

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: via Zoom

May 28, 2021

Present: Member Gayle Miller, Chairperson
Representative of the Director of the Department of Finance
Member Jacqueline Wong-Hernandez
Representative of the State Controller, Vice Chairperson
Member Lee Adams
County Supervisor
Member Jeannie Lee
Representative of the Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member Spencer Walker
Representative of the State Treasurer

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 Miller called the meeting to order at 10:02 a.m. Executive Director Heather Halsey called the roll and Members Adams, Lee, Miller, Olsen, Walker, and Wong-Hernandez all indicated that they were present.

APPROVAL OF MINUTES

Chairperson Miller asked if there were any objections or corrections to the March 26, 2021 minutes. Member Olsen made a motion to adopt the minutes. With a second by Member Adams, the Commission voted to adopt the March 26, 2021 hearing minutes by a vote of 6-0.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

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

CONSENT CALENDAR

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

TEST CLAIMS

- Item 3* Dismissal: *Waste Discharge Requirements and Water Quality Certification for: Santa Clara Valley Water District and U.S. Army Corps of Engineers, Upper Berryessa Creek Flood Risk Management Project, 17-TC-04*
San Francisco Bay Regional Water Quality Control Board Order No. R2-2017-0014, Provision B. 19, effective April 12, 2017
Santa Clara Valley Water District, Claimant

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

ADOPTION OF ORDER TO ADOPT RULEMAKING

- Item 7* General Cleanup, Proposed Amendments to California Code of Regulations, Title 2, Division 2, Chapter 2.5, Articles 1, 3, 5, and 7

Executive Director Halsey stated that Items 3 and 7 were proposed for consent. Chairperson Miller asked if there were any objections to the Consent Calendar. There was no response.

Member Olsen made a motion to adopt the Consent Calendar. Member Wong-Hernandez seconded the motion. The Commission voted to adopt the Consent Calendar by a vote of 6-0.

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

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

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

- Item 2 Appeal of Executive Director Decisions

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

TEST CLAIM

- Item 4 *County of Los Angeles Citizens Redistricting Commission*, 19-TC-04
Elections Code Sections 21530, 21531, 21532, 21533, 21534, and 21535 as added by Statutes 2016, Chapter 781 (SB 958)
County of Los Angeles, Claimant

Senior Commission Counsel Juliana Gmur presented this item and recommended that the Commission adopt the Proposed Decision to partially approve this Test Claim.

Lucia Gonzalez and Fernando Lemus appeared on behalf of the County of Los Angeles. Chris Hill appeared on behalf of the Department of Finance.

Following discussion between Member Adams, Member Wong-Hernandez, parties, and staff, Member Wong-Hernandez made a motion to adopt the staff recommendation. With a second by Member Adams, the Commission voted to adopt the staff recommendation by a vote of 6-0.

INCORRECT REDUCTION CLAIM

- Item 5 *Municipal Storm Water and Urban Runoff Discharges*, 19-0304-I-04, 20-0304-I-06, 20-0304-I-08, 20-0304-I-09, 20-0304-I-10, 20-0304-I-11, and 20-0304-I-13
Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012

City of Claremont, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006

City of Downey, Claimant

Fiscal Years: 2008-2009, 2009-2010, 2010-2011, 2011-2012

City of Glendora, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012

City of Pomona, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009

City of Santa Clarita, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013

City of Signal Hill, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013

County of Los Angeles, Claimant

Commission Counsel Elizabeth McGinnis presented this item and recommended that the Commission adopt the Proposed Decision to deny this Consolidated Incorrect Reduction Claim.

Howard Gest appeared on behalf of the County of Los Angeles and the City of Downey and William Winter appeared on behalf of the County of Los Angeles Public Works. Lisa Kurokawa appeared on behalf of the State Controller's Office. Annette Chinn appeared on behalf of Cost Recovery Systems.

Following discussion between Member Wong-Hernandez, Member Adams, Chairperson Miller, parties, an interested person, and staff, Member Wong-Hernandez made a motion to adopt the staff recommendation. With a second by Member Olsen, the Commission voted to adopt the staff recommendation by a vote of 6-0.

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 2 (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

Executive Director Heather Halsey stated that no SB 1033 applications have been filed.

REPORTS

Item 8 Legislative Update (info)

Assistant Executive Director Heidi Palchik presented this item.

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

Chief Legal Counsel Camille Shelton presented this item.

Item 10 Executive Director: Budget, Workload Update, and Tentative Agenda Items for the July and September 2021 Meetings (info)

Executive Director Halsey presented this item and described the Commission's pending caseload.

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

The Commission adjourned into closed executive session at 11:26 a.m., pursuant to Government Code section 11126(e)(2). The Commission met in closed session to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

A. PENDING LITIGATION

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

Trial Courts:

1. *County of San Diego v. Commission on State Mandates, Department of Finance, State Controller*
San Diego County Superior Court, Case No. 37-2020-00009631-CU-WM-CTL
(*Youth Offender Parole Hearings* (17-TC-09))
2. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al* (petition and cross-petition)
Los Angeles County Superior Court, Case No. BS130730
Second District Court of Appeal Case No. B292446
California Supreme Court, Case No. S214855
[*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]

Courts of Appeal:

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)

Third District Court of Appeal, Case No. C092139
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. *City of San Diego v. Commission on State Mandates, State Water Resources Control Board, Department of Finance*

Third District Court of Appeal, Case No. C092800
Sacramento County Superior Court, Case No. 2019-80003169
(*Lead Sampling in Schools: Public Water System No. 3710020 (17-TC-03)*)

California Supreme Court:

1. *Coast Community College District, et al. v. Commission on State Mandates*,
California Supreme Court, Case No. S262663
(Petition for Review Filed June 10, 2010)

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,
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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).]

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)(1).

RECONVENE IN PUBLIC SESSION

At 11:43 a.m., the Commission reconvened in open session.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Miller reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2). The Commission conferred with and received advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and conferred with and received advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

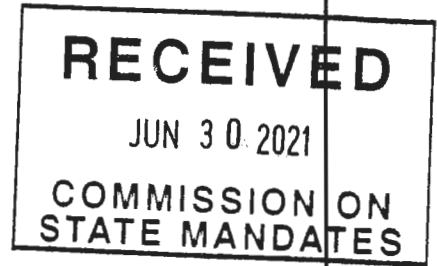
ADJOURNMENT

Hearing no further business, Chairperson Miller requested a motion to adjourn the meeting. Member Walker made a motion to adjourn the meeting. Member Adams seconded the motion. The Commission adopted the motion to adjourn the May 28, 2021 meeting by a vote of 5-0 at 11:45 a.m., with Member Wong-Hernandez not present for the vote.



Heather Halsey
Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES



PUBLIC MEETING

FRIDAY, MAY 28, 2021

10:02 A.M.

MEETING HELD

VIA ZOOM

A VIDEO COMMUNICATIONS PLATFORM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ORIGINAL

REPORTED BY:

KATHRYN S. SWANK

Certified Shorthand Reporter No. 13061

Registered Professional Reporter

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Roseville, California 95661
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A P P E A R A N C E S

(All attendees appeared remotely, via Zoom.)

COMMISSIONERS PRESENT

GAYLE MILLER
Representative for KEELY BOSLER, Director
Department of Finance
(Chair of the Commission)

JACQUELINE WONG-HERNANDEZ
Representative for BETTY T. YEE
State Controller
(Vice Chair of the Commission)

SPENCER WALKER
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

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COMMISSION STAFF

JULIANA GMUR
Senior Commission Counsel

HEATHER A. HALSEY
Executive Director

ELIZABETH MCGINNIS
Commission Counsel

HEIDI PALCHIK
Assistant Executive Director

CAMILLE N. SHELTON
Chief Legal Counsel

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

2

3 *PUBLIC PARTICIPANTS*

4 ANNETTE CHINN
5 Cost Recovery Systems

6 HOWARD GEST
7 County of Los Angeles and City of Downey

8 LUCIA GONZALEZ
9 County of Los Angeles

10 CHRIS HILL
11 Department of Finance

12 FERNANDO LEMUS
13 County of Los Angeles

14 LISA KUROKAWA
15 State Controller's Office

16 WILLIAM WINTER
17 County of Los Angeles Public Works

18 ---o0o---

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1 FRIDAY, MAY 28, 2021, 10:02 A.M.

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3 CHAIRPERSON MILLER: Good morning, everyone, again.
4 It's 10:00 o'clock and the meeting of the Commission on
5 State Mandates will come to order.

6 Welcome and thank you to everyone participating via
7 zoom.

8 Please note that in response to COVID-19 and its
9 impact on public meetings, under the Bagley-Keene Open
10 Meeting Act, Governor Newsom's Executive Order N-29-20
11 suspends, on an emergency basis, pursuant to California
12 Government Code section 8571, certain requirements for
13 public meetings.

14 Accordingly, requiring the physical presence of
15 board members at public meetings and providing a
16 physical space for members of the public to observe and
17 participate have been suspended until further notice, so
18 long as the agency makes it possible for members of the
19 public to observe and address the meeting remotely; for
20 example, via web or audio conferencing, such as we are
21 on Zoom.

22 The Commission is committed to ensuring that our
23 public meetings are accessible to the public and that
24 the public has the opportunity to observe the meeting
25 and to participate by providing written and verbal

1 comment on Commission matters.

2 During these extraordinary times and as we explore
3 new ways of doing business with new technologies, we ask
4 that you remain patient with us.

5 Please note that materials for today's meeting,
6 including the notice, agenda, and witness list, are all
7 available on the Commission's website at www.csm.ca.gov
8 under the "Hearings" tab.

9 So with that, Ms. Halsey, will you please call the
10 roll.

11 MS. HALSEY: Sure. Mr. Adams.

12 MEMBER ADAMS: Here.

13 MS. HALSEY: Ms. Lee.

14 MEMBER LEE: Here.

15 MS. HALSEY: Ms. Miller.

16 CHAIRPERSON MILLER: Here.

17 MS. HALSEY: Ms. Olsen.

18 CHAIRPERSON MILLER: Ms. Olsen, can you unmute
19 yourself, please, and say "here." Thank you.

20 MEMBER OLSEN: Here.

21 CHAIRPERSON MILLER: Thank you.

22 MS. HALSEY: Mr. Walker.

23 MEMBER WALKER: Here.

24 MS. HALSEY: Ms. Wong-Hernandez.

25 MEMBER WONG-HERNANDEZ: Here.

1 CHAIRPERSON MILLER: Thank you. We have a quorum.
2 Next is Item Number 1.

3 Are there any objections to or corrections of the
4 minutes from March 26, 2021?

5 MEMBER OLSEN: Move adoption.

6 CHAIRPERSON MILLER: Thank you, Ms. Olsen.
7 Do we have a second?

8 MEMBER ADAMS: Second.

9 CHAIRPERSON MILLER: Second by Mr. Adams. Thank
10 you.

11 We are going to take a roll call vote just in
12 case someone -- we can't hear everything on Zoom.

13 So may we please have a roll call vote of the
14 minutes, moved by Ms. Olsen, seconded by Mr. Adams. And
15 I see no public comment for the minutes.

