At the witness table, the claimant and local agency interested parties sit to the left, and state agency parties and interested parties sit to the right.

The restrooms are located down the hall, near the north entrance of the building. Finally, please take a note of all the emergency exits in the room. Very thorough. I assume a lot of you have been here before, but I haven't.

First I will have the roll call.

Where is Heather? Where's Heather? Hello.

MS. HALSEY: Mr. Adams.

MEMBER ADAMS: Here.

MS. HALSEY: Ms. Bosler.

1 CHAIRPERSON BOSLER: Here.

2 MS. HALSEY: Mr. Hariri.

3 MEMBER HARIRI: Here.

4 MS. HALSEY: Ms. Lee.

5 MEMBER LEE: Here.

6 MS. HALSEY: Ms. Olsen.

7 MEMBER OLSEN: Here.

8 MS. HALSEY: Ms. Ramirez.

9 MEMBER RAMIREZ: Here.

10 MS. HALSEY: Ms. Stowers.

11 MEMBER STOWERS: Here.

12 CHAIRPERSON BOSLER: First we will deal with
13 the minutes.

14 Are there any objections to or corrections of
15 the November 30, 2018, minutes? We have two sets of
16 minutes to document here tonight -- today -- this
17 morning.

18 MEMBER RAMIREZ: I would like to abstain as I
19 wasn't present.

20 MEMBER LEE: I would also like to abstain from
21 the November 30th meeting.

22 MEMBER OLSEN: And if you don't me, I should
23 also, because I wasn't here. But if you do need me to
24 vote, I am perfectly happy to vote.

25 MS. HALSEY: We just need four so...

1 CHAIRPERSON BOSLER: Is there a motion?

2 MEMBER ADAMS: I so move on both.

3 MEMBER HARIRI: Second.

4 CHAIRPERSON BOSLER: And a second. Thank you.

5 We have a motion and a second for the adoption.

6 All those in favor of adopting the minutes, say

7 "aye."

8 (Ayes)

9 CHAIRPERSON BOSLER: Minutes are approved.

10 So the next item is the January 25th, 2019,

11 minutes.

12 Are there any objections to or corrections to

13 those minutes?

14 MEMBER OLSEN: And, again, I will abstain.

15 MEMBER RAMIREZ: Same here.

16 CHAIRPERSON BOSLER: Okay.

17 MEMBER ADAMS: I would move those in.

18 MEMBER STOWERS: Second.

19 CHAIRPERSON BOSLER: Okay. Thank you. We have

20 a motion and a second.

21 All those in favor of adopting the minutes,

22 signify by saying "aye."

23 (Ayes)

24 CHAIRPERSON BOSLER: Minutes are adopted.

25 MS. HALSEY: And now we will take up public

1 comment for matters that are not on the agenda. Please
2 note that the Commission cannot take action on items not
3 on the agenda. However, it can schedule issues raised
4 by the public for consideration at future meetings.

5 MR. GIBBONS: I will come back up. This is for
6 something that's not on the agenda.

7 Chair, Members of the Commission, Dillon
8 Gibbons with the California Special Districts
9 Association. I will make this very, very brief.

10 I was grateful to see that the website had been
11 updated with all the current members of the Commission,
12 but I would also encourage this Commission to update the
13 website to also list the designees of the commission
14 members. Those are very difficult and challenging to
15 find and, yet, they are regularly attending the
16 hearings.

17 And that is it. Thank you very much.

18 CHAIRPERSON BOSLER: Thank you.

19 Are there any other comments? All right.

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

21 CHAIRPERSON BOSLER: This is just a cost
22 estimate.

23 Is there any questions on the consent?

24 MEMBER OLSEN: I will move the consent
25 calendar.

1 CHAIRPERSON BOSLER: Do I have a second?

2 MEMBER RAMIREZ: Second.

3 CHAIRPERSON BOSLER: Second. And we have a
4 motion and a second.

5 All those in favor, say "aye."

6 (Ayes)

7 CHAIRPERSON BOSLER: Motion passes.

8 MS. HALSEY: Let's move to the Article 7
9 portion of the hearing.

10 Will the parties and witnesses for Items 4 and
11 5 please stand.

12 (Parties/witnesses stood to be
13 sworn or affirmed.)

14 MS. HALSEY: Item 3 is reserved for appeals of
15 Executive Director decisions, and there are no appeals
16 to consider for this hearing.

17 Moving on to Item 5, we are taking this item up
18 first to accommodate a witness who needs to make a
19 flight.

20 Senior Commission Counsel Matt Jones will
21 present Item 5, a test claim on lead sampling in
22 schools.

23 MR. JONES: Good morning. This test claim
24 alleges new state mandated activities and costs arising
25 from an amendment to the City of San Diego's water

1 system permit, adopted by the State Water Resources
2 Control Board.

3 The staff finds that the activities required by
4 the order are new as compared against prior state and
5 federal law, but the requirements of the test claim
6 order do not impose a new program or higher level of
7 service within the meaning of Article XIII.B.6.

8 Therefore, staff recommends denying the test
9 claim, and staff further recommends that the Commission
10 instruct staff to make any technical, nonsubstantive
11 changes to the decision after the hearing.

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

14 MR. PALMUCCI: Raymond Palmucci for Claimant,
15 City of San Diego.

16 MR. ZELENY: Tom Zeleny, Deputy City Attorney,
17 City of San Diego.

18 MR. SOUZA: Kurt Souza with the Division of
19 Drinking Water, State Water Resources Control Board.

20 MR. RICE: David Rice. Office of Chief Counsel
21 for the State Water Resources Control Board.

22 Mr. Palmucci is the first witness.

23 MR. ZELENY: Sorry, just a minute. I am trying
24 to find something.

25 CHAIRPERSON BOSLER: Oh, no worries. Sorry.

1 Sorry. That's okay.

2 MR. ZELENY: I didn't realize we had a request
3 in to go first.

4 CHAIRPERSON BOSLER: Sorry. No worries. Take
5 your time.

6 MR. ZELENY: First of all, again, Tom Zeleny,
7 Deputy City Attorney. To my left is Deputy City
8 Attorney Ray Palmucci.

9 Thank you for accommodating us for this
10 PowerPoint presentation. I've never appeared before the
11 Commission before. I don't know what your regular room
12 is like. It's very nice.

13 CHAIRPERSON BOSLER: This is my first time here
14 too.

15 MR. ZELENY: I do appreciate that.

16 Okay. Am I on?

17 CHAIRPERSON BOSLER: Yes.

18 MR. ZELENY: Thank you very much.

19 All right. Who are we? We are the City of San
20 Diego. We're a charter city, a little bit south of
21 here. We've been a municipal water agency since 1901,
22 all, maybe, 3 or 4 thousand residents we had at the
23 time, on a ballot initiative voted for the City to go
24 issue bonds and take over the local water distribution
25 supply, and we have been a municipal water agency ever

1 since. We've grown a little bit since then; we're now
2 serving water to about 1.3 million residents, and we
3 distribute our potable water pursuant to a permit from
4 the State Water Resources Control Board.

5 The proposed decision that you have in front of
6 you today is asking you to do a couple of things that I
7 don't think you have ever done before. Again, I've
8 never been here, but I've gone through as many of your
9 opinions as I could find.

10 And from what I can tell, this is the first
11 time you are going to be asked to deny a test claim on
12 the basis that the function a city is providing is a
13 proprietary function and not a governmental function.
14 As far as I can tell, this is also the first time you
15 are going to be asked to decide that a service that a
16 city is being ordered to provide for free is not a state
17 mandate. I have not seen that issue come up before this
18 Commission before as well.

19 Something else I noticed -- I don't know how
20 long many of you have been on this Commission, but there
21 is a pending appeal on a Commission decision involving
22 the Paradise Irrigation District.

23 In that opinion, the test claim was denied
24 because of the fact that the Paradise Irrigation
25 District couldn't charge fees for its service. What the

1 water agency in that case is arguing is that there's a
2 provision in Proposition 218, a procedural requirement,
3 to make sure you don't have a majority protest from your
4 rate payers in order to implement a rate increase. And
5 so the issue in that case is whether or not the
6 procedural provisions of Proposition 218 are a barrier
7 to the fees provision, thereby making them eligible to
8 seek reimbursement from this Commission.

9 That is not us. And I wanted to bring that up
10 very clearly. We are not claiming that there's any
11 procedural barrier in the constitution to us raising
12 fees at all.

13 What our issue is, and the reason we are here
14 before you today is, we do have fee authority. We do
15 not have fee authority in this case because the permit
16 amendment we were issued specifically says, we are not
17 allowed to charge for our services.

18 And I will get to a little bit more about that
19 later. It's a substantive, not a procedural,
20 requirement of Proposition 218 that forces the city, in
21 order to comply with both the permit and the
22 constitution, to spend our taxpayer money, subject to
23 the Gann Limit, and that is why we are here.

24 This started with a senate bill maybe three or
25 four years ago, Senate Bill 334. What that bill did is,

1 apparently, currently in the Education Code, there's a
2 requirement that schools provide clean drinking water to
3 their students or -- this is what I thought was
4 interesting -- or pass a resolution saying they don't
5 have the ability to do so.

