

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
May 30, 2014

Present: Member Eraina Ortega, Chairperson
Representative of the Director of the Department of Finance
Member Andre Rivera, Vice Chairperson
Representative of the State Treasurer
Member Ken Alex
Director of the Office of Planning and Research
Member Richard Chivaro
Representative of the State Controller
Member Sarah Olsen
Public Member
Member Carmen Ramirez
City Council Member
Member Don Saylor
County Supervisor

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 Ortega called the meeting to order at 10:05 a.m. Executive Director Heather Halsey called the roll. Member Chivaro was absent at roll call, but entered the room after adoption of the consent calendar.

APPROVAL OF MINUTES

Member Olsen made a motion to adopt the minutes. With a second by Member Ramirez, the March 28, 2014 hearing minutes were adopted by a vote of 6-0.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

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

CONSENT CALENDAR

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

PARAMETERS AND GUIDELINES

Item 5* *Race to the Top*, 10-TC-06
Education Code Sections 48354(b)(1), 48356(d), 48357, 53202(a),
53202(b), 53300, and 53301
Statutes 2009-2010, 5th Extraordinary Session, Chapter 2 (SBX5 1)
Statutes 2009-2010, 5th Extraordinary Session, Chapter 3 (SBX5 4)
California Code of Regulations, Title 5, Section 4702(a) (Register 2010,
No. 32)
Twin Rivers Unified School District, Claimant

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

STATEWIDE COST ESTIMATES

- Item 8* *California Public Records Act*, 02-TC-10 and 02-TC-51
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982
(AB 2799); and Statutes 2001, Chapter 355 (AB 1014)
County of Los Angeles and Riverside Unified School District, Claimants
- Item 9* *Teacher Credentialing*, 03-TC-09
California Code of Regulations, Title 5, Sections 80556(a),(c),(f) and (j) and
80556.1(e) as added and amended by Register 86, No. 40;
Register 94, No. 19
San Diego County Office of Education, Claimant

Member Saylor made a motion to adopt the Consent Calendar. With a second by Member Olsen, the Consent Calendar was adopted by a vote of 6-0.

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

Executive Director Heather Halsey swore in parties and witnesses participating in the hearing.

**APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA
CODE OF REGULATIONS, TITLE 2, SECTION 1181(c)**

- Item 2 Appeal of Executive Director Decisions

There were no appeals to consider.

TEST