16 Ms. Halsey.

17 MS. HALSEY: Sure.

18 Mr. Adams.

19 MEMBER ADAMS: Aye.

20 MS. HALSEY: Ms. Lee.

21 MEMBER LEE: Aye.

22 MS. HALSEY: Ms. Miller.

23 CHAIRPERSON MILLER: Aye.

24 MS. HALSEY: Ms. Olsen.

25 MEMBER OLSEN: Aye.

1 MS. HALSEY: Mr. Walker.

2 MEMBER WALKER: Aye.

3 MS. HALSEY: Ms. Wong-Hernandez.

4 MEMBER WONG-HERNANDEZ: Aye.

5 CHAIRPERSON MILLER: The minutes are approved.

6 Thank you.

7 MS. HALSEY: And now we will take -- sorry.

8 CHAIRPERSON MILLER: Oh, no. Go ahead.

9 MS. HALSEY: Now we can take public comment for
10 matters not on the agenda. Please note that the
11 Commission cannot take action on items not on the
12 agenda. However, it can schedule issues raised by the
13 public for consideration at future meetings.

14 We invite the public to please comment on matters
15 that are on the agenda as they are taken up.

16 CHAIRPERSON MILLER: Thank you.

17 Is there any public comment?

18 MS. PALCHIK: I'm seeing none, Madam Chair.

19 CHAIRPERSON MILLER: Great. Thank you,

20 Ms. Palchik.

21 Hearing no public comment, we'll move to the next
22 item, please. Ms. Halsey.

23 MS. HALSEY: Items 3 and 7 are proposed for
24 consent.

25 Are there any objections to the proposed -- sorry.

1 That's you. Sorry.

2 CHAIRPERSON MILLER: No worries. It's all good.

3 Are there any objections to the proposed consent
4 calendar?

5 (No response)

6 CHAIRPERSON MILLER: Seeing none, may we have a
7 motion and a second to adopt the consent calendar,
8 please.

9 MEMBER OLSEN: So moved.

10 CHAIRPERSON MILLER: Moved my Ms. Olsen.

11 MEMBER WONG-HERNANDEZ: Second.

12 CHAIRPERSON MILLER: Seconded by

13 Ms. Wong-Hernandez. Thank you.

14 We have a motion and a second.

15 Any public comment on the consent calendar?

16 (No response)

17 MS. PALCHIK: Seeing none.

18 CHAIRPERSON MILLER: Great. Thank you very much.

19 Ms. Halsey, will you call the roll for the consent
20 calendar, please.

21 MS. HALSEY: Mr. Adams.

22 MEMBER ADAMS: Aye.

23 MS. HALSEY: Ms. Lee.

24 MEMBER LEE: Aye.

25 MS. HALSEY: Ms. Miller.

1 CHAIRPERSON MILLER: Aye.

2 MS. HALSEY: Ms. Olsen.

3 MEMBER OLSEN: Aye.

4 MS. HALSEY: Mr. Walker.

5 MEMBER WALKER: Aye.

6 MS. HALSEY: Ms. Wong-Hernandez.

7 MEMBER WONG-HERNANDEZ: Aye.

8 CHAIRPERSON MILLER: Great. The consent calendar
9 is approved.

10 Ms. Halsey, let's move to Article 7, please.

11 MS. HALSEY: Now will the parties and witnesses for
12 Items 4 and 5 please turn on your video and unmute your
13 microphones and please rise.

14 (Parties/witnesses stood to be sworn or
15 affirmed.)

16 MS. HALSEY: Thank you. Please be seated and turn
17 off your video and mute your microphone.

18 Item 2 is reserved for appeals of executive
19 director decisions. There are no appeals to consider
20 for this hearing.

21 Next is Item 4. Senior Commission Counsel Juliana
22 Gmur will please turn on her video and unmute her
23 microphone and present a proposed decision on a test
24 claim on County of Los Angeles Citizens Redistricting
25 Commission.

1 At this time, we invite the parties and witnesses
2 for Item 4 to turn on their video and unmute their
3 microphones.

4 CHAIRPERSON MILLER: Thank you, Ms. Gmur. Please
5 go ahead.

6 MS. GMUR: Madam Chair, Commissioners, good
7 morning.

8 This test claim addresses changes to the Elections
9 Code, which created the Los Angeles County Citizens
10 Redistricting Commission, or CRC, to perform the
11 supervisorial redistricting required after each federal
12 sentence [sic].

13 Under prior law, the Los Angeles County -- I beg
14 your pardon.

15 Under prior law, the Los Angeles County Board of
16 Supervisors performed the redistricting and had to
17 comply with only a few requirements. Now the County is
18 required to create, staff, and fund the 14-member CRC
19 and the CRC must comply with several requirements in
20 performing the redistricting.

21 The claimant seeks reimbursement for the costs
22 associated with the creation, staffing, and funding of
23 the CRC, as well as costs associated with the CRC's
24 redistricting, including the costs of retaining a
25 consultant to assist the CRC.

1 Staff finds that the test claim statute imposes a
2 reimbursable state-mandated program on Los Angeles
3 County within the meaning of Article XIII B, section 6,
4 for the activities listed in the proposed decision.

5 However, the requirements to adjust supervisorial
6 boundary lines, adopt a redistricting plan every ten
7 years, and comply with the Public Records Act are not
8 new, and do not impose a new program or higher level of
9 service on the claimant.

10 In addition, the retention of a consultant is not
11 mandated by the plain language of the test claim statute
12 but it is authorized by law, and that authority is not
13 new.

14 Finally, the compliance with the Brown Act for
15 public hearings conducted by the CRC is expressly
16 excluded from the subvention requirement by Article XIII
17 B, section 6(a)(4) of the California Constitution, and,
18 therefore, those costs are not eligible for
19 reimbursement.

20 Accordingly, staff recommends that the Commission
21 adopt the proposed decision to partially approve the
22 test claim and authorize staff to make any technical,
23 nonsubstantive changes to the proposed decision
24 following the hearing.

25 CHAIRPERSON MILLER: Thank you, Ms. Gmur. That was

1 great.

2 So now, please, would the parties and witnesses
3 state your names for the record, one at a time, please.
4 And Mr. Lemus and Ms. Gonzalez for the County of Los
5 Angeles, please state your names, and then we'll ask
6 Mr. Hill to begin after -- to state his position after
7 that.

8 Mr. Lemus, we can't hear you.

9 MS. GONZALEZ: Can you hear me?

10 CHAIRPERSON MILLER: I can hear you, Ms. Gonzalez.
11 Why don't you state your name for the record.

12 I will have Mr. Hill do the same, and we'll see if
13 Mr. Lemus can figure out his audio.

14 Go ahead, Ms. Gonzalez, please.

15 MS. GONZALEZ: Good morning. My name is Lucia
16 Gonzalez. I'm with the Office of the County Counsel for
17 Los Angeles County.

18 And I believe Mr. Lemus is the claim
19 representative, and he was going to introduce me,
20 following his intro.

21 CHAIRPERSON MILLER: Great. We'll give him one
22 more second.

23 And then, Mr. Hill, can you introduce yourself,
24 please, for the record.

25 MR. HILL: Certainly. Good morning.

1 Chris Hill with the California Department of
2 Finance.

3 CHAIRPERSON MILLER: Thank you for that.

4 Mr. Lemus, are you still having audio issues? Why
5 don't we -- there's a number that you can actually call
6 in. And so if you can call in by phone, since we can't
7 hear you on audio, and then we can -- you hopefully will
8 be able to sync your audio and video. So do you want to
9 try that? And we will just give you a couple minutes to
10 do that and then -- before we say anything more. So
11 we're just going to pause for two minutes while
12 Mr. Lemus gets his audio working. Thank you, Mr. Lemus.
13 We have all been there, so no worries at all. It seems
14 like you can hear us, which is good.

15 Ms. Halsey, are you or someone from your team able
16 to give the number for Mr. Lemus to call? Do you have
17 that, Mr. Lemus? You do? Okay.

18 MR. LEMUS: Okay. Can you hear me now?

19 CHAIRPERSON MILLER: We can hear you now. Great.
20 Great news.

21 MR. LEMUS: I apologize. I just -- I just had my
22 little web cam and microphone replaced because the
23 previous one made it sound like I was -- like I was
24 dying. It made it sound like I was really, really sick.
25 And I apologize. This one, for some reason, is not

1 working.

2 CHAIRPERSON MILLER: No worries.

3 MR. LEMUS: So my name is Fernando Lemus. I am the
4 claimant representative. And as Lucia stated, I was --
5 this was the extent of what I was going to say was just,
6 I was going introduce her because she will be presenting
7 the County's comments before this Commission.

8 CHAIRPERSON MILLER: Great. Thank you very much.
9 We appreciate that.

10 Ms. Gonzalez, please go ahead.

11 MS. GONZALEZ: Thank you.

12 Good morning again, Madam Chair and Commissioners,
13 and everybody else that's listening right now.

14 Claimant County of Los Angeles requests that this
15 Commission adopt the staff's proposed decision findings
16 at Election Code section 21532 and 21534, as added by
17 the test claim statute, imposes a reimbursable
18 state-mandated program on the County of Los Angeles. As
19 the test claim imposes increased costs mandated by the
20 State pursuant to Article section -- I'm sorry,
21 Article -- yeah. Article XIII B, section 6, of the
22 California Constitution and Government Code section
23 17514.

24 The County -- the claimant, however, urges the
25 Commission to reject the staff's analysis that

1 consultant costs are not mandated by the test claim
2 statute. The test claim statute requires that the
3 Citizens Redistricting Commission, also known as the
4 CRC, be staffed and that the claimant provide reasonable
5 funding.

6 The costs associated with retaining a consultant
7 are reasonable and, in fact, contemplated in the test
8 claim statute as the legislature set forth the criteria
9 on who can be a consultant.

10 Further, the test claim statute requires that the
11 CRC issue a report and explains its decisions to ensure
12 the mapping process achieves compliance with the
13 designated criteria in the U.S. Constitution; the
14 Federal Voting Rights Act of 1965; geographic
15 contiguity; geographic integrity of the cities,
16 neighborhoods, or communities of interest; geographical
17 compactness without regard to any incumbent, political
18 candidate, or political party.

19 This criteria necessarily requires an understanding
20 of the applicable law, legal, and geographical concepts
21 and practical applications and subject matter expertise
22 that compels engagement of a consultant in order to
23 comply with the reporting requirements in Election Code
24 section 21534(d)(4).