6 Okay?

7 Well, what this Senate Bill would have done is
8 it got rid of that "or." It simply said, you have to
9 provide clean drinking water to your students for free
10 during lunchtime.

11 The bill indicated that it would impose a state
12 mandated local program on the schools. It passed both
13 houses. It went to former Governor Brown, and he vetoed
14 it. His veto message was that this would impose a state
15 mandate of potentially unknown quantity, unknown
16 magnitude. So he vetoed it. And instead, he directed
17 the State Water Resources Control Board to make the
18 local water agencies do it instead. That's important,
19 and I will touch back on that again later.

20 We got a permit amendment pursuant to the
21 mayor's veto order. It ordered the City -- well, I
22 shouldn't say just the City. Everybody who had a
23 kindergarten through 12th grade school in their service
24 area was issued a permit amendment that said, you are
25 now going to do lead testing at any K through 12 school

1 in your service area at their request, and that you are
2 going to do it for free.

3 It became effective on January 18th, 2017, and
4 we received it five days later.

5 It was announced with some fanfare. The
6 Department of Education announced to everybody that
7 there was a new state program that now you can get free
8 lead testing in your drinking water.

9 The State Water Resources Control Board did the
10 same thing: More free lead testing under a new
11 initiative announced by the State Water Resources
12 Control Board.

13 The impact that had on us: We got 255 requests
14 from schools in our service area in the first year. The
15 State Water Resources Control Board used to have a
16 little map on their website, which showed where the
17 requests were coming from. And at one point, the City
18 of San Diego, we had more requests for lead testing than
19 the rest of the state combined.

20 So we went out. We did all of those lead
21 testing.

22 The limits established in the permit amendment
23 had a trigger threshold of 15 parts per billion. We did
24 find that at four different schools. One of the schools
25 vacated the premises. The other three took their own

1 action. They got rid of the source of the lead. And we
2 haven't found issues with city water pursuant to all
3 this lead testing.

4 Okay. If the permit amendment had simply said,
5 go do your lead testing at the request of these K
6 through 12 schools, we would not be here today. We have
7 the authority to charge fees for the services we
8 provided, and if we got a request from a school, we
9 said, yes, we will do it. We have to do it. And then
10 here is what it costs.

11 And under Proposition 26, we would be limited
12 to charging what it actually cost us to provide them
13 that service. We would have had no problem.

14 The problem we created, or that was created,
15 was to mandate that the services be provided for free.

16 The substantive, as opposed to procedural,
17 provisions of Proposition 218 say, you cannot charge a
18 property owner more than the cost to provide the water
19 service to that property owner.

20 So if we use our ratepayer money to offset
21 services provided to another customer for free, that's a
22 violation of Proposition 218. So Proposition 218, the
23 constitution, prohibits us from paying for services
24 provided for free for one customer, using ratepayer
25 provided -- money provided by another.

1 In order to comply with both the permit
2 amendment, which requires free services, and the
3 constitution, which prohibits one customer subsidizing
4 another one, the only way to comply with both is to use
5 our taxpayer revenue and backfill the money that we have
6 spent on the lead testing provided at the request for
7 schools.

8 Those of you who have been on this Commission,
9 probably more than one meeting, you have probably
10 already seen this. This is the two-part test as to what
11 programs constitute a reimbursable state mandate.

12 The first part of the test seems to focus on
13 the program: Is the program a governmental function
14 providing services to the public?

15 The second one seems to focus on, who is
16 providing it? Is it being posed -- is the program to
17 implement a state policy being imposed, you know, on the
18 government only, or is it being provide -- being imposed
19 on everybody in the state?

20 That's from a California Supreme Court opinion.

21 The second one is a little unfortunate because
22 it seems like there's a lot of gray area in the middle.
23 It can be imposed -- there's something allowed in
24 between, between imposing it only on local government or
25 on the entire public. It seems like you impose it on

1 some of the government, some of the public, and fall
2 between the cracks of that second test. But that's just
3 my only personal commentary, but that is our California
4 Supreme Court, and they are a lot smarter than I am.

5 The proposed decision you have in front of you
6 today, it indicates that our test claim, the situation
7 you have in front of you today, most closely resembles a
8 prior court opinion known as County of Los Angeles II.
9 Involved in that case were state regulations regarding
10 elevator safety, to, you know -- to improve them, to
11 make sure they can withstand, you know, regular safety
12 things, earthquake events, and stuff like that.

13 So that was issued. And it was applicable to,
14 you know, everybody who has elevators. So everybody,
15 pursuant to that mandate from the state, had to upgrade
16 their own elevators.

17 That's not what's happening here.

18 If our -- if the state board had actually asked
19 us or asked everybody to go test their own water, their
20 own fixtures, and their own buildings for lead, then
21 this case would be analogous to us. If the order had
22 simply been, City, check all your buildings for lead;
23 schools, you check all your buildings for lead;
24 everybody in the private sector, check your own
25 buildings for lead, that would be the same as the County

1 of Los Angeles II case.

2 So we believe that's the fault with the
3 proposed decision because that is not us. We were
4 actually directed not to test our own -- our own
5 buildings, but to go test somebody else's buildings, at
6 their request. When they send us a letter or they send
7 us an e-mail saying, "We would like our free lead
8 testing," we go out to their property, their private
9 property, and then test for leads. That is a public --
10 a public service. You call somebody up, we go to your
11 property, we provide a service. Ordinarily, we charge,
12 but we're not allowed to charge under the permit
13 amendment.

14 So we submit the County of Los Angeles II case
15 is not analogous because not everybody is being ordered
16 to test their own buildings for lead. We're testing
17 other people's buildings for lead, at their request.

18 There are other opinions out there that talk
19 about, again, things that were public services
20 applicable to the general public at large. There were
21 three other cases: One involved unemployment insurance,
22 that the local agency had to apply -- had to provide
23 unemployment insurance for their employees; and the two
24 others had to do with workers' compensation and
25 benefits.

1 Again, those just increase, essentially, the
2 overhead of providing the service you are already
3 providing. It just makes having employees a little bit
4 more expensive, and it applied to everybody.

5 Again, those cases are not like this one
6 either, because that's not what we're doing; we're not
7 giving, you know, city employees raises. We're not
8 mandated to do that. We're mandated to go out and
9 provide services to somebody else. It's a new service.
10 So the cases in the proposed decision that talk about
11 County of Los Angeles II and those other cases, those
12 are not analogous to what we have here today.

13 The proposed decision, in support of that
14 analysis, points to a line of cases that -- they start
15 over a hundred years ago, and ended maybe roughly 50
16 years ago -- that make a distinction between water
17 service as a governmental function, or water service as
18 a proprietary function.

19 A long time ago, before the Tort Claims Act was
20 passed by the Legislature about 50 years ago, if a local
21 agency was out doing something that was considered to be
22 a business, it no longer got the certain immunities from
23 liability that would have us performing a governmental
24 function.

25 So if somebody had a personal injury, and it

1 was somehow related to, maybe -- maybe a police activity
2 or something like that, it wasn't considered a
3 governmental function and certain immunities from
4 liability were triggered from that.

5 But if you are acting in the marketplace like a
6 business, then the law said, you are not treated
7 differently, you are treated like everybody else, and
8 they called that a proprietary function.

9 So there are -- there's a line of cases that's
10 relied on by the proposed decision that talks about
11 water service being a proprietary function and,
12 therefore, not a governmental function.

13 And the argument in the proposed decision is
14 that water service is a business, and as a business,
15 it's not a governmental function. Therefore, you don't
16 meet the program test to be a state mandate in front of
17 this Commission.

18 The proposed decision points out that, well,
19 there's a lot of private businesses out there providing
20 essentially public water service. You don't have to be
21 a public agency to provide public water service. You
22 can be privately owned. And as you can see by those
23 numbers up there, there's a lot of them. But to be a
24 private water provider, under the auspices of the State
25 Water Resources Control Board's regulation, all you have

1 to do is you have to have 15 connections and 25
2 customers. And there's a lot of small ones out there.

3 But the only ones -- only about a third -- my
4 recollection is, in the draft proposed decision, of all
5 the agencies that actually have K-12 schools within
6 their service areas, about one-third are privately owned
7 and two-thirds are publicly owned, so that the agencies
8 subject to -- or the water agencies subject to this
9 order, two-thirds of them were public agencies.

10 Perhaps, more importantly, 81 percent of the
11 residents in the state of California who get potable
12 water service get it from a governmental agency. So we
13 may be outnumbered, but we're a heck of a lot bigger.

14 Also, another note, the propriety versus
15 governmental distinction, it was actually abolished by
16 the Legislature via the Torts Claim Act, and there are
17 court opinions out there, as recently as 1997, that says
18 trying to distinguish between proprietary and
19 governmental functions is almost unworkable.

20 I did a lot of digging. The highest Supreme
21 Court -- the highest court in the land, U.S. Supreme
22 Court, actually did an analysis specifically with
23 municipal water service and whether or not it is a
24 governmental function. And I've got a little bit of a
25 quote up there, but it's actually so important I want to

1 read it to you, because the opinions in the draft
2 proposed decision -- I'm sorry, the proposed decision
3 that talk about water being a proprietary function, the
4 extent of their analysis is, well, private businesses do
5 it too. That is the entire rationale of why, under
6 state law from a hundred years ago, that water service
7 is a proprietary function. It's because the private
8 sector does it too. It didn't look at the actual nature
9 and the function of the water service itself.