25 The staff, in its decision, suggests -- in its

1 proposed decision suggests that the County may be able
2 to shift their costs, since nothing in Article XIII B,
3 section 6, prohibits shifting of costs between local
4 government agencies. However, it is the claimant's
5 belief that the staff's reliance on the case they cited,
6 City of San Jose versus California, is not applicable to
7 this test claim statute. There, the City of San Jose
8 filed a writ after its test claim was denied. Their
9 test claim claimed that Government Code section 29550,
10 which authorized counties to charge cities for the costs
11 of booking persons into county jails -- which resulted
12 in a significant cost to the City of San Jose.

13 In that case, the court of appeals agreed with the
14 Commission and found that the statute did not create a
15 mandate, because it was discretionary for the County to
16 shift those costs to the cities. But in this case,
17 there is no discretion for the County. The County must
18 create the independent Citizens Redistricting
19 Commission. This is mandatory.

20 In addition, the test claim does not allow for cost
21 shifting among local governments. In the case cited by
22 staff in the proposed decision, City of San Jose, the
23 statute itself allowed for counties that they may shift
24 these costs to the cities. There's nothing in this test
25 claim statute that authorizes the County to shift these

1 costs to any other local municipality.

2 Finally, the claimant does agree with the staff's
3 proposed decision to recommend approval of the test
4 claim. However, we would ask, again, that the
5 Commission revisit its position on the consultants.

6 In addition, if the Commission were to find that
7 the consultant costs are not mandated under this test
8 claim statute, it is the intent of the Claimant to
9 follow the staff's advice, as listed on page 33 of its
10 draft proposed decision. There, it directs that a
11 request for consultant costs be included in the
12 parameters and guidelines, so long as a request is
13 supported by substantial evidence in the record, showing
14 that the activity to hire consultants is reasonably
15 necessary for the performance of the state-mandated
16 program in accordance with the Government Code sections.

17 Thank you.

18 CHAIRPERSON MILLER: Thank you very much,
19 Ms. Gonzalez.

20 Mr. Hill, would you like to speak now, please?

21 MR. HILL: Yes, thank you. Again, Chris Hill for
22 the Department of Finance.

23 We do acknowledge that the Commission staff did
24 limit somewhat the scope of the claimed reimbursable
25 activities that were claimed by the claimant.

1 However, just for the record, we would like to
2 reiterate our contention as stated in our letter of
3 December 28th, 2020, that the statutes at issue, we do
4 not believe that they impose a new program or a higher
5 level of service. Instead, we believe that the costs
6 that are incurred by the claimant are to create and
7 support the Citizens Redistricting Commission and the
8 fulfillment of districting for the board of supervisors,
9 which is an existing activity; and that the statute at
10 issue merely increased the costs for the county clerk or
11 registrar and for the board of supervisors to -- costs
12 associated with an existing activity.

13 And we would just note for the record as well that
14 pursuant to a ruling in the case City of Anaheim versus
15 the State of California, from 1987, the Third District
16 Court of Appeal ruled that increased costs alone do not
17 result in a reimbursable state mandate.

18 And the second course -- excuse me. The second
19 case we would cite is San Diego Unified School District
20 versus the Commission on State Mandates, from 2004, when
21 the Fourth District Court of Appeal ruled that
22 reimbursement is not required if a statute merely
23 implements a change and increases the costs of providing
24 a service.

25 Thank you.

1 CHAIRPERSON MILLER: Thank you very much.
2 Are there any questions or discussion from members?
3 Mr. Adams, please.
4 MEMBER ADAMS: Thank you.
5 Actually, I have two questions.
6 One for Mr. Hill: Is the Department's position,
7 then, if this has no higher level of service, that
8 nothing should be reimbursed in this matter?
9 MR. HILL: Yes, sir. That is our contention.
10 MEMBER ADAMS: Okay. So you folks disagree with
11 the staff's recommendation partially then.
12 MR. HILL: Yes, sir.
13 CHAIRPERSON MILLER: Okay. Thank you.
14 MEMBER ADAMS: And then I guess my other question,
15 for anybody who wants to answer it is, if the work of
16 the consultant was done in-house by the County of Los
17 Angeles, would we feel as though that is reimbursable?
18 Is the issue is that a consultant is doing the work?
19 And I guess I would like the answer to that
20 question, and then I will have a follow-up question.
21 CHAIRPERSON MILLER: Thank you, Mr. Adams. And
22 then I will get to you, Ms. Wong-Hernandez.
23 Ms. Gmur or Ms. Shelton, do you want to answer
24 that?
25 MS. GMUR: Yeah, I will if that's all right,

1 Camille.

2 MS. SHELTON: Please.

3 MS. GMUR: So when we're looking at reimbursement,
4 we're speaking in terms of the consultant, but the
5 reality of the reimbursement is, we're actually looking
6 at the activities.

7 So, yes, if somebody in-house was performing the
8 approved reimbursable activities, then that would be
9 reimbursable. If the consultant is performing those
10 activities, that's reimbursable. It depends on what
11 they are doing.

12 But I must say that Mr. Hill is quite correct, that
13 increased costs do not a mandate make, but that's not
14 what we have.

15 Before the prior law was, the board of supervisors
16 was required to handle the redistricting. There was no
17 requirement to form the CRC at all. This is a new
18 program, it is a higher level of service, and it has its
19 reimbursable components. Redistricting is not new.
20 Drawing a map, not new.

21 So those portions that were required to be done
22 before, including having one of the meetings before the
23 adoption of the map, all not new. We're only
24 concentrating on that which has been added as a result
25 of the program, which requires the County to create

1 staff and fund the CRC.

2 CHAIRPERSON MILLER: Thank you for that.

3 Mr. Adams, do you have a follow-up to that?

4 And then we'll go the Ms. Wong-Hernandez.

5 MEMBER ADAMS: I don't. I will listen to others
6 before I ask anything else. Thank you.

7 CHAIRPERSON MILLER: Thank you.

8 Ms. Wong-Hernandez.

9 MEMBER WONG-HERNANDEZ: So this is partially adding
10 on or responding to Mr. Adams, but also partially making
11 sure I understand. So please, I'm asking Commission
12 staff to correct me if I'm not understanding.

13 I think that the point that you are all making is
14 that the mandate is not for consultants. Like, the
15 mandate itself; it actually only limits the number --
16 you know, it limits kind of the ability to hire
17 consultants. It does not say you need to hire a
18 consultant.

19 But the Ps&Gs, to me, seem like the appropriate
20 place to make that a reimbursable activity. That it was
21 like if you -- that you would sort of make the case in
22 the parameters and guidelines that what you are going to
23 need is that consultant that's allowable in that
24 statute. Is that correct?

25 Because I don't think you guys are saying you can't

1 ever have a consultant that's reimbursable. It's just
2 that you are not mandated to, but that there would be
3 like an opportunity to figure that out later. Is that
4 correct or not correct?

5 MS. GMUR: That is correct, Commissioner.

6 So the test claim statute is silent as to the
7 hiring of a consultant. There's just nothing there,
8 except that if you are going to hire a consultant, there
9 is a limitation on who you can hire. They have to meet
10 the qualifications of an individual who would be
11 qualified for the CRC itself. So that's the only
12 direction that we have coming out of the statute on its
13 face.

14 Ms. Gonzalez is arguing that, you know, how could
15 you possibly do this without a consultant? And in that,
16 she may be correct. But it's still not mandated on the
17 plain language, on the face of the statute.

18 MEMBER WONG-HERNANDEZ: So my follow-up is, but
19 we're not saying it may never be reimbursable. We're
20 saying, it's not -- in and of itself is not a mandate,
21 but as we're figuring out what the parameters and
22 guidelines of the mandate are, we may find that that is
23 an allowable expense at a future time; is that right?

24 MS. GMUR: That is correct, Commissioner. Yes.

25 You know, it ties back to the reimbursable

1 components, the activities. And if the County is able
2 to produce sufficient evidence, substantial evidence, to
3 prove that the consultant is necessary for this
4 activity, then that is what we will cover in the Ps&Gs.

5 MEMBER WONG-HERNANDEZ: Thank you.

6 MS. HALSEY: I would like to add one thing to that.
7 I mean, we will consider that with evidence submitted in
8 the record. But, generally speaking, who performs the
9 mandate is not a mandate itself. That is just a
10 reimbursable -- that's neither here nor there. There's
11 nothing in the plain language of the statute that
12 requires the hiring of consultant, and even if they need
13 to hire a consultant, it's still not an activity.

14 MEMBER WONG-HERNANDEZ: Right.

15 MS. HALSEY: So --

16 MEMBER WONG-HERNANDEZ: The focus on activities is
17 the right one, but I just wanted to get back to kind of
18 what Mr. Adams was talking about, which is that we're
19 not saying, "L.A. County, you can absorb this." That's
20 not what we're saying in this. We're saying that there
21 are activities, and we'll figure out who is performing
22 them and how they are going to get reimbursed. But
23 we're not saying you absolutely can do this with no
24 additional resource.

25 MS. HALSEY: That's correct.

1 MEMBER WONG-HERNANDEZ: I mean, we're figuring out
2 who is going to do them and how.

3 MS. HALSEY: That's correct.

4 Camille has something to add.

5 MS. SHELTON: Just to be clear, though, this
6 analysis is finding that the activity to actually draw
7 the lines, redistricting activities, and the activity to
8 draw the map, are not new and would not be included in
9 the reimbursable state-mandated activities.

10 MEMBER WONG-HERNANDEZ: Thank you.

11 CHAIRPERSON MILLER: Right. And some of these
12 discussions will be ongoing when we get to P&Gs later.

13 Any further questions on this matter?

14 (No response)

15 CHAIRPERSON MILLER: Any public comment?

16 MS. PALCHIK: I see no public comment.

17 CHAIRPERSON MILLER: Thank you, Ms. Palchik.

18 With that, is there a motion and a second, please?

19 MEMBER WONG-HERNANDEZ: I will move the staff
20 recommendation.

21 MEMBER ADAMS: And I would second.

22 CHAIRPERSON MILLER: Thank you, Ms. Wong-Hernandez
23 and Mr. Adams.

24 There have been a motion and a second, and there's
25 no further public discussion.

1 Ms. Halsey, will you please call the roll.

2 MS. HALSEY: Mr. Adams.

3 MEMBER ADAMS: Aye.

4 MS. HALSEY: Ms. Lee.

5 MEMBER LEE: Aye.

6 MS. HALSEY: Ms. Miller.

7 CHAIRPERSON MILLER: Aye.

8 MS. HALSEY: Ms. Olsen.

9 MEMBER OLSEN: Aye.

10 MS. HALSEY: Mr. Walker.

11 MEMBER WALKER: Aye.

12 MS. HALSEY: Ms. Wong-Hernandez.

13 MEMBER WONG-HERNANDEZ: Aye.

14 CHAIRPERSON MILLER: Thank you. The staff
15 recommendation is approved.

16 We will now move to item our next item, Number 5.

17 MS. HALSEY: We now ask presenters for Item 4 to
18 please turn off their videos and mute their microphones.
19 And next is Item 5.

20 Commission Counsel Elizabeth McGinnis will please
21 turn on her video and unmute her microphone and present
22 a proposed decision on a consolidated indirect reduction
23 claim on Municipal Storm Water and Urban Runoff
24 Discharges.

25 At this time, we invite the parties and witnesses

1 for Item 5 to please turn on their video and unmute
2 their microphones.

3 CHAIRPERSON MILLER: Thank you.

4 Welcome, Ms. McGinnis. Do you want to introduce
5 the item, please?

6 MS. MCGINNIS: Yes. Hello. Good morning.

7 CHAIRPERSON MILLER: Good morning.

8 MS. MCGINNIS: This consolidated incorrect
9 reduction claim alleges that the State Controller's
10 Office incorrectly reduced reimbursement claims filed by
11 the Cities of Claremont, Downey, Glendora, Pomona, Santa
12 Clarita, and Signal Hill, and the County of Los Angeles
13 for costs claimed to implement the Municipal Storm Water
14 and Urban Runoff Discharges Program.

15 The Controller found that the claimants failed to
16 identify and deduct as offsetting revenues Proposition A
17 and Proposition C Local Return Funds which the claimants
18 received from the Los Angeles County Metropolitan
19 Transportation Authority, and used to pay for the
20 installation and maintenance of trash receptacles at
21 traffic stops required by the mandated program.

22 Staff finds that the Controller's reduction is
23 correct as a matter of law. Under Article XIII B,
24 section 6, of the California Constitution, the State is
25 required to provide reimbursement only when a local

1 government is mandated by the State to spend its own
2 proceeds of taxes subject to the appropriations limit of
3 Article XIII B.

4 Proposition A and Proposition C are transactions
5 and use taxes levied used by the Los Angeles County
6 Metropolitan Transportation Authority. A portion of the
7 Proposition A and Proposition C tax revenues are
8 distributed to the claimant cities and county through
9 the Proposition A and Proposition C local return
10 programs for use on eligible transportation projects.

11 These taxes, however, are not levied by or for the
12 cities and county as that constitutional phrase is
13 interpreted by the courts, because the claimants do not
14 have the authority to levy Proposition A and Proposition
15 C taxes.

16 Therefore, these taxes are not the claimant's local
17 proceeds of taxes, nor are the proceeds subject to the
18 cities or county's respective appropriations limit.
19 Therefore, where as here, a local government funds
20 mandated activities with other than its own proceeds of
21 taxes, those amounts are not eligible for reimbursement,
22 and the funds must be identified as offsetting revenues
23 against its reimbursement claims.

24 Accordingly, staff recommends that the Commission
25 adopt the proposed decision and deny this consolidated

1 IRC.

2 CHAIRPERSON MILLER: Thank you very much,
3 Ms. McGinnis.

4 Now we will ask the parties and witnesses to please
5 state your name for the record.

6 Mr. Gest and Mr. Winter for the County of Los
7 Angeles, if you would like to begin, please; if you
8 could please state your names for the record.

9 MR. GEST: Yes. Howard Gest, of Burhenn & Gest, on
10 behalf of the County of Los Angeles and also the City of
11 Downey.

12 CHAIRPERSON MILLER: Great. Thank you very much.

13 MR. WINTER: And William Winter with Los Angeles
14 County Public Works.

15 CHAIRPERSON MILLER: Thank you very much.

16 And Ms. Kurokawa for the State Controller's Office,
17 will you please state your name for the record.

18 MS. KUROKAWA: My name is Lisa Kurokawa, and I work
19 for the State Controller's Office.

20 CHAIRPERSON MILLER: Great. Thank you and welcome.

21 So Mr. Gest and Mr. Winter, if you would like to
22 begin, please.

23 MR. GEST: Yes. Thank you very much.

24 I will have Mr. Winter go first.

25 MR. WINTER: Again, my name is William Winter. I'm

1 an assistant deputy director with Los Angeles County,
2 Public Works. The operational title is division head,
3 and I currently manage the Sewer Maintenance Division,
4 about 200 employees, with a \$75 million budget for our
5 sewer system, our sanitary sewer system in the region.
6 I'm a registered civil engineer, and I've been here for
7 35 years in a very -- you know, responsibly progressive
8 jobs at the Department of Public Works.

9 I'm here to testify in support of the claim for
10 reimbursement for the trash receptacles that were
11 installed pursuant to the Municipal Storm Water Permit.

12 From 1995 to 2000, my assignment was in the
13 Programs Development Division. I was first a unit head
14 and a section head, where I coordinated the
15 transportation projects of the department with the
16 various federal, state, railroad, and local authorities.
17 That involved extensive involvement with the Los Angeles
18 County Metropolitan Transportation Authority. It often
19 involved seeking grant funding, securing necessary
20 agreements, and ensuring that all the applicable laws
21 and regulations were communicated to the operational
22 parts of my department.

23 But for 2000 to 2003, I served in an even greater
24 role of responsibility as the assistant division head of
25 the Programs Development Division. I oversaw my

1 previous job that I held. But I also was now involved
2 with transit operations, with project budgeting, and
3 flood control management as well.

4 So in that time frame, I was directly involved in
5 the management decisions associated with trash
6 receptacles at bus shelters. We had a very limited
7 success in securing grant funding from the MTA, LA
8 County MTA.

9 The source of that was federal funds, federal
10 transportation enhancement activity funds. And those
11 funds were really just for the purchase of the
12 receptacles. It didn't provide any maintenance dollars.
13 And these were limited, as I said.

14 The Proposition A Local Return Funds is a source of
15 revenue that's relied on as a bridge source of funds.
16 And as a member of the L.A. County MTA Technical
17 Advisory Committee, I was also in a position to know
18 that the MTA was desirous of ensuring that the
19 Proposition A transit dollars went to advancing mobility
20 goals of the region.

21 And so while a bus stop and associated amenities
22 are important for the transit users, the use of the Prop
23 A funds for trash receptacles wouldn't directly advance
24 the mobility or increased transit usage.

25 So I was involved in the decision making and,

1 personally, to file an SB 90 claim, and when the County
2 identified the Prop A funds as a source of the front
3 funding, the County was also aware that it had an SB 90
4 claim for reimbursement that was pending or would be
5 filed.

6 So use of our Prop A local return was intended to
7 meet the cash flow needs to address the trash TMDL while
8 seeking reimbursement of the expense. That would allow
9 us to also meet our local transit needs once that
10 reimbursement was received. So, in other words, the
11 Proposition A Local Return Funds was a bridge for cash
12 flow purpose.

13 And the return funds were generated from local
14 sales tax, but I or no one else within the
15 administration of Public Works had any reason at that
16 time to believe that the County could not use the Prop A
17 fund and then seek reimbursement under the SB 90
18 program. Had I known that in 2002/2003, that making
19 that decision could ultimately jeopardize reimbursement,
20 I was in a position of authority and decision making to
21 have charted a different course.

22 Thank you.

23 CHAIRPERSON MILLER: Thank you very much,
24 Mr. Winter.

25 Mr. Gest, do you want to comment?

1 MR. GEST: Yes.

2 Again, Howard Gest on behalf of the County of Los
3 Angeles and City of Downey.

4 As has been indicated, this is a consolidated
5 incorrect reduction claim seeking reimbursement for the
6 installation and maintenance of trash receptacles which
7 were imposed by the Los Angeles County Municipal Storm
8 Water Permit starting in 2002.

9 And Mr. Winter just addressed the thought processes
10 of the County when they were looking for funds to pay
11 for this. And as he indicated, we had an SB 90 -- he
12 refers to SB 90. Of course it's now a claim under
13 Article XIII B, section 6, that we would be looking for,
14 for reimbursement, and there was no intent, by using
15 these other funds, to preclude us from that.

16 It's undisputed in this case that this is a
17 reimbursable state mandate, and it's undisputed that the
18 county and the cities incurred these costs in accordance
19 with the mandate.

20 It's also undisputed that the county and the cities
21 used local sales tax revenue. You have heard reference
22 to Proposition A and Proposition C. These are
23 propositions that were adopted -- one in 1980 and one in
24 1990 -- which impose a half cent sales tax on the local
25 citizens in the County of Los Angeles, or a half cent

1 use tax on the citizens in the County of Los Angeles.

2 A citizen in Orange County doesn't pay the tax; a
3 citizen in San Diego County doesn't pay the tax; in
4 Ventura County doesn't pay the tax. Only the citizen in
5 Los Angeles pays -- or a resident in L.A. County pays
6 the tax. So there's no dispute that this is a local
7 sales tax.

8 And these are generally the elements that are
9 required for reimbursement of a mandate under
10 Article XIII B, section 6: A reimbursable state
11 mandate, use of a local tax.

12 Nevertheless, the Controller's Office and the
13 Commission staff and the proposed decision intend to add
14 a requirement that's not present in the language of
15 Article XIII B, 6, and is inconsistent with the voters'
16 intent and inconsistent with the structure of
17 Article XIII B. And that requirement is that the tax
18 also has to be part of the "appropriations subject to
19 limitation" under section 1. Not section 6, but section
20 1 of Article XIII B.

21 And this is wrong and erroneous, and it's wrong and
22 erroneous for several reasons:

23 One, it's not consistent with the plain language of
24 Article XIII B, section 6;

25 Two, it's not consistent with the structure of

1 Article XIII B, section 6 -- Article XIII B in its
2 entirety;

3 Three, it's contrary to the intent of the voters
4 who adopted Article XIII B, under Proposition 4;

5 And, five [sic], it's an unlawful retroactive
6 application of the parameters and guidelines that never
7 had this requirement in it.

8 And, now -- and as mentioned, Mr. Winter testified,
9 if we knew that it was going to be interpreted this way,
10 we would have gone a different route. There was nothing
11 that stopped the county or cities from just using the
12 general sales tax or other general funds. They believe
13 that they had a claim for reimbursement because they
14 were using a local sales tax.

15 Now, let me just give you a brief history so we can
16 set the scene: In 2002 -- or effective as of 2002 -- it
17 was adopted in December of 2001 -- the Regional Water
18 Quality Control Board adopted this storm water permit
19 which imposed this mandate. And starting 2002, the
20 county and the cities began to incur expenses to comply
21 with it.

22 The parameter -- and they used what we call -- what
23 we are referring to as this Proposition A and
24 Proposition C funds, which were for local transit
25 purposes but specifically had a provision where there

1 would be a local return fund. So under Proposition A,
2 25 percent of the sales tax went back to the county or
3 the cities for their local use; and under Proposition C,
4 20 percent of the sales tax went back to the local
5 municipalities for their use.

6 The parameters and guidelines in this case
7 was adopted -- were adopted in 2011. As is pertinent
8 here, they specifically had a provision that said
9 reimbursement for this mandate received from any
10 federal, state, or nonlocal source shall be identified
11 and deducted from this claim.