10 I'm reading now from the U.S. Supreme Court:
11 (As read), "We conclude that the acquisition and
12 distribution of a supply of water for the needs of the
13 modern city involve the exercise of essential
14 governmental functions. And this conclusion is
15 fortified by the consideration of the public uses to
16 which the water is put. Without such a supply, public
17 schools, public sewers, so necessary to preserve health,
18 fire departments, street-sprinkling and cleaning, public
19 buildings, parks, playgrounds, and public baths could
20 not exist. And this is equivalent, in a very real sense,
21 to say that the city itself would then disappear.

22 "More than one-fourth of the water furnished by
23 the City of the New York, we are told by the record, is
24 utilized for these public purposes. Certainly, the
25 maintenance of public schools, a fire department, a

1 system of sewers, parks, and public buildings, to say
2 nothing of other public facilities and uses calls for
3 the exercise of governmental functions. And so far as
4 these are concerned, the water supply is a necessary
5 auxiliary and, therefore, partakes of their nature.

6 "Moreover, the health and comfort of the City's
7 population of 7 million souls, and, in some degree,
8 their very existence, are dependent upon an adequate
9 supply of pure and wholesome water.

10 "It may be suggested -- it may be, as it is
11 suggested, that private corporations would be able and
12 willing to undertake to provide a supply of water for
13 all purposes, but if the State and City of New York be
14 of the opinion, as they evidently are, that the service
15 should not be entrusted to private hands, but should be
16 rendered by the City itself, as an appropriate means of
17 discharging its duty to protect the health, safety, and
18 lives of its inhabitants, we do not doubt that it may do
19 so in the exercise of its essential governmental
20 functions."

21 That is the best analysis of what is the nature
22 of water service that I have ever seen.

23 The court opinions that are relied on in the
24 draft proposed -- in the proposed decision simply say,
25 well, private business does it too, so, therefore, it's

1 a proprietary function.

2 In this opinion, the Supreme Court actually
3 went on to discuss the fact that many state -- many
4 state courts view water service as a proprietary
5 function. But what the court said is, that is a rule
6 that developed in the realm of personal injury, and it
7 was done so to avoid the injustices from technical
8 governmental defenses, and they specifically limited
9 that proprietary rule to the realm of torts and did not
10 expand it beyond that.

11 What's also important about this U.S. Supreme
12 Court opinion is, it's actually done in the context of
13 taxes. The federal government could not tax state
14 operations that were governmental functions, but they
15 could tax state operations that were proprietary
16 functions. So it was the same test, but in the realm of
17 taxes, which I submit is actually closer to what we're
18 dealing with today, because Proposition 4 that created
19 the laws on state mandates was done as part of
20 limitations on the spendings of tax money. So this is
21 actually a lot quarter -- a lot closer than bringing in
22 a proprietary rule that rests in the realm of personal
23 injury.

24 We also have opinion from the California
25 Supreme Court specific to us, specific to the City of

1 San Diego. San Diego has assuming rights from the
2 Pueblo; we have rights in the river.

3 What happened in that California Supreme Court
4 case is a water company, a private water company,
5 upstream of us started taking the water. We said, "Hey,
6 hey. Wait a minute. That's our water." And so we went
7 to court over that.

8 And an argument was made that, well, this is a
9 proprietary function. We're here first. We're the
10 Cuyamaca Water Company. It's -- the City is just acting
11 as a business, and it's ours. And the California
12 Supreme Court said specifically that when we are
13 securing our water rights, we are acting in a
14 governmental capacity, and the term "proprietary" had no
15 application to this situation.

16 If you adopt the proposed decision you have
17 today, we're going to be in a very strange situation
18 where, when the City is out securing its water rights,
19 it's acting as a governmental agency and a governmental
20 capacity. But when we distribute that water to our
21 customers, we're somehow transitioning to a proprietary
22 function. That doesn't make sense.

23 More on the issue of private companies
24 precluding -- function from being functioning. The
25 purpose of this slide is just simply to point out just

1 because the private sector does it, it doesn't mean it's
2 not a governmental function. For example, the private
3 industry is out there operating prisons. Operating
4 prisons is still a governmental function, despite the
5 fact that private industry also does that function.

6 Trash collection is another one. Trash
7 collection is an established governmental function even
8 though there are private trash collectors out there
9 doing the same thing.

10 CHAIRPERSON BOSLER: Are you going to make
11 another point?

12 I just think we -- this is -- this is a big
13 issue and it's one that's -- that's pretty well tested
14 in this body. I get your point, but I think that the
15 whole issue is -- I mean, we -- we're not going to make
16 a decision to upend and say, all water districts are now
17 government service. That's not going to happen today.

18 So I don't know if you want to just move on to
19 your next point. That's -- I think it's -- he's just
20 made the point for now, like, ten minutes. So I mean,
21 I'm happy to keep hearing it --

22 MR. ZELENY: I've only got two sides left.

23 CHAIRPERSON BOSLER: Okay. Okay.

24 MR. ZELENY: But I do want to point out that
25 they're --

1 MEMBER OLSEN: I actually would like to have
2 him finish.

3 MR. ZELENY: There is nothing out there that
4 says that -- other than the realm of torts that
5 establishes the -- a proprietary exception to a
6 governmental function. That's never been in front of
7 this body.

8 And, actually, it's good timing because I
9 actually am shifting gears a little bit right now.

10 CHAIRPERSON BOSLER: Great. Perfect.

11 MR. ZELENY: It's actually good timing.

12 CHAIRPERSON BOSLER: We're -- we're in sync
13 then.

14 MR. ZELENY: You actually looked ahead, I
15 think.

16 I think I have only got two slides left.

17 CHAIRPERSON BOSLER: Okay.

18 MR. ZELENY: The proposed decision, in order to
19 take advantage of a proprietary function argument has
20 to -- it has to categorize what we're doing as actually
21 a water service. And I submit to you, that's actually
22 not what we're doing.

23 The order we were told to do is to go on to
24 private property and test for lead. Just because our
25 water department is capable of doing it does not

1 necessarily make it a water service.

2 And an example I use is one that I put in my
3 papers, which is, our water department also provides
4 park and rec services. We have boating on our
5 reservoirs; we have fishing; we maintain hiking trails
6 on our open space. That's not a water service. Yes, it
7 is provided by the water utility, but it is not a water
8 service. This would fall under the same bucket, so to
9 speak. We are out there performing lead testing on
10 school property. That's not something that's the
11 exclusive purview of water service. There is private
12 industry out there. There are private companies out
13 there that do the very same thing. And there's a lot of
14 water agencies that don't have labs, that can't test for
15 this stuff. They went to the private sector and they
16 had them go do this.

17 So when this is characterized as water service,
18 I think that's taking it too far out. This is really
19 just a service being provided on private property, that
20 the public sector is able to do, but we were ordered to
21 do it and do it for free.

22 And I note there that, you know, building
23 inspections -- there's nothing out there that says
24 specifically testing for lead on private property is
25 governmental or not. But building inspections on

1 private property, that's kind of close. That's
2 established to be a governmental function.

3 And maybe, more importantly, protecting the
4 health of children is a governmental function.
5 Protecting the health of students is a governmental
6 function. And what the city has been ordered to do is
7 what the school district had been told it was going to
8 have to do earlier, which is, test the water to protect
9 the kids. So the function the City is providing through
10 lead testing is protecting the health and safety of
11 children and students in our schools, and that is an
12 established governmental function.

13 The purpose of state mandates law -- again,
14 going to back to the California Supreme Court -- it was
15 to prevent the state from shifting the fiscal
16 responsibilities for programs that it wanted on to local
17 agencies to have to provide it.

18 This was in the original Senate Bill
19 established as a -- as a -- as a state mandate on a
20 local agency, on the schools, who are going to have to
21 go and test their water for lead. If you adopt the
22 proposed decision, what it does is it invalidates the
23 State Water Resources Control Board's approach and says,
24 if it was a -- if it was going to be a state mandate for
25 that local agency, somehow we can shift the very same

1 obligation to another local agency, and it loses the
2 nature of being a governmental function. I submit to
3 you that it does not. That if it's a governmental
4 function of a school does it, if you simply take the
5 obligation and move it to another local agency, it
6 should not lose the nature of being a governmental
7 function.

8 I'm done. Thank you very much.

9 We're available for questions.

10 CHAIRPERSON BOSLER: Thank you. Thank you for
11 your very thorough -- very thorough presentation. Thank
12 you.

13 Do you guys -- do you want to -- though -- now
14 it's the Water Board's turn? So yeah. Because I want
15 to hear more about the regulatory scheme in which water
16 is regulated, including under the safe drinking water.

17 MR. RICE: Sure. I don't have any prepared
18 testimony.

19 CHAIRPERSON BOSLER: Okay.

20 MR. RICE: So if you would like to ask
21 questions of myself, again, I'm David Rice.

22 CHAIRPERSON BOSLER: Yeah. So one question I
23 have is, I know that the federal government requires
24 compliance with -- and the Water Board carries that out
25 on behalf of the federal government compliance with safe

1 drinking water standards around lead.