12 At the time the parameters and guidelines were
13 adopted, the Departments of Finance, the State
14 Controller's Office had an opportunity to comment on
15 these parameters and guidelines and asked for changes if
16 they wanted. They didn't change the word "nonlocal
17 source" to -- and, in addition, taxes subject to the
18 appropriations limit. There was no request to change
19 the provisions or parameters and guidelines that says
20 that what will be the -- identified and deducted are
21 federal, state, or nonlocal sources.

22 So we believe that the proposed decision and the
23 Controller's actions, which now include a new element,
24 which is that it has to be a local sales tax -- local
25 tax that's not subject to the -- that is subject to the

1 appropriations limitations is an -- is adding something
2 to the parameters and guidelines and, even more
3 importantly, not consistent with the statute and the
4 Constitution itself.

5 So let me address those two points:

6 First of all, Article XIII B was adopted by the
7 initiative Proposition 4, and it has two main purposes:

8 One is to limit the appropriations -- the
9 expenditures of the municipalities, and it does that by
10 adopting Section 1, which limits the expenditures of
11 what's defined to be "appropriations subject to
12 limitation";

13 Its second purpose is to provide mandates,
14 reimbursement for state mandates. And that's reflected
15 in section 6. Section 6 is independent of section 1.
16 There's nothing in the language of section 6 that ties
17 it to section 1 or appropriations subject to limitation.

18 As the Commission is familiar, Article XIII B,
19 section 6, says that whenever the legislature or any
20 state agency mandates a new program or higher level of
21 service on any local government, the State shall provide
22 a subvention of funds. There's nothing in that section
23 that references the other sections.

24 The courts have construed that section to make
25 clear that this applies when there's an expenditure of

1 tax revenue, and that it was to be directed to the local
2 municipalities' tax revenues. But the courts have never
3 said that this section was a tie -- tied to the
4 limitation on the expenditures of appropriations.

5 In fact, you know, they always speak in terms of
6 taxes. And the reason why there's a reimbursement is
7 because the State is mandating the county or city to use
8 their tax revenues for a purpose that the State believes
9 is important but is not something to do with it.

10 So, first of all, there's nothing in section 6 that
11 ties it. There was nothing in the voter pamphlet that
12 advised the people who were voting on the initiative
13 that section 6 would be tied to a requirement that the
14 local tax be subject to the payment limitation. So
15 there was nothing to indicate that the voters intended
16 to do that.

17 Third, if you look at Article XIII B, in the
18 definition of "appropriations subject to limitation,"
19 they explicitly exclude subventions pursuant to section
20 6. And in the definition of "proceeds of taxes," they
21 specifically exclude subventions pursuant to article --
22 section 6.

23 So what they have done is they said that the
24 appropriate -- the definition of "appropriations subject
25 to limitation," which is in section 1, should not --

1 those -- those appropriations should not include any
2 subventions that the city or a county would receive.

3 But the Commission's proposed -- the staff's
4 proposed decision turns that on its head. They are
5 saying that unless the money was under the
6 appropriations limit, you can't get reimbursed; whereas,
7 Article XIII B's definitions in A and C specifically say
8 you should not be including it. Because the result of
9 the proposed decision is, unless we had spent money that
10 was subject to the appropriations, we couldn't get
11 subvention. But section 8(a) and section 8(c) say
12 subvention should not be included within those
13 definitions of "appropriations" or "proceeds of taxes."

14 In the initial presentation, there was also a
15 reference to, we're not using what's defined to be
16 "proceeds of taxes" under Article XIII B.

17 But, again, there's nothing in section 6 that talks
18 about proceeds of taxes. That all relates to the
19 definition of what ultimately will be included under
20 Article XIII B, section 1, which -- it's our position --
21 is independent of section 6.

22 Now, in the proposed decision, there are -- there
23 is some citation to cases, but all the cases provide
24 along the following two lines: When the cases are
25 dealing with the appropriations subject to limitation,

1 the court emphasizes the policy of trying to restrict
2 expenditures. But when the courts are dealing with
3 mandates under section 6, they always emphasize that it
4 is meant to protect the taxes that would -- are
5 available for the county or the city to spend.

6 So, thus, like in the County of Fresno case, which
7 upheld the facial validity of Government Code section
8 1156, the court, you know, specifically says that the
9 purpose is to preserve the taxes, which are -- which the
10 county and the cities have limited ability to raise.
11 They don't talk about the appropriations limits.

12 There's another very significant reason why the
13 Commission's proposed decision is incorrect. And this
14 is the retroactive application of this interpretation.
15 This money was -- started to be spent in 2002. The
16 claim here deals with money spent between 2002 and 2012.

17 The parameters and guidelines were adopted in 2011.
18 The parameters and guidelines specifically provided that
19 the reimbursement from any federal, state, or nonlocal
20 source shall be deducted.

21 Now, the Controller's Office is coming in saying,
22 well, wait a minute, "nonlocal" doesn't mean "nonlocal."
23 Even though this is a local sales tax, that should fall
24 within the definition of "nonlocal." But, you know, the
25 plain meaning of "nonlocal" is "nonlocal." And not only

1 that, they are coming in and saying, well, you really
2 should read this as, well, nonlocal or local taxes that
3 are not subject to the appropriations limit.

4 That's -- as Mr. Winters testified, if the county
5 or the cities knew that "nonlocal" was not going to mean
6 "nonlocal," they could have done something different.
7 But now, in 2001, which is 19 years after the money
8 began to be spent, and eight years -- or nine years
9 after the parameters and guidelines, they are coming in
10 with a new interpretation of what "nonlocal" means.

11 There was never any notice. The Controller's
12 Office or the Department of Finance could have put that
13 in the parameters and guidelines when they were adopted,
14 but they didn't.

15 And it's fundamentally unfair to go back to the
16 counties and the cities, which have now spent the money,
17 and say, "You know what? Eight years later, 18 years
18 later, we're going to change what we meant," because we
19 could -- had the right to assume that "nonlocal" meant
20 "nonlocal."

21 Retroactivity, which is what this interpretation
22 would be, it would be a retroactive interpretation, is
23 disfavored in the law. It's unlawful to impose a
24 different interpretation that would change,
25 fundamentally change, the rights of parties with respect

1 to conduct at the time they performed it.

2 And it's fundamentally unfair, but not only is it
3 unfair, but it's inconsistent with Article XIII B for
4 the reasons I previously said before, to say that merely
5 because they use these -- these Prop A or Prop C funds,
6 they are not entitled to reimbursement. Prop A and Prop
7 C allowed the use of these local return funds, allowed
8 the use for their advancement, and then allowed them to
9 be reimbursed.

10 And upon reimbursement, the county and the cities
11 would take those funds, would put it back in the
12 appropriate Prop A or Prop C account, and would use that
13 money for other local transit purposes.

14 But what we have here is, if we're not reimbursed,
15 is that we have got a mandate and the State is directing
16 the use of those local sales tax for its own priorities
17 over what the city and county's priorities and use of
18 those funds would be.

19 And for that reason, we ask you not to accept the
20 proposed decision, but to overturn the Controller's
21 decision and find that the county and the cities are
22 entitled to reimbursement.

23 Thank you very much.

24 CHAIRPERSON MILLER: Thank you, Mr. Gest.

25 I'm going to open it up to questions in a moment.

1 I'm going to let Ms. Kurokawa please speak on
2 behalf of the Controller, and then turn it to
3 Ms. McGinnis and Ms. Shelton, just to speak about the
4 specific questions about proceeds of tax. I think there
5 was some conflating of issues on that, so I just wanted
6 to make sure we're clear on those pieces. And then
7 we'll open it up to questions and turn it back to you,
8 Mr. Guest and Mr. Winter.

9 Completely hear in your voices the frustration on
10 how long this has been, but the question here is -- is
11 really one of the law and what we are able to do and,
12 obviously, the Constitution.

13 So with that, Ms. Kurakowa, can you please speak.
14 And then we'll open it up for Ms. McGinnis and
15 Ms. Shelton and then Board questions.

16 MS. KUROKAWA: Yeah. Sure.

17 CHAIRPERSON MILLER: Thank you.

18 MS. KUROKAWA: Sure. Yeah.

19 The State Controller's Office agrees with the
20 Commission's proposed decision.

21 CHAIRPERSON MILLER: Great. Thank you.

22 Ms. McGinnis and Ms. Shelton, any preference as
23 to -- can we open it up to questions, and then I will
24 have you respond.

25 I specifically though, before we open it up to

1 questions, want to speak to this idea of the proceeds of
2 tax and whether or not the claimant actually had --
3 was -- had the authority under state law to have those
4 proceeds of tax. I think there was some confusion on
5 that issue. Ms. McGinnis, if you could respond to that
6 and then we'll open it up to questions.

7 MS. MCGINNIS: Yeah. Sure.

8 I think it might be helpful here to just take even
9 a step back further from that --

10 CHAIRPERSON MILLER: Please.

11 MS. MCGINNIS: -- and look at, when we're talking
12 about -- so Mr. Gest has stated that there's no
13 disagreement here that the funds that are at issue, the
14 Proposition A and Proposition C Local Return Funds are
15 funds that are generated from a local sales tax. So
16 that term of art there, "local sales tax," we have to
17 unpack that.

18 So we're talking -- yes, we're going to talk about
19 proceeds of taxes, but we also have to look at, what do
20 we mean when we say "local sales tax"? Okay? So if we
21 look at the parameters and guidelines, the basis under
22 which the Controller's Office determined that these
23 funds should be offset is if they fell into the category
24 of nonlocal source revenues. Okay? So the parameters
25 and guidelines say that offsetting is required for

1 federal, state, or other nonlocal source revenues.

2 So the issue -- the initial issue is whether or not
3 these local sales tax revenues are a nonlocal source
4 revenue. And I think what's confusing here is this term
5 "local." What do we mean when we're saying "local"?
6 Okay? When we're saying "local," we're -- we are
7 talking about the specific local agency that has
8 presented the claim for reimbursement. We're not
9 talking about a separate local agency's sales taxes.

10 So, here, Proposition A and Proposition C are sales
11 taxes that are levied by the Los Angeles County
12 Metropolitan Transportation Authority. They are not
13 taxes that are levied by the County of Los Angeles or
14 any of the claimants in this matter. None of these
15 claimants have the authority to levy these taxes. They
16 are only receiving a portion of the revenues of these
17 taxes through a special program that's required under
18 the Proposition A and Proposition C ordinances.

19 Under Proposition A, 25 percent of the tax revenues
20 that are generated throughout the County are allocated
21 to the County of Los Angeles and cities within the
22 county, based on their per capita populations to use for
23 specific authorized transportation projects. And one of
24 those was installation and maintenance of trash
25 receptacles.

1 Under Proposition C, similarly, they are receiving
2 20 percent of those -- of all of the revenues that are
3 generated in the County.