2 And I wanted to understand how that is -- is --
3 how that is -- is -- actually happens on the ground, in
4 local jurisdictions.

5 MR. SOUZA: How they actually do the sampling?

6 CHAIRPERSON BOSLER: Not -- not the technical.
7 But I know you do sampling, that sampling has been done
8 for many, many --

9 MR. SOUZA: Right.

10 CHAIRPERSON BOSLER: Decades. Not you, but the
11 water agencies on behalf of -- yeah.

12 MR. SOUZA: So the water agencies are required
13 to sample. Their -- their system, which is actually on
14 private property. So the homes, they have to pick a
15 number of homes. They are a large city, so it started
16 with a hundred and they reduced down to 50. And they
17 are supposed to pick in what is considered a high risk
18 home. It was built in this certain time, in the '80s,
19 when they used lead solder and stuff. So those samples
20 are collected, they are analyzed, and if they are too
21 high, they have to do additional corrosion control, and
22 they have done that for 25 years.

23 CHAIRPERSON BOSLER: And this -- this new
24 action by the Water Board was basically to include
25 schools, because, traditionally, it's just been homes.

1 MR. SOUZA: Right. So you -- it's specific
2 that they have to do homes in the rule.

3 Because it is specific in the federal rule,
4 they couldn't use this testing as part of the lead and
5 copper rule compliance, but it's more or less an
6 extension of that, where they sampled at schools to see
7 if the schools, you know, had an issue as well as their
8 homes.

9 CHAIRPERSON BOSLER: Are there questions from
10 the committee? From the public?

11 MEMBER OLSEN: So I would like commission staff
12 to discuss a little bit on -- you know, you do talk in
13 the proposed decision about preponderance of
14 governmental function.

15 And, you know, I think some of the evidence
16 suggests that there is sort of a preponderance of a
17 governmental function here. And I just want to know,
18 what -- what is the test for preponderance?

19 MR. JONES: So the -- the recommendation you
20 have in front of you is essentially that the courts of
21 this state have defined "governmental function" to
22 include generally education, police, and fire. We don't
23 really have any guidance further than that on what else
24 might be considered within that universe of a
25 governmental function, where a new state program or

1 state requirement that tacks on to that would be then
2 considered a new program or higher level of service for
3 mandates purpose.

4 So both the State Water Board and the claimants
5 have sought these analogies from other bodies of law,
6 and one of them that you heard a lot about is the
7 proprietary versus governmental test, which does have
8 its origins in tort law.

9 The recommendation before you is not to rely on
10 that distinction. In fact, I would turn your attention
11 to page 61 of the proposed decision, where the -- the
12 finding is actually stated at the end of a section
13 describing the existing case law. (As read), "The
14 Commission finds that the case law interpreting new
15 program or higher level of service does not support a
16 finding that the provision of drinking water through the
17 operation of a public water system is an essential or
18 peculiarly governmental function."

19 And then you will find that after that, in the
20 next several pages, is where we begin discussing these
21 other analogies and these other concepts in law that
22 we're bringing in to either support or disclaim water
23 service as being a proprietary -- or, excuse me, as
24 being a governmental function. And the proprietary
25 versus governmental distinction finds -- we -- the

1 recommendation before you finds that it supports the
2 Water Board's position, and it supports a finding that
3 water service is not governmental in nature.

4 And as the Claimant has pointed out, of course
5 part of that is that there are a substantial number of
6 entities that are affected by this, that are private
7 entities, and that it's hard to disconnect those two --
8 those two concepts.

9 The unique to government test, and, in this
10 case, the governmental function test, are somewhat
11 related in that nature. It's hard to disaggregate those
12 two.

13 MEMBER OLSEN: Yeah. My -- my concern here is
14 that two-thirds of -- let's see if I can say this
15 correctly: Two-thirds of the water districts that
16 provide water to -- that have school districts in their
17 service area are public water districts. And I don't
18 mean to be too simplistic here, but two-thirds is a
19 supermajority in the House for passage of anything.

20 So it seems, to me, that that suggests a
21 preponderance test, and that's why I am -- that's why I
22 am focusing on this. You know, you can have private
23 entities providing a service, but if it's overwhelmingly
24 public in nature, then it's a public service.

25 MS. SHELTON: Can I just, one, address --

1 there's no preponderance of the evidence test with
2 mandates. This is all a question of law. So you have
3 to make the determination, as to matter of law, whether
4 this is a new program or a higher level of service.

5 What the state board has done is put into the
6 record the numbers of how many private-public water
7 suppliers there are, how many local agency public water
8 suppliers there are. Based -- and based on that
9 information, you can make your legal determination of
10 what constitutes a new program or higher level of
11 service.

12 MEMBER OLSEN: Right.

13 MS. SHELTON: Right.

14 MR. JONES: I think the point Camille is making
15 is that the numbers actually aren't relevant. It's the
16 question of whether it's a governmental service.

17 MS. HALSEY: And on -- the numbers really go in
18 the unique question; is it unique to government or not.
19 And it's -- everyone agrees that it's not unique to
20 government, so now we're really focused, is this a
21 peculiarly governmental function, as a core -- core --
22 or core governmental function.

23 MEMBER OLSEN: Right.

24 And I guess the peculiarly governmental
25 function suggests to me that there is -- you know,

1 peculiarly can be exclusively, but that's not what we're
2 talking about. We're talking about peculiarly. Okay?
3 And that's why I'm -- that's why I'm focused on this.
4 Because it seems to me that the decision really rides --
5 that our ability to have a difference of opinion here
6 rides on that.

7 MS. SHELTON: That's one way to look at it.

8 So with a -- with the mandate cases dealing
9 with education, for example, the courts have
10 acknowledged that there certainly are private schools in
11 the state of California, right? It's still an essential
12 governmental function because the right to education is
13 in the constitution. Okay.

14 Here we have, in the constitution, the
15 authority provided to private companies and to public
16 agencies to provide water. It's authority and not a
17 duty. There's no duty anywhere.

18 MS. HALSEY: And the history of that is, it
19 used to be a purely private function, and escaped clear
20 authority for government to also provide that service.

21 CHAIRPERSON BOSLER: Yes. Mr. Adams.

22 MEMBER ADAMS: Madam Chair, just on that
23 thought, where if a part of the City -- or, excuse me,
24 County of San Diego decided to go into the water
25 business in 1901, they opted in; is that correct?

1 MR. ZELENY: Yes, we did. The City of San
2 Diego.

3 MEMBER ADAMS: The City of San Diego.

4 So you are in. Could you opt out? Are you
5 mandated to continue this function?

6 MR. ZELENY: Mandated by our city charter, yes.
7 Mandated by state law, no. Mandated by contract, yes.
8 We have issued a substantial amount of debt. If we were
9 to, like, stop operating our water system with a vote of
10 25 percent of our outstanding bondholders, we would be
11 ordered to repay approximately \$890 million immediately.
12 So there is no getting out of the game at this point.
13 There is no practical way out of -- of us being a water
14 system anymore.

15 MEMBER ADAMS: Okay. Thank you.

16 Sort of be careful what you wish for. Thank
17 you.

18 MEMBER RAMIREZ: I have a -- more of a comment
19 than a question.

20 I think this is a -- very frustrating,
21 particularly to the public, because state mandate law is
22 so exact. And many times in the past, I have seen
23 members of the public, litigants, claimants, become very
24 frustrated, because, really, what it seems to me, just
25 as an irrelevant aside, is, we need a change in

1 legislation, and budgeting that would help.

2 I know my City of Oxnard and our county really
3 struggles over water issues.

4 But we're not a political process here. We're
5 a legal process. And -- and I feel for you, seriously.

6 CHAIRPERSON BOSLER: Yeah. I --

7 MEMBER RAMIREZ: And I have visited San Diego
8 Water Facility, where you can actually drink recycled
9 water. And I congratulate the City. I survived.

10 (Laughter)

11 CHAIRPERSON BOSLER: Wonderful. Yeah. I
12 associate my comments with yours as well.

13 Yes.

14 MEMBER HARIRI: I have a question.

15 CHAIRPERSON BOSLER: Yes. Absolutely.

16 MEMBER HARIRI: Regardless of whether the
17 service is a governmental function or not, there's
18 something else in my mind here.

19 It is the responsibility of the school systems
20 to provide water to its students, correct? And is it
21 the responsibility of the school districts and system to
22 ensure that the quality of water is safe and drinkable
23 by our students? And if that's -- if that's yes, then
24 the requirement to test this water is the responsibility
25 and the burden of the school system.

1 In that case, shouldn't the school system owe
2 the money to the City of San Diego?

3 MR. ZELENY: Yeah. I mean, that's kind of our
4 point, is, it's the school district's responsibility.
5 But if the State ordered the school to do more, it would
6 have created a state mandate that the state would have
7 had to pay for.

8 So to get around that, they are ordering the
9 water utility to do it, for which normally we could
10 charge a fee. But if we charge them a fee, then the
11 school would have the same claim against the state
12 today, and it would be the school district sitting here,
13 instead of me. That's why they ordered us to provide it
14 for free, and that's what the key is, is that we're
15 being ordered to provide a service for free.