4 So when we're talking about local sales tax
5 revenues, we're talking about a subset of funds that are
6 generated by a separate local entity. And so it's
7 staff's interpretation of this tax, this is not a local
8 sales tax in the sense of a "local" meaning fee claimant
9 at issue. It's local in the sense that it's not a state
10 or federal tax, but it's not local in the sense that
11 it's not levied by or for the claimants in this matter.

12 CHAIRPERSON MILLER: Thank you very much.

13 Anything to add, Ms. Shelton, or can we go to Board
14 questions?

15 MS. SHELTON: Let me just kind of bring it --
16 circle it back just to mandates law, just to make it
17 really clear.

18 First of all, you know, Article XIII A and XIII B
19 are budgeting laws that were adopted by the voters.
20 Budgeting laws for each individual county and city that
21 restrict their ability to levy taxes and put an
22 appropriations limit on the amount that they can spend.

23 There's a long line of cases going all the way back
24 to the beginning of the Supreme Court's interpretation
25 of Article XIII B, section 6, that said, you have to

1 read Article XIII B, section 6, in light of these taxing
2 and spending limitations of XIII A and XIII B.

3 We see that in County of Fresno. We see that same
4 statement in the Department of Finance versus Commission
5 on State Mandates case; the 2016 case which was dealing
6 with this very program, the storm water program, where
7 the court said the reimbursement provision in section 6
8 included in recognition of the fact that Articles XIII A
9 and B severely restrict the taxing and spending powers
10 of local government.

11 We see it in cases from the First District Court of
12 Appeal and the Second District Court of Appeal in County
13 of Sonoma and County of Los Angeles versus Commission on
14 State Mandates, where the courts recognized that
15 reimbursement under Article XIII B, section 6, is
16 required only when a mandated new program or higher
17 level of service forces local government to incur
18 increased actual expenditures of their limited tax
19 proceeds that are counted against the local government
20 spending limit.

21 In County of Fresno, the court went through and
22 tied the appropriations limit to the reimbursement
23 requirement of Article XIII B, and said that those funds
24 that are not defined as "proceeds of taxes," like fee
25 authority, like federal funds, like bond funds, are not

1 subject to the appropriations limit, and, therefore, are
2 not, when used, entitled to reimbursement.

3 The cases -- we do have cases cited in this
4 proposed decision from the Third District Court of
5 Appeal dealing with redevelopment agencies, and those
6 really, factually, are directly on point.

7 In those cases -- one is Redevelopment Agency
8 versus the City of San Marcos. The other is the
9 redevelopment agency for the City of El Monte both --
10 who both filed test claims against the Commission. The
11 Commission denied those test claims. And the Third
12 District Court of Appeal upheld those denials.

13 In both cases, the redevelopment agencies made the
14 argument that the money that they were spending were
15 local proceeds of taxes; they were tax revenue, because
16 they receive a portion of that tax revenue.

17 And the court said, "Well, no. You do not have the
18 authority to collect that tax revenue. The city and
19 county for which your redevelopment agency is located
20 will have the authority, statutory authority, to collect
21 the tax revenue. And you just get the tax increment
22 portion of that revenue for the increased value due to
23 your redevelopment."

24 The redevelopment agencies have no authority under
25 law to levy taxes, and, therefore, using the County of

1 Placer case, the court said, "You do not -- the levying
2 of that money is not by or for you. That was for the
3 county. And you are just getting, by law, a portion of
4 it." That's no different than what's going on here.
5 And the court said there is a direct relationship
6 between the appropriations limit and Article XIII B,
7 section 6. Because the money that you spent was not
8 subject to the limitations of Article XIII A and XIII B,
9 you are not entitled reimbursement under the California
10 Constitution.

11 So you have to understand this case in light of
12 that backdrop.

13 The parameters and guidelines, the language that is
14 referred to, is boilerplate language. When the Ps&Gs
15 were adopted back in 2011, we had no knowledge of the
16 local return programs. In fact, the County never raised
17 that issue either.

18 That's why we have boilerplate language which is
19 there to generally tell you about the requirements of
20 Article XIII B, section 6. So there's no retroactive
21 application of the law because the law has always been
22 this. You have to individually look at each claimant;
23 you have to individually look at their restrictions on
24 their tax revenue; individually look at their proceeds
25 of taxes and what is being spent; individually look at

1 their spending limit.

2 Are the money -- is the money that they spent
3 subject to the appropriations limit and defined as a
4 proceeds of tax. And here, that's not.

5 And then one other thing, just to mention -- I know
6 that Liz would mention as well, and it's in the
7 analysis -- is that the Prop C funds specifically
8 designate those funds subject -- to being subject to the
9 appropriations limit of Metro. They are -- under law,
10 you can't -- the same funds can't be subject to multiple
11 appropriations limit. So they can only be part of the
12 appropriations limit of Metro.

13 And, therefore, unfortunately, we have to construe
14 Article XIII B strictly. We cannot apply it as an
15 equitable remedy. Certainly, we understand the
16 frustration of local government in this case. I mean,
17 this lawsuit -- there's been a lawsuit which was
18 recently upheld affirming the test claim decision. It's
19 a frustrating decision. But there's nothing that we can
20 do to provide equity here.

21 And that's all I have.

22 CHAIRPERSON MILLER: Great. Thank you,
23 Ms. Shelton.

24 Mr. Gest, I see your hand, but I will turn to you
25 in a moment.

1 Ms. Olsen has been waiting as well as
2 Ms. Wong-Hernandez.

3 MEMBER OLSEN: I'm okay. Ms. McGinnis and
4 Ms. Shelton answered all of my questions.

5 CHAIRPERSON MILLER: Great. I appreciate that.
6 Thank you.

7 Ms. Wong-Hernandez.

8 MEMBER WONG-HERNANDEZ: I was actually going to
9 thank Ms. McGinnis and Ms. Shelton for your
10 explanations. Both of them, in tandem, were extremely
11 helpful to me, and I appreciate, Ms. Shelton, you
12 bringing it back to the context of the greater, sort of,
13 the budget and those statutes as what they -- the
14 mandate reimbursement process was really designed to do
15 historically.

16 I want to express some sympathy on the cash flow
17 issue. Like, I -- I get it. I don't have any problem
18 with the staff recommendation and you -- I'm prepared to
19 vote that way. But I do want to say that I'm really
20 sympathetic to the local government decision making in
21 those cash-strapped times. Like, we were all there in
22 the budget. Finance, Controller's Office, you all were
23 there with me in the legislature, you know, when people
24 were looking for places to get money. And I get the
25 idea of making a decision and thinking, well, you know,

1 this is what we are going to use for now, because it's
2 an allowable use of what is nonlocal-sourced funding.
3 But it's an allowable use. We'll plug it there. We'll
4 figure it out later once the mandates process plays out.

5 And, like, this doesn't feel good to me. I don't
6 like that that's -- I don't know how to do this better
7 and how to be very explicit going forward with people.
8 Like, "You can't do that. I know it sounds like a good
9 idea."

10 But to the extent that we can somehow message that
11 to prevent something like that from happening, because
12 it really -- it bothers me, because it seems like such a
13 logical thing to have done, while I recognize that we
14 are bound by, you know, the laws and duties that govern
15 this Commission.

16 So thank you.

17 CHAIRPERSON MILLER: Great. Thank you for that,
18 Ms. Wong-Hernandez.

19 Mr. Adams.

20 And then if any other board member has a question,
21 if you could please use the raise hand feature so we can
22 return to Mr. Gest.

23 Mr. Adams.

24 MEMBER ADAMS: Thank you, Ms. Miller.

25 I too just wanted to voice my great sympathy and

1 frustration for local government. But, like
2 Ms. Wong-Hernandez, I'm going to vote or leaning to vote
3 the staff recommendation.

4 I honestly think Article XIII B is all about the
5 Prop 4 limited money and everything else is everything
6 else.

7 I am sorry that the term "nonlocal" was used in the
8 P&Gs. I wished that we could have come up with another
9 language.

10 And just in case this moves forward to a court
11 case, I am just curious, on this sales tax that was
12 assessed by Prop A and C, can somebody answer for me,
13 are part of these taxes paid by noncounty residents? If
14 I go into Los Angeles County and buy something, and I'm
15 a resident of another county, am I paying that tax?

16 CHAIRPERSON MILLER: Please, Ms. McGinnis.

17 MS. MCGINNIS: Are you -- if I'm understanding, you
18 are just asking if the sales tax is imposed throughout
19 the county on anyone that would come to the county?

20 MEMBER ADAMS: Yes.

21 MS. MCGINNIS: The ordinance specifies how it's
22 imposed, but my understanding is, it would be imposed on
23 specific transactions that take place in the county. So
24 not specific to a person in the county. I don't know if
25 there's an issue for how the sales taxes are governed

1 for online purchases or something like that. But I
2 know, the ordinance does spell that out. And my
3 understanding -- and perhaps Mr. Gest can comment
4 further. My understanding is that, yes, it would be on
5 specific transactions within the county.

6 MEMBER ADAMS: Therefore, I would just -- again, I
7 have great sympathy, but while it's a tax that's
8 collected locally, it's not just locals are paying it.
9 Number one, it's an optional tax that the County of Los
10 Angeles opted to go for. So, again, not subject to its
11 Prop 4 limit.

12 So, again, I think if this goes to a court, it will
13 be an interesting discussion, but I certainly -- again,
14 frustrated. I wish we could split the baby, but, again,
15 I believe the staff recommendation has it right.

16 Thanks.

17 CHAIRPERSON MILLER: Thank you.

18 Mr. Adams, I would love to follow up with you, just
19 maybe offline, on the imposition of the tax in the
20 county. I wasn't clear on your question, but I would
21 like to make sure that we follow up with you and get
22 that.

23 MEMBER ADAMS: Thank you.

24 CHAIRPERSON MILLER: Thank you for that.

25 Mr. Gest.

1 MR. GEST: Thank you.

2 All right. So, first of all, let me say that
3 although I do not have a specific answer to Mr. Adams's
4 question -- and if you want, we could see if we could
5 get you a specific answer -- you know, it's my
6 understanding that, you know, of course, you come in,
7 you buy -- you spend \$10 for a cup of coffee; they are
8 going to assess the sales tax.

9 But if you are coming in and buying a car, for
10 example, there might be a way to say, no, I'm not a
11 citizen of Los Angeles County, and, therefore, you
12 don't --

13 CHAIRPERSON MILLER: No.

14 MR. GEST: -- have to pay that tax. So I don't
15 have the precise answer for you.

16 CHAIRPERSON MILLER: This is about sales tax law.
17 So, for example, your cup of coffee that's to go, it's
18 because you are there. So sales tax is all based on
19 nexus and physical presence. And the car, in fact, is
20 based on where you register. That's how sales tax law
21 in this state works.