16 And there's even language in the -- in this
17 proposed decision that speaks to free services being a
18 governmental function.

19 It's on page 12, where it says, (as read),
20 "Providing water service for a fee, traditionally a
21 proprietary function, to ratepayers is far different
22 than a city or county providing police or fire
23 protection or a school district providing a free and
24 appropriate public education to all residents of the
25 jurisdiction, regardless of their ability to pay."

1 And that's what City of San Diego is doing, is
2 we're being ordered to provide free services regardless
3 of the ability to pay -- for the school districts to
4 pay.

5 So there's even language in the proposed
6 decision that suggests, the fact that we're being
7 ordered to do this for free makes this a state mandate
8 and a governmental function, because it's not a
9 proprietary function to provide free services.

10 I think that gets to your point. If not,
11 please ask again. I've got all day.

12 CHAIRPERSON BOSLER: It's interesting.

13 MEMBER HARIRI: My mind is seeing that it is
14 really the responsibility of the school system to ensure
15 the safe quality of the drinking water.

16 I -- I don't see it as an added burden or a
17 mandated service. They go hand in hand. You provide
18 water to your schools, to your -- to your children. You
19 have to make sure that this water is safe and drinkable.

20 MR. ZELENY: Our system ends at the water
21 meter. We don't know what goes in on the other side,
22 how old the school facilities are.

23 So our water ends at the meter. And then where
24 the lead comes in is through old fixtures, old pipes
25 that may exist after that.

1 We clean up our system, but at the meter, it
2 ends, and now you are on school property, and that's a
3 school water system; it's not ours anymore. So from the
4 meter to the tap, that's where we found the issues at
5 four schools. And the schools, on their own property,
6 managed to locate and fix themselves.

7 It's the Education Code that provides that it's
8 a mandate for the schools to provide free and clean
9 drinking water, I believe, during lunch hours.

10 MEMBER HARIRI: Now, if the school were sitting
11 here, would they be entitled to a reimbursement?

12 MR. ZELENY: If -- if -- if the Senate Bill had
13 gone through, that wasn't vetoed by the Governor, then,
14 yes, the school district would be here, and they, in my
15 opinion, would be entitled to reimbursement.

16 And so how does that change when they simply
17 take the same obligation and transfer it to another
18 local agency? That's one of our points.

19 MEMBER HARIRI: Thank you.

20 MS. SHELTON: I was just going to say, except
21 for the permit does acknowledge the existing duties on
22 the school district by putting the burden on the school
23 to notify the water supplier to come test for lead. So
24 the burden is still there on the school district.

25 MR. RICE: And I think it might be worth

1 mentioning that the permit amendment doesn't require the
2 water system to change out any lead pipes on the school,
3 doesn't require it to fix the faucets or anything like
4 that. So there is still the requirement on the school
5 district, or the particular school, to take the
6 information provided following the lead testing and to
7 comply with whatever Education Code requirements there
8 are, to provide safe drinking water to the students.
9 So, you know, it's not quite as simple as maybe it
10 appears.

11 MR. SOUZA: And to make one point, as I
12 explained how the lead testing worked, it is the one
13 rule that the water system is required to go on to
14 private property and test. And the water has to be
15 non-corrosive, so it doesn't cause a problem on private
16 property. It is the one rule that if you do have a
17 problem on private property, that you have to fix the
18 water going on to that property, because it can change
19 as it goes through the pipe.

20 CHAIRPERSON BOSLER: Any other comments?

21 (No response)

22 CHAIRPERSON BOSLER: I will just say, as in
23 many of these mandate issues, it's complicated,
24 definitely. I think you have made a lot of really
25 compelling points today. But again, I do think that the

1 way in which our staff have been working up these
2 analyses for many, many, many years, that they are --
3 nothing is changed here by the recommendation that's
4 being made, to deny the test claim. And so I am
5 prepared to support that motion.

6 And I would like to ask if there's a motion to
7 support -- or to adopt the staff recommendation.

8 MEMBER RAMIREZ: I will make that motion.

9 MEMBER STOWERS: I will second.

10 CHAIRPERSON BOSLER: Thank you.

11 It's been moved and seconded.

12 MS. HALSEY: Call the roll.

13 Mr. Adams.

14 MEMBER ADAMS: Aye.

15 MS. HALSEY: Ms. Bosler.

16 CHAIRPERSON BOSLER: Aye.

17 MS. HALSEY: Mr. Hariri.

18 MEMBER HARIRI: Aye.

19 MS. HALSEY: Ms. Lee.

20 MEMBER LEE: Aye.

21 MS. HALSEY: Ms. Olsen.

22 MEMBER OLSEN: No.

23 MS. HALSEY: Ms. Ramirez.

24 MEMBER RAMIREZ: Aye.

25 MS. HALSEY: Ms. Stowers.

1 MEMBER STOWERS: Aye.

2 MS. HALSEY: Thank you.

3 CHAIRPERSON BOSLER: Thank you. Thank you for
4 coming up.

5 MR. ZELENY: Thank you very much.

6 CHAIRPERSON BOSLER: A new experience for you.

7 MR. ZELENY: Yes, it is.

8 CHAIRPERSON BOSLER: Thank you.

9 MS. HALSEY: Next is Item 4. Senior Commission
10 Counsel Raj Dixit will present a test claim on Central
11 Basin Municipal Water District Governance Reform.

12 CHAIRPERSON BOSLER: Good morning.

13 MR. DIXIT: Good morning, ladies and gentlemen.

14 The test claim statute requires the claimant,
15 the Central Basin Municipal Water District, to expand
16 its board of directors, notify its water purveyors of
17 said expansion, and provide them 60 days to nominate new
18 directors for appointment to the board.

19 The test claim statute also establishes a
20 minimum qualifications for the appointed directors and
21 limits the benefits to be provided to board members.

22 Staff finds that there is no evidence in the
23 record that the Claimant receives any proceeds of taxes
24 subject to the appropriations limit of Article XIII.B.
25 of the California Constitution, and, therefore, is not

1 eligible for subvention under Article XIII.B.6.

2 Instead, the record shows that the Claimant's revenues
3 derive solely from its authority to collect fees,
4 assessments, and grants.

5 Accordingly, staff recommends that the
6 Commission adopt the proposed decision, denying the test
7 claim. Further, staff requests authorization to make
8 any technical, nonsubstantive changes to the decision
9 following the hearing.

10 At this time, will the parties and witnesses
11 please state your names for the record.

12 MR. HILL: Chris Hill, California Department of
13 Finance.

14 MR. HUNT: Kevin Hunt, Central Basin Municipal
15 Water District.

16 CHAIRPERSON BOSLER: Is there -- would you like
17 to present or is it --

18 MR. HUNT: I would like to speak for a minute.

19 CHAIRPERSON BOSLER: Yes. That would be great.
20 Welcome.

21 MR. HUNT: I don't have an entourage, and I
22 don't have a PowerPoint.

23 CHAIRPERSON BOSLER: That's okay. We still --
24 we still -- take the --

25 MR. HUNT: I do have a plane to catch, but I

1 will stay here as long as --

2 CHAIRPERSON BOSLER: Okay. Thank you very
3 much.

4 MR. HUNT: So good morning, Chair and
5 Commission Members.

6 As I said, my name is Kevin Hunt. I'm the
7 general manager of Central Basin Municipal Water
8 District since November 2014.

9 I was brought in to clean up the district, and
10 I've done what I think is a very good job with the
11 cooperation of the citizens, the 40 retail agencies we
12 serve, the one hotel agency we serve, and the board of
13 directors.

14 We provide water, wholesale water, for potable,
15 recycled, and groundwater replenishment to 1.6 million
16 people in southeast Los Angeles County. It's a diverse
17 socioeconomic community: 70 percent of the residents
18 are Latino, 49 percent are disadvantaged.

19 And one of the reasons I came today is because,
20 frankly, I thought that the staff report wallowed in the
21 salacious history of the district and painted an
22 unfortunate picture of where the district is right now.

23 You can read the press release of what happened
24 between 2013 to 2015, when I got there, but since that
25 time, that district is run by the book, straight.

1 The state audit, we embraced it. I testified
2 before the State Audit Commission to -- we embraced the
3 audit and we adopted 31 out of the 32 recommendations,
4 and the only one that wasn't adopted had to do with how
5 directors are compensated for travel, a minor thing.

6 We value the work of the Commission. I
7 followed your work over the years, and we appreciate the
8 effort that you put in and know it's a -- it's a no-win
9 situation.

10 The amount we're appealing for is not large
11 compared to the state budget, but it is for us. Our
12 district is financially challenged. We've been
13 downgraded twice. Our water sales have dropped
14 dramatically because of conservation, and we still
15 actively engage in conservation significantly.

16 The total cost that we're implement -- that it
17 would cost is a couple hundred thousand. It doesn't
18 sound like a lot; it is to a small district.

19 The reason that the -- I was implemented -- and
20 we worked with Assemblyman Garcia on the bill. AB 1794,
21 frankly, is a godsend to the district. It has helped it
22 form better. It provides real talented individuals.
23 I'm very fortunate now that I have four new board
24 members that are actually excellent, ethical human
25 beings.