22 And, additionally, you know, the sales tax is
23 actually -- the retailer pays it as a privilege tax of
24 doing business in this state. It's collected, but it's
25 an imposition on the retailer; unlike the use tax, which

1 is an imposition on the taxpayer.

2 So that's -- and I know this isn't the point of
3 your conversation, Mr. Gest. It's not -- taxes imposed
4 by a county are not, in fact, optional. So I just want
5 that to be as a matter of state law. So there's -- I do
6 think is a different conversation, so I certainly don't
7 want to go kind of down that rabbit hole.

8 But Mr. Gest -- can we let Mr. Gest -- Ms. Halsey?

9 You are muted, Ms. Halsey. I'm sorry, Mr Gest.
10 Ms. Halsey?

11 MS. HALSEY: Oh. I just wanted to clarify that
12 there's not a tax being imposed by the county. It's
13 being imposed by the Metropolitan Transit District.
14 That's all.

15 CHAIRPERSON MILLER: Thank you for that.

16 Mr. Adams, do you have a follow-up to that, or can
17 we let Mr. Gest continue?

18 MEMBER ADAMS: Yeah. I was just going to say, my
19 whole point was -- is that intermixed in this is taxes
20 paid from people from everywhere, not just locals, and
21 that was my only point. So thanks.

22 CHAIRPERSON MILLER: Great. Yes. Thank you for
23 that.

24 Mr. Gest, apologies. Please continue.

25 MR. GEST: Okay. I want to -- I understand that

1 the members of the Commission, even though they haven't
2 voted yet, are indicating that although they are
3 sympathetic, they feel that the law restricts them. And
4 I want to point out that I don't believe that that's
5 correct.

6 First of all, although counsel for the Commission
7 talked about the various case law, those cases, when you
8 look at those cases, if they are dealing with the
9 mandates, they are dealing with the use of tax proceeds.
10 But when you look at those cases, if they are dealing
11 with other aspects, like whether a special assessment
12 should be concluded in the appropriations subject to
13 limitation, they emphasize the propositions and the
14 article's intent to restrict government spending. So
15 it's not correct that mandates under Article XIII B,
16 section 6, have been tied to appropriations limits.

17 In fact, there is no case -- no case -- that has
18 ever held that a mandate was not reimbursable because it
19 was -- the taxes that were used were not subject to the
20 appropriation limitations. This would be a -- and
21 there's no Commission decision that we found that has
22 ever held that. This would be a precedent-setting
23 decision, so there is no case that requires the
24 Commission to rule in that fashion.

25 Secondly, there is a discussion that because the

1 tax is imposed by Metro, it's a nonlocal source. But
2 the fact of the matter is, it is a local tax. The
3 citizens of Los Angeles believe that they are paying
4 this tax. And I think if you had talked to any person
5 who voted for Proposition 4, they would have believed
6 that these kinds of taxes are local taxes, and there's
7 certainly nothing in the voter pamphlet that indicated
8 there was something different. And, in fact, when one
9 interprets the initiative, one presumed that the
10 electors knew what the law was. And there was an SB 90
11 program before Proposition 4 was adopted. Proposition 4
12 simply enshrined that in the Constitution.

13 But before Proposition 4 adopted it under the SB 90
14 program, there was no requirement that reimbursement for
15 mandates be only with respect to taxes that were subject
16 to appropriations, because there was no such subject to
17 appropriations limit.

18 So what you have here is, if you uphold the
19 Controller's Office's decision and the proposed
20 decision, you are ruling that the voters, when they
21 adopted Proposition 4, intended to limit the SB 90
22 program, rather than enshrine it in the Constitution,
23 because it was more -- you are saying it's more limited
24 than it was before this proposition was adopted, because
25 there was no requirement with respect to it being part

1 of appropriations.

2 And it's presumed that the voters knew what the law
3 was when they adopted it, and there's nothing in the
4 voter pamphlet and nothing to indicate that they
5 intended to limit it in the way that it's being
6 proposed.

7 And contrary to argument, you do not construe this
8 strictly. The cases that talk about construing matters
9 strictly dealt with appropriations. They did not deal
10 with Section 6 of the mandate. In fact, this is an
11 initiative that was adopted by the voters and it's being
12 construed deliberately to effectuate their intent. And
13 that is not happening with respect to the proposed
14 decision.

15 And for those reasons, we again would request that
16 you reverse the Controller's Office's audits.

17 CHAIRPERSON MILLER: Thank you, Mr. Gest.

18 Ms. Shelton.

19 MS. SHELTON: Yes. Let me just unpack just a
20 couple of things.

21 And respectfully, Mr. Gest, I do disagree.

22 The courts have repeatedly instructed the
23 Commission to interpret Article XIII B, section 6,
24 strictly and not as an equitable remedy. The City of
25 San Jose case versus State of California is one that

1 comes to mind very quickly.

2 Also, secondly, this is not an issue of first
3 impression. As I indicated during my earlier testimony,
4 there have been lots of cases dealing with proceeds of
5 taxes and appropriations limit. We have cases that we
6 have found something to be mandated and imposed a new
7 program higher level of service, but the funds that are
8 used for the program would not incur -- or be costs
9 mandated by that state. That happens all the time.

10 The Redevelopment Agency versus City of San Marcos
11 case, those were requirements imposed on the
12 redevelopment agency. They probably were new and they
13 probably imposed a new program or higher level a
14 service. But the redevelopment agency and the funds
15 that they used are not entitled to be reimbursed because
16 they are not triggered. They -- those funds are not
17 proceeds of taxes and they are not subject to the
18 appropriations limit.

19 So this is not new, and it's wrong to say that it
20 is new.

21 Also, lastly, the SB 90 program, the courts have
22 said, was very different than Article XIII B, section 6.
23 Just pointing to the County of Los Angeles case, which
24 is the first Supreme Court 1987 case, the court said,
25 these are not the same. In fact, many provisions in SB

1 90 are different than what's required by Article XIII B,
2 section 6.

3 Also, SB 90 was a quasi legislative process, not a
4 quasi judicial process. So there's many differences,
5 and we can't equate the two provisions together.

6 And that's all I have, and I'm happy to answer any
7 questions that you might have.

8 CHAIRPERSON MILLER: Thank you very much for that.

9 Any other questions from the board on this matter?

10 (No response)

11 CHAIRPERSON MILLER: Seeing none, any public -- it
12 looks like we have one. Is that correct, Ms. Palchik?

13 MS. PALCHIK: Yes, Madam Chair.

14 Ms. Chinn. Ms. Annette Chinn. One moment.

15 CHAIRPERSON MILLER: Thank you.

16 Ms. Chinn, we will -- if you could please state
17 your name for the record.

18 MS. CHINN: Annette Chinn, Cost Recovery Systems.
19 I'm a consultant that works directly with cities to help
20 them prepare these claims for reimbursement.

21 And Ms. Hernandez mentioned that she sympathized
22 with local agency's perspective and wishes that there
23 was some communication to local agencies to let them
24 know the importance of using general fund.

25 And I have. I have done this with many of my --

1 all my clients. And the response that I get unanimously
2 back from them is that, "We just don't have the general
3 funds to spend for these things." So what are the
4 practical implications for local agencies when they are
5 out of general funds? There is no general fund that's
6 bottomless that they could use to pay for these state
7 mandates. And what if the State mandates more than what
8 local agencies have?

9 So is the implication, that, well, if you don't
10 have it, like, go get bonds and get other sources of
11 revenue to pay for state mandates? I mean, I'm not an
12 expert at law. I'm not an expert at tax revenues. But
13 the logical conclusion here is that the State can
14 mandate more than local agencies have, and what is --
15 what does that mean? That local agencies just have to
16 go find other people to tax to pay for state mandates?
17 That seems to defy the purpose of this whole program,
18 but...

19 CHAIRPERSON MILLER: Thank you, Ms. Chinn, for your
20 comment.

21 Ms. Wong-Hernandez?

22 And I would like to avoid kind of a debate on
23 cities' and counties' general funds.

24 MEMBER WONG-HERNANDEZ: I'm sorry, Madam Chair.
25 It's just because my name --

1 CHAIRPERSON MILLER: Absolutely.

2 MEMBER WONG-HERNANDEZ: I just want to say, yes, I
3 understand your frustration, Ms. Chinn. And when you
4 are ready to join a coalition to revamp the mandates
5 process and do some reforms, we are happy to engage in
6 that conversation from the vantage point of the
7 Controller's Office and from the people here on this
8 Commission. But that, right now, we implement the
9 process that is part of our Constitution.

10 CHAIRPERSON MILLER: Thank you for that,
11 Ms. Wong-Hernandez.

12 Ms. Shelton, I just want to make sure this is --
13 this is actually to the IRC.

14 MS. SHELTON: Just, real quickly, that the mandate
15 reimbursement is not like a tort. You don't get -- you
16 are not entitled to reimbursement to make you whole.
17 It's not -- it's very narrowly tailored to recover only
18 those funds that are spent from your proceeds of taxes
19 and subject to the appropriations limit. And that's the
20 whole point of XIII B, section 6.

21 CHAIRPERSON MILLER: Thank you for that.

22 Okay. Is there any further public comment?

23 (No response)

24 CHAIRPERSON MILLER: Seeing none, any further
25 questions from the Board on this matter?

1 (No response)

2 CHAIRPERSON MILLER: Seeing none, do we have a
3 motion and a second?

4 MEMBER WONG-HERNANDEZ: So move the recommendation.

5 CHAIRPERSON MILLER: Thank you.

6 MEMBER OLSEN: Second.

7 CHAIRPERSON MILLER: Thank you.

8 Ms. Wong-Hernandez moves to adopt the staff
9 recommendation; and Ms. Olsen seconds.

10 And just one more time, I'm going to check on
11 public comment, just because we're on Zoom.

12 I see none. Ms. Palchik, just confirming.

13 MS. PALCHIK: Yes. That is correct, Madam Chair.

14 CHAIRPERSON MILLER: Great. Thank you very much.

15 We have a motion and a second.

16 Ms. Halsey, will you please call the roll.

17 MS. HALSEY: Mr. Adams.

18 MEMBER ADAMS: Aye.

19 MS. HALSEY: Ms. Lee.

20 MEMBER LEE: Aye.

21 MS. HALSEY: Ms. Miller.

22 CHAIRPERSON MILLER: Aye.

23 MS. HALSEY: Ms. Olsen.

24 MEMBER OLSEN: Aye.

25 MS. HALSEY: Mr. Walker.

1 MEMBER WALKER: Aye.

2 MS. HALSEY: Ms. Wong-Hernandez.

3 MEMBER WONG-HERNANDEZ: Aye.

4 CHAIRPERSON MILLER: Thank you. The staff
5 recommendation is adopted.

6 Thank you, everyone, for your time and attention to
7 this matter.

8 Ms. Halsey.

9 MS. HALSEY: Sure. We now ask the presenters for
10 Item 5 please turn off their videos and mute their
11 microphones.

12 Item 6 is reserved for county applications for a
13 finding of significant financial distress or SB 1033
14 applications. No SB 1033 applications have been filed.