1 However, it doesn't -- it doesn't come without
2 a cost. There was a cost to implement it from the
3 physical, actual work that had to be done. And there's
4 a cost on a day-to-day base of dealing with eight
5 directors instead of five and taking care of them,
6 communicating on behalf of eight directors instead of
7 five, so it increases the -- the burden.

8 We worked on the audit and all the other issues
9 and collaborate with all our member agencies. We have a
10 monthly meeting. They are all there. I just had one on
11 Wednesday where I had 21 of my agencies speak.

12 The process that we went through in doing
13 this -- and I'm doing this to paint the picture of the
14 district that we are. We have the first of its kind of
15 an independent ethics hotline where they -- they can --
16 totally independent of the district, totally. They can
17 call up and any attorney can analyze the -- the
18 question.

19 We did everything from strategic planning,
20 business planning. We have two bonds resales. We have
21 done everything we can to make the district effective,
22 efficient, and low cost. I have reduced the staffing
23 from 25 down to 19 people because we don't have the
24 money. We had to close down the school program.

25 So when it comes to a mandate from the state

1 that -- AB 1794 says in it, this is a state mandated
2 program. We come from a mandate from the state that
3 increases our cost. Even a small amount is significant
4 to us. I don't think there's any doubt by adding three
5 board members increased our costs and is unique to our
6 agency in the way it was -- it was created.

7 And we do our funding right now -- our
8 operating budget -- we think it will pass through -- is
9 approximately \$12 million. A quarter of that is a
10 parcel tax. It was passed by a vote of the people.
11 It's exactly the same as if you're going to increase
12 your taxes, you have to get a two-thirds vote of the
13 people to change it.

14 We also have water rates. They are subject to
15 not only Prop 219, but, as a wholesale agency, Prop 26,
16 which constrains what we do in terms of doing
17 (verbatim). So we have -- we have a complicated process
18 to go through to increase our rates.

19 So while we are totally supportive of the bill,
20 we bill that -- we believe that the cost of the bills
21 passed on to us are a state mandated cost and fall under
22 the state subvention regulations.

23 That's all that I have. If you have any -- any
24 questions, I would be glad to answer.

25 MR. HILL: Chris Hill, Department of Finance.

1 As part of our interim review of the test
2 claim, we did check State Controller's Office data, Los
3 Angeles County Auditor-Controller's Office data, and we
4 saw no indication that the district receives tax
5 revenues, so we agree with the Commission recommendation
6 that this be denied on the basis that the district does
7 not receive tax revenue and, therefore, is ineligible to
8 file the claim.

9 CHAIRPERSON BOSLER: Thank you.

10 I just want to say, first, thank you for all of
11 your hard work and -- and bringing the management of
12 your -- your district back under -- and I'm sorry if
13 there was anything that was brought up, you know, that
14 is not current, because I do want to recognize the hard
15 work that's happening at all local agencies around the
16 state to manage their resources appropriately and from a
17 place of sustainability. So we appreciate that.

18 I will now open it up to committee members --
19 Commission members, if they have any questions.

20 MEMBER HARIRI: I have a comment.

21 CHAIRPERSON BOSLER: Yeah.

22 MEMBER HARIRI: This has to do with the letter
23 that came from the esteemed attorney from Nossaman.
24 Through that, the historical reference -- through that
25 historical reference initially gave us a negative

1 perception of the quality of management in the district,
2 and it ended there, because this historical reference
3 played no role whatsoever into the analysis; it was not
4 factored into the analysis; had no bearing on the
5 conclusion reached by staff.

6 And the cruel statement by the esteemed
7 attorney that we are incapable, and it is impossible for
8 us to make an objective decision, is disheartening and
9 disturbing. And I had to say that, because in no way
10 did it play into our mind and our decision; it vanished
11 into oblivion once I started to read the analysis. So
12 he made a huge point time and again in his letter, and
13 it became public so I had to address it.

14 CHAIRPERSON BOSLER: Thank you.

15 MR. HUNT: Sir, if I may say, that's why I am
16 here and not him.

17 MEMBER STOWERS: Madam Chair.

18 CHAIRPERSON BOSLER: Yes.

19 MEMBER STOWERS: Could staff, just for the
20 record, explain why you feel that the parcel tax is not
21 subject to the limitation?

22 MR. DIXIT: This is the first we appear to be
23 hearing of any parcel tax, as the member from Finance --
24 the representative from Finance commented, we have seen
25 no evidence and nothing in the record, up to and

1 including the drafting of the proposed decision, that
2 indicated that the Claimant received any parcel taxes or
3 any proceeds of any taxes from -- based upon all the
4 exhibits attached to the proposed decision, and all the
5 materials we reviewed, there was no indication that the
6 Claimant had any sources of revenues besides fees and
7 assessments, and, therefore, that is how we reached or
8 conclusion.

9 MS. HALSEY: And -- and I understand that those
10 are collected on the parcel tax bill, that those are
11 fees and assessments.

12 MEMBER STOWERS: Those are the fees. So, sir,
13 that you are referring to is that --

14 MR. HUNT: Yes, we have a parcel tax that was
15 passed by the people in 1991; \$10 per parcel in our
16 service area brings in \$3.25 million a year, one quarter
17 of our income.

18 MS. SHELTON: Let me just make clear, the
19 recommendation is based on the information provided in
20 the Bureau of State Audits Report, which fully discusses
21 their funding. We also pulled their last posted budget
22 on the website, all of which shows that they receive all
23 the revenue from fees, assessments, and grants.

24 Their fees and assessments are collected on a
25 property tax bill, but they're still defined as fees and

1 assessments.

2 MR. HILL: Department of Finance. We also
3 checked Los Angeles Auditor-Controller's data and State
4 Controller's Office, and we came to the same conclusion.

5 MR. DIXIT: I believe the \$10 parcel tax is
6 addressed in the decision. It appears on local -- on
7 homeowners' property tax bills, but it is not, itself, a
8 tax; it is an assessment.

9 MEMBER STOWERS: That's what I was trying to
10 get to. It's on the bill --

11 MR. DIXIT: And that is addressed in the --

12 MEMBER STOWERS: It's not a property tax.
13 That's just a means of collecting.

14 MR. DIXIT: Yes. That is addressed inside the
15 decision.

16 And to speak to Mr. Hariri's comment, the
17 references to the BSA audit in the proposed decision
18 were not intended to impugn anyone. They are necessary
19 to set the background of how and why the test claim
20 statute came to be.

21 MEMBER RAMIREZ: Madam Chair.

22 CHAIRPERSON BOSLER: Yes, Ms. Ramirez.

23 MEMBER RAMIREZ: Briefly, I want to repeat my
24 earlier comments about the other case, that state
25 mandate law is so precise; it's not political. People

1 do come on very -- litigants, claimants, come with very
2 worthy requests, but we're not able to fulfill them.

3 And I would just, again, like to repeat, these
4 are budget issues and even legislative and even
5 political issues.

6 Water is on the headlines today in our state.
7 I know the Governor is taking a look at it. But we
8 aren't that body that can fulfill the needs of water
9 agencies or anybody in the community. We have to follow
10 the law.

11 So I want to just thank you for your diligent
12 work in providing water to your community. It's not
13 easy; it's expensive. And perhaps there needs to be a
14 legislative solution, because you certainly are not the
15 only water agency in the state feeling the pinch. So
16 thank you.

17 MR. HUNT: Thank you, ma'am.

18 I would say, it seems to be a very narrow
19 interpretation. I understand it's supposed to respond
20 to -- the whole system responds to Prop -- the old Prop
21 13. But the law has evolved since then, where we are
22 equally constrained on what are rates with Prop 218 and
23 Prop 26. And there's no difference, in my mind --
24 again, I'm just an engineer, not a lawyer or an
25 accountant. But there's no difference in my mind

1 between a parcel tax that requires a two-thirds vote of
2 the people or a property tax that requires a vote of the
3 people. It's still the same burden of -- of trying to
4 get the approval.

5 And so I -- it's -- when you increase our
6 costs -- and, again, we're confused simply because when
7 the bill was put, and it was put out of the state
8 legislature, said this is a state mandated bill. It's
9 right on there.

10 MS. SHELTON: Let me just mention. A lot of
11 bills -- all the bills will have a statement of that.
12 The courts have directed the Commission to ignore that
13 legislative language, because the Legislature has given
14 the Commission the sole and exclusive authority to
15 determine whether a reimbursable state mandated program
16 exists.

17 CHAIRPERSON BOSLER: Yes. Mr. Adams.

18 MEMBER ADAMS: Madam Chair, if I can.

19 I just -- I think the word "fee" and "tax" are
20 being used synonymously, and I think that's a misnomer
21 that we shouldn't do. So that's what this hangs on for
22 us.

23 But with that said, I also just want to say
24 that you have my sympathy for what you are trying to do.
25 But as Ms. Ramirez said, there's a lot of public and

1 private water districts that suffer through this.

2 I live in a small community of 260 people.
3 Public water district. You can only imagine the per
4 capita costs of providing water to 200 households. They
5 don't like the rates, but they are what they are.