15 Assistant Executive Director Heidi Palchik will
16 please turn on her video and microphone and present
17 Item 8, the Legislative Update.

18 MS. PALCHIK: Yes. Thank you. Good morning.

19 AB 1013, State Mandates Claims, proposes reducing
20 the statutorily required minimum amount of costs
21 incurred to file a mandate reimbursement claim from
22 \$1,000 to \$900. On March 4th, this bill was referred to
23 the Assembly Committee on Local Government. It appears
24 to be a spot bill, and it contains the same language as
25 the member's 2020 spot bill, which was AB 2395, and we

1 tracked this last year.

2 Next is AB 885, Bagley-Keene Open Meeting Act:
3 Teleconferencing, which proposes to add provisions to
4 the Bagley-Keene Open Meeting Act, including the
5 requirements that the portion of a meeting or proceeding
6 conducted by teleconference, that is required to be open
7 to the public, be both audibly and visibly -- visually
8 observable; the agenda be posted at the primary physical
9 location where members of the public may physically
10 attend; and requiring at least one of the members be
11 present at that physical location for the meeting.

12 This bill would also delete the requirement for the
13 agenda to be posted at the location of each public
14 official participating in the public meeting remotely,
15 including from the member's private home or hotel room;
16 and would amend the current language so that members of
17 the state body participating remotely shall count
18 towards a quorum.

19 Finally, this bill would make legislative findings
20 demonstrating the interests protected by limiting the
21 right of access to meetings of public bodies and the
22 need for protecting that interest as follows: By
23 removing the requirement for agendas to be placed at the
24 location of each public official participating in the
25 public meeting remotely, including from a member's

1 private home or hotel room. This act protects the
2 personal, private information of public officials and
3 their families while preserving the public's right to
4 access information concerning the conduct of the
5 people's business.

6 This bill was re-referred to the Committee on
7 Governmental Organization on March 25th, and we will
8 continue to monitor legislation for bills that impact
9 the mandates process.

10 That's all I have, unless there are questions.

11 CHAIRPERSON MILLER: Thank you very much.

12 Any questions for Ms. Palchik?

13 (No response)

14 CHAIRPERSON MILLER: Obviously, we continue to work
15 on how we can learn from the pandemic and have
16 successful -- continue to use the technologies in order
17 to have the public access. So really appreciate the
18 update on that.

19 I'm happy to answer any questions from the board,
20 if those things come up as well.

21 Thank you for that.

22 Seeing no questions, Ms. Halsey, are we moving on
23 to the --

24 MS. HALSEY: Legal Counsel Camille Shelton will
25 present the Chief Legal Counsel Report.

1 CHAIRPERSON MILLER: Thank you.

2 MS. SHELTON: Good morning.

3 There are no new filings or recent decisions to
4 report.

5 We do have a hearing set in San Diego County
6 Superior Court on the challenge to the Youth Offender
7 Parole Hearing Test Claim for August 6th, 2021.

8 CHAIRPERSON MILLER: Thank you, Ms. Shelton.

9 Ms. Halsey, will you please present the Executive
10 Director Report.

11 MS. HALSEY: Yes.

12 The Mandate Reimbursement Local Assistance portion
13 of the Commission's budget was heard in Senate Bill
14 Subcommittee 4 on February 3rd, 2021, and approved as
15 proposed. It was also heard in Assembly Budget
16 Subcommittee 4 on March 9, 2021, but no action was
17 taken.

18 The Governor has released his May revision and has
19 indicated that the administration intends to retain the
20 mandatory across-the-board 5 percent reduction to state
21 agencies' operating and expenses and equipment budgets.
22 However, it is anticipated that the personal leave
23 program will end for all bargaining units. However,
24 this is still being negotiated with several of the
25 bargaining units.

1 With regard to local government mandates proposed
2 for funding and suspension, they are essentially the
3 same as last fiscal year, and two new mandates --
4 U Visa and Peace Officer Training Mental Health Crisis
5 Intervention -- are proposed to be funded at the high
6 end of the range projected in their respective statewide
7 cost estimates that were adopted by the Commission.

8 And additionally, staff understands that the Public
9 School Restrooms Feminine Hygiene Products mandate for
10 which the Commission adopted the statewide cost estimate
11 on December 4, 2020, is expected to be added to the
12 budget before its adoption.

13 With regard to Commission's workload, after this
14 hearing, there are 40 pending test claims, 38 of which
15 are regarding storm water NPDES claims, and there is
16 also one parameters and guidelines, one parameters and
17 guidelines amendment, and three statewide cost estimates
18 pending.

19 On inactive status, pending the outcome of
20 litigation, there is one parameters and guidelines
21 remaining regarding storm water, which is still pending
22 in the courts.

23 Finally, there are now six IRCs remaining. The
24 Commission staff currently expects to complete all
25 currently pending test claims and IRCs by approximately

1 the March 2024 Commission meeting, depending on staffing
2 and other workload. However, some of the test claims
3 and IRCs may be heard at an earlier time than currently
4 anticipated if they are consolidated for hearing.

5 With regard to administrative developments, the
6 Commission is in a period of change and transition.
7 Three of our 14 staff members have taken new jobs with
8 different agencies this spring. Senior Legal Counsel
9 Christopher Becker has taken a position with the
10 Attorney General's Office, Employment Administrative
11 Mandate section, where he will be focusing on trial
12 work, which is very different from the detailed
13 analytical work of preparing mandate analyses and writ
14 and appellate litigation work that the Commission
15 attorneys perform. His last day with the Commission was
16 April 30th.

17 And then Associate Governmental Program Analyst,
18 HR, Marie Jacques accepted a promotional opportunity
19 with Covered California where she is serving as Staff
20 Services Manager HR, and her last day with the
21 Commission was March 23rd.

22 And then, finally, Associate Governmental Program
23 Analyst, Purchasing and Legislative, Kerry Ortman is
24 making a big move from the Commission after 14 years in
25 a part-time position with us. She has moved over to the

1 Consumer Affairs Medical Board Enforcement Section in a
2 full-time position, where she will be staffing the
3 medical board members as a panel analyst, processing
4 disciplines against physicians and surgeons. And her
5 last day with the Commission was May 6.

6 The Commission management wishes Chris, Marie, and
7 Kerry the best in their future endeavors, and we will be
8 recruiting for their positions.

9 In the meantime, Commission is operating with only
10 ten of its 14 positions as the Commission's office
11 technician continues to be redirected as a contact
12 tracer, where he has been for about a year now.

13 And then for everybody, particularly the claimants
14 and Finance and State Controller's Office, please see
15 the rest of my Executive Director's Report to see if an
16 item you are interested in is coming up in the next
17 hearing or two. You can expect draft staff analyses on
18 those to issue at least eight weeks prior to the
19 hearing.

20 And that's all I have.

21 CHAIRPERSON MILLER: Thank you very much,
22 Ms. Halsey.

23 And our congratulations to Chris, Marie, and Kerry
24 as well and with huge gratitude for their public
25 service. Thank you very much.

1 Any questions for Ms. Halsey or any of the board
2 members?

3 (No response)

4 CHAIRPERSON MILLER: Any questions or public
5 comment for either Ms. Halsey or Ms. Shelton? I realize
6 I did not ask that.

7 (No response)

8 CHAIRPERSON MILLER: Seeing none --

9 MS. PALCHIK: I see none.

10 CHAIRPERSON MILLER: Thank you, Ms. Palchik.

11 Seeing none, the Commission will now meet in closed
12 executive session, pursuant to Government Code section
13 11126(e) to confer with and receive advice from legal
14 counsel for consideration and action, as necessary and
15 appropriate, upon the pending litigation listed on the
16 published notice and agenda; and to confer with and
17 receive advice from legal counsel regarding potential
18 litigation. The Commission will also confer on
19 personnel matters pursuant to Government Code section
20 11126(a)(1). And we will reconvene in open session in
21 approximately 15 minutes.

22 For the board members, Ms. Halsey did send a
23 calendar invite for the closed session, and it's also in
24 an e-mail. If you have any questions, please reach out
25 to Ms. Halsey.

1 So we will now adjourn into closed session. Thank
2 you, everyone.

3 (Closed session was held from
4 11:26 a.m. to 11:43 a.m.)

5 CHAIRPERSON MILLER: Thank you, everyone, for
6 coming back.

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

16 There was no action taken.

17 With no further business to discuss today, I will
18 entertain a motion to adjourn, please.

19 MEMBER WALKER: So moved.

20 CHAIRPERSON MILLER: Thank you, Mr. Walker.

21 Ms. Halsey, is it okay to do the adjournment motion
22 by -- or do I have to do a roll call for that too?
23 Sorry.

24 MS. HALSEY: So did you have something to say?
25 I guess, technically, we should do everything by

1 roll call.

2 MEMBER ADAMS: If you need a second of that motion,
3 I will second that.

4 CHAIRPERSON MILLER: Thank you, Mr. Adams. I
5 appreciate it.

6 So we will take a very quick roll call to adjourn.
7 I appreciate everyone's patience, but since we can't --
8 (audio malfunction) -- when they are talking over each
9 on Zoom, we just want to make sure our voices are
10 recorded. Thank you.

11 Go ahead, Ms. Halsey.

12 MS. HALSEY: Mr. Adams.

13 MEMBER ADAMS: Aye.

14 MS. HALSEY: Ms. Lee.

15 MEMBER LEE: Aye.

16 MS. HALSEY: Ms. Miller.

17 CHAIRPERSON MILLER: Aye.

18 MS. HALSEY: Ms. Olsen.

19 MEMBER OLSEN: Aye.

20 MS. HALSEY: Mr. Walker.

21 MEMBER WALKER: Aye.

22 MS. HALSEY: And Ms. Wong-Hernandez is not here.

23 CHAIRPERSON MILLER: This meeting is adjourned.

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1 Thank you for your time and your attention, and we
2 will see you next month. Take care, everyone.

3 (Proceedings concluded at 11:45 a.m.)

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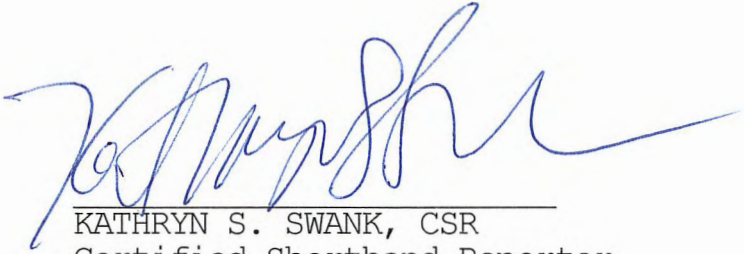
CERTIFICATE OF REPORTER

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 were 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 23rd day of June 2021.



KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
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