6 And the problem we have here, again, is the
7 law, but even if the law didn't mandate that we look
8 between fee and tax, the bottom line is, how do you get
9 the rest of the state to subsidize one small area of
10 California's water?

11 I understand that -- that the size of your
12 board was increased. And, again, we're only looking at
13 tax versus fee. But some of the costs that were added
14 on were somewhat eye-raising, from celebratory dinners,
15 portraits, parking stripes. It's, like, who pays for
16 what? But, again, the bottom line here is, is it a fee
17 or a tax? And that's where we have to -- where we have
18 to draw the line.

19 But, again, you have my sympathy. But, again,
20 even in my county of 3,000 people, we have some water
21 districts where people are paying \$90 a month for water.
22 Others are paying 20. And the people who are paying 20
23 complain in my hometown and I tell them, you ought to
24 live on the other side of the county and be paying \$90 a
25 month for your base fee.

1 So it -- unfortunately, it is what it is. But
2 for us today, it is that dividing word of tax versus
3 fee.

4 Thanks.

5 CHAIRPERSON BOSLER: Thank you, Commissioner
6 Adams.

7 Any other comments from the Commission?

8 (No response)

9 CHAIRPERSON BOSLER: From the public?

10 (No response)

11 CHAIRPERSON BOSLER: Is there a motion to
12 support the staff recommendation, which is to deny the
13 claim?

14 MEMBER ADAMS: So moved.

15 MEMBER HARIRI: Second.

16 CHAIRPERSON BOSLER: Moved by Commissioner
17 Adams and seconded by Mr. -- by Commissioner Hariri.

18 MS. HALSEY: Mr. Adams.

19 MEMBER ADAMS: Aye.

20 MS. HALSEY: Ms. Bosler.

21 CHAIRPERSON BOSLER: Aye.

22 MS. HALSEY: Mr. Hariri.

23 MEMBER HARIRI: Aye.

24 MS. HALSEY: Ms. Lee.

25 MEMBER LEE: Aye.

1 MS. HALSEY: Ms. Olsen.

2 MEMBER OLSEN: Aye.

3 MS. HALSEY: Ms. Ramirez.

4 MEMBER RAMIREZ: Aye.

5 MS. HALSEY: Ms. Stowers.

6 MEMBER STOWERS: Aye.

7 CHAIRPERSON BOSLER: And thank you, again, for
8 coming, and thank you for your hard work.

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

12 No SB 1033 applications have been filed.

13 Item VII was our consent calendar.

14 Program Analyst Kerry Ortman will present Item
15 8, the Legislative Update.

16 MS. ORTMAN: Good morning. SB 287, Commission
17 on State Mandates Test Claim Filing Date, proposes
18 language that would specify, for purposes of filing a
19 test claim, based on the date of incurring increased
20 costs the phrase, "within 12 months" means by June 30 of
21 the fiscal year following the fiscal year in which
22 increased costs were first incurred by the test
23 claimant.

24 We first saw this language proposed in the
25 education omnibus bill last session. This bill is set

1 to be heard on March 27th, 2019 in the Senate Committee
2 on Government and Finance.

3 AB 400, State Mandates, is a spot bill,
4 according to the author's office.

5 Former AB 1471, State Mandated Local Cost
6 Notification, is now AB 1471, State Mandated Local Costs
7 Preventable Loss Revenue. This former spot bill was
8 amended on March 14th to provide that reimbursement to
9 an underprivileged -- underprivileged or disadvantaged
10 local agency for preventable lost revenue sustained as a
11 result of the delayed implementation of a state action
12 shall be provided pursuant to the same provisions
13 outlined for local agencies to file a test claim for
14 reimbursement of those costs with the Commission on
15 State Mandates.

16 Additionally, this bill would exempt this
17 provision from the exceptions to the requirement that
18 the State provide a subvention of funds to local
19 agencies under Government Code 17556.

20 This bill has been referred to the Assembly
21 Committee on local government, and staff will continue
22 to monitor for bills that impact the state mandates
23 process.

24 CHAIRPERSON BOSLER: Thank you very much. Yes.
25 Yes. Commissioner Olsen.

1 MEMBER OLSEN: So do we have a definition in
2 law or in the bill that talks about what an
3 "underprivileged" or "disadvantaged" --

4 MS. ORTMAN: We had this discussion in our
5 office.

6 MS. HALSEY: So the bill was just introduced.
7 It hasn't been analyzed by any legislative committee
8 yet. I -- there are definitions out there, so I imagine
9 they would put one in there, in federal definitions.
10 Oh, there's a definition in the bill as well.

11 A city -- I will just skip ahead. City or
12 county with a -- that is below the county with the
13 highest median income by 25 percent or more, based on
14 the American survey five-year estimates prepared by the
15 Census Bureau. Yeah. And also a city or county with an
16 average life expectancy that's below the county with the
17 highest life expectancy by three years or more, based on
18 the recent edition for Institute for Health Metrics and
19 Evaluation.

20 CHAIRPERSON BOSLER: That's a big, new change.

21 MS. HALSEY: Are there any more questions?

22 (No response)

23 CHAIRPERSON BOSLER: Okay. Any other
24 questions?

25 (No response)

1 CHAIRPERSON BOSLER: And then we have some
2 testimony. Mr. Dillon Gibbons. Nice to see you again.

3 MR. GIBBONS: Nice to see you.

4 CHAIRPERSON BOSLER: Special Districts
5 Association.

6 Go ahead.

7 MR. GIBBONS: Chair and members of the
8 Commission, Dillon Gibbons with the California Special
9 Districts Association.

10 We were the sponsor of the provision that was
11 in the omnibus last year, and we are the sponsors of the
12 legislation this year, SB 287, that would make changes
13 to the Government Code that would make the Government
14 Code look exactly like what the Commission's regulations
15 were prior to their being changed in 2017.

16 So we're -- we're trying to go back -- you
17 know, when we testified back in 2017, we were talking
18 about the timeliness of the filing of our test claims
19 and trying to align it better with our fiscal year,
20 where we could have audited financial statements and be
21 able to provide the best test claims to the Commission.
22 So we're -- we're trying to go back to that standard so
23 that we can be able to provide this Commission with the
24 most accurate information possible, hopefully reducing
25 the amount of denied claims based on inaccurate

1 information, the number of times folks have to come back
2 and -- and testify. So, really, it's to try and
3 streamline the process.

4 So we've got this bill going through the
5 Legislature now. I would encourage the Commission to
6 take a look at it. And if you have suggested changes,
7 please let us know. We would have -- we would be happy
8 to work with you on it if you, for some reason, feel
9 that it could be improved to work better for your needs.

10 I understand that the Commission does not take
11 positions on bills, and so I'm not going to ask you to
12 come out and support it, though I sure would love it.
13 But if there is a way that -- that -- that we could
14 improve it, that -- that feedback be -- would be
15 welcome.

16 And I would be happy to answer any questions
17 you might have for us at this time. All right.

18 CHAIRPERSON BOSLER: So right now, what problem
19 are you trying to solve? I mean, I guess I'm trying to
20 understand, because if you -- sometimes we don't incur
21 mandated costs, you know, because they only happen in a
22 cycle. And -- and that is allowed, that there's one
23 year after it's incurred.

24 But what I am trying to understand what the
25 current timeline or the revised -- recently revised, but

1 what we think is consistent with state statute timeline,
2 what -- what you are trying to solve. Like give me a --
3 maybe give me an example or scenario, so I can better
4 understand the issue.

5 MR. GIBBONS: Right.

6 So let's say January 1, a new bill takes
7 effect.

8 CHAIRPERSON BOSLER: A lot of new bills take
9 effect January 1.

10 MR. GIBBONS: Which is why the regulation got
11 changed, right?

12 So takes effect January 1.

13 CHAIRPERSON BOSLER: Yeah.

14 MR. GIBBONS: Then it gets to, June 20th, we --
15 we first start incurring costs. We go through
16 the process of, you know, trying to figure out what
17 those costs are in order to then submit a claim. In
18 that scenario, we would have until June 21st of the
19 following year to submit a claim.

20 But -- but there's some ambiguity, and that's
21 where I think we could get a suggestion from the
22 Commission, whether or not we would have to submit, by
23 December 31st of that year, where the claim -- or the
24 new higher level of service began January 1, but we
25 first started incurring costs on June 20th. The -- the

1 claim may be required to be submitted by

2 December 31st or it may be June --

3 CHAIRPERSON BOSLER: Oh, got it.

4 MR. GIBBONS: -- 21st.

5 Additionally, the -- by -- the change that was
6 made in the regulation, as discussed by this Commission,
7 was done to get it in compliance with the Government
8 Code, which was silent on the issue of -- and -- and
9 when it is, just as every other bill takes effect on
10 January 1, now our test claim process is -- we would
11 need to file by January 1.

12 By making this change, it essentially gives
13 public agencies an additional six months to file that
14 test claim, and -- and -- and it also allows the
15 additional six months to do the proper accounting.

16 And -- and just as the State goes through their
17 budget process and determines costs and does that
18 analysis, so do all of our public agencies. There are
19 very few that have a fiscal year that differs from the
20 traditional June 30/July 1. As such, this is when they
21 are going to be going through the books, having the --
22 the audits done, the accountants go through, and
23 determine what the -- what the true costs are.

24 And I think what -- what we have seen or what
25 we have heard from our members is that they are going to

1 be submitting truncated claims.

2 CHAIRPERSON BOSLER: Got it. Okay.

3 MR. GIBBONS: So that's what we are trying to
4 get to.

5 CHAIRPERSON BOSLER: Yeah.

6 MR. GIBBONS: And from -- from the testimony
7 that we had in 2017 and all of the discussion that was
8 had with the commissioners, there didn't seem to be an
9 issue other than, it doesn't align with the Government
10 Code, and that there's potential -- there was potential
11 liability for, if a claim was -- would have been
12 approved after the -- the one-year deadline, but in
13 this -- in this window of what the regulation should
14 have been, but wasn't, because it didn't align with the
15 Government Code.

16 And so we're just trying to --

17 CHAIRPERSON BOSLER: Got it.

18 MR. GIBBONS: -- resolve that discrepancy and
19 eliminate that liability for the Commission, or
20 potential liability, as it was discussed.

21 CHAIRPERSON BOSLER: Very good. Thank you.
22 That was actually helpful.

23 A lot of my job is dealing with, you know, the
24 messiness of implementation once the law is changed, so
25 it's helpful.

1 MR. GIBBONS: Yeah. I think it was really
2 interesting, if I can add one more thing.

3 When the -- when the Department of Finance took
4 opposition to the omnibus, that portion of the omnibus
5 bill last year, it -- the statement was that it
6 circumvented the regulatory process, right? And so
7 we're not trying to circumvent.

8 CHAIRPERSON BOSLER: Okay.

9 MR. GIBBONS: Because it's -- it's the only
10 way. We can't change the regulations at this point,
11 again, because it would be out of line with the
12 Government Code. So the only --

13 CHAIRPERSON BOSLER: Yeah. Yeah. That's fair.

14 MR. GIBBONS: Right. So the only fix is the
15 statutory --

16 CHAIRPERSON BOSLER: Is a statutory -- right.

17 MR. GIBBONS: Right.

18 CHAIRPERSON BOSLER: Yeah. And I think that
19 omnibus bills are usually reserved for things that don't
20 have costs and are noncontroversial, and this -- this
21 may be something that we would key at cost. I
22 haven't -- I haven't --

23 MR. GIBBONS: Well, there would be -- there
24 would be a cost as far as going through the regulatory
25 process again, but a mandate that's going to be approved

1 would be approved. And so there would be -- or a
2 mandate that would be denied will be denied. So this
3 doesn't change the -- whether or not you are going to
4 approve or deny mandates. The only costs would be
5 associated with updating the regulations.

6 And the only controversy would be whether or
7 not this Commission wants to allow the additional time
8 for public agencies to submit accurate claims or not.
9 So that -- that was why we thought it was not a
10 controversial --

11 CHAIRPERSON BOSLER: Well, we will all be
12 taking a look at it --

13 MR. GIBBONS: I appreciate it. Thank you.

14 CHAIRPERSON BOSLER: -- as it moves through the
15 process.

16 Thank you.

17 Is there any other questions or comments from
18 the public? From members?

19 (No response)

20 CHAIRPERSON BOSLER: Otherwise, we'll move on
21 to --

22 MS. HALSEY: Item 9.

23 CHAIRPERSON BOSLER: Yes. Item 9, Camille's
24 report, so --

25 MS. SHELTON: Good morning. There haven't been

1 any new filings since the last Commission meeting.

2 THE COURT REPORTER: Excuse me. Is your
3 microphone on?

4 MS. SHELTON: I'll repeat that.

5 We haven't seen any new filings since the last
6 Commission meeting. On Wednesday, the Third District
7 Court of Appeal did issue their certified opinion in the
8 Paradise Irrigation District case, which affirmed the
9 Commission's decision denying the water conservation
10 test claim, on the ground that the District has fee
11 authority despite the procedural issues in Prop 218.

12 And there's also a -- one hearing set on the
13 remand of the discharge of stormwater runoff set for
14 June 7th in the Sacramento County Superior Court. And
15 that's all I've got.

16 CHAIRPERSON BOSLER: All right.

17 MS. HALSEY: And then it's the Executive
18 Director report.

19 After this hearing, we have 42 pending test
20 claims, 39 of which are regarding stormwater NPDES
21 permits.

22 We also have two statewide cost estimates which
23 are pending inactive. And there are -- there is a
24 proprietary and an additional statewide cost estimate,
25 both of which are regarding NPDES permits that are on

1 inactive status pending the outcome of litigation
2 regarding the test claim decisions underlying those
3 matters.

4 In addition, we have one parameters and
5 guidelines amendment pending on inactive status and
6 pending on the -- pending the outcome of litigation in
7 the CSBA case, which is currently before the California
8 Supreme Court.

9 We have also one request for mandate
10 redetermination.

11 And, finally, there are five incorrect
12 reduction claims pending.

13 Commission staff expects to complete all
14 currently pending test claims and IRCs by approximately
15 the March 2024 Commission meeting, depending on staffing
16 and other workload. That date may be earlier if some of
17 those test claims are eventually consolidated, and there
18 are many of them that may be, but it's too early to
19 determine that.

20 Please check the tentative agenda items on the
21 Executive Director's Report to see if an item you are
22 interested in is coming up. We list the items we expect
23 to hear in the next two hearings on that report. You
24 can also use the pending case load documents on the
25 Commission's website, which are updated at least

1 bimonthly to see when something is tentatively set for
2 hearing.

3 Also, please expect to receive draft proposed
4 decisions on all test claim and IRC matters for your
5 review and comment at least eight weeks prior to the
6 hearing date and a proposed decision approximately two
7 weeks before the hearing.

8 And, finally, and importantly, I wanted to
9 emphasize this: For parties and interested parties
10 planning to participate in upcoming hearings on pending
11 claims, please notify Commission staff not later than
12 the Wednesday prior to a hearing that you or a witness
13 you are bringing is planning to testify, and please
14 include the names of the people who will be speaking for
15 inclusion on the witness list.

16 Staff will no longer be sending reminder
17 e-mails because the Commission does not have the
18 resources to contact each party and interested party,
19 and especially these pending matters that are coming up,
20 there are so many. The mailing lists are enormous, and
21 also not to give preferential treatment to some over
22 others just because they earlier commented.

23 Therefore, the last communication you will get
24 from Commission staff is the proposed decision, and that
25 should come to you approximately two weeks before the

1 hearing. And then it is incumbent on the participants
2 to let the Commission staff know if they wish to testify
3 or bring witnesses.

4 And that's all I have.

5 CHAIRPERSON BOSLER: Excellent. Thank you.

6 Does anyone have any questions for Ms. Halsey?

7 (No response)

8 CHAIRPERSON BOSLER: At this time, I will -- I
9 would like to recess to move into closed executive
10 session. Thank you, everyone, and the public for being
11 here today.

12 Pursuant to Government Code section 11126(e) to
13 confer with and receive advice from legal counsel for
14 consideration and action, as necessary and appropriate,
15 upon the pending litigation listed on the published
16 notice and agenda; and to confer with and receive advice
17 from legal counsel regarding potential litigation.

18 The Commission will also confer on personnel
19 matters pursuant to Government Code section 11126(a)(1),
20 and we will reconvene in open session in approximately
21 15 minutes.

22 Thank you very much, everyone.

23 (Closed session was held from

24 11:21 a.m. to 11:34 a.m.)

25 CHAIRPERSON BOSLER: We are now going to

1 reconvene into our general meeting after our closed
2 session.

3 The Commission met in closed executive session
4 pursuant to Government Code section 11126(e)(2), [sic]
5 to confer with and receive advice from legal counsel for
6 consideration and action, as necessary and appropriate,
7 upon the pending litigation listed on the published
8 notice and agenda; and to confer with and receive advice
9 from legal counsel regarding potential litigation; and
10 pursuant to Government Code section 11126(a)(1), to
11 confer on personnel matters.

12 With no further business to discuss, I will
13 entertain a motion to adjourn.

14 MEMBER OLSEN: Oh, so moved.

15 CHAIRPERSON BOSLER: Thank you.

16 We have a motion.

17 Do I have a second?

18 MEMBER RAMIREZ: Second.

19 CHAIRPERSON BOSLER: Second. Thank you.

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

21 (Ayes)

22 CHAIRPERSON BOSLER: The meeting is adjourned.

23 Thank you very much for your patience and my first time
24 here. I appreciate it.

25 (Proceedings concluded at 11:35 a.m.)

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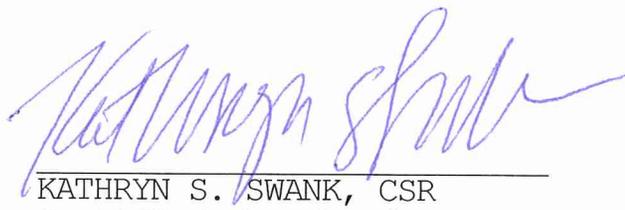
CERTIFICATE OF REPORTER

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 9th day of April 2019.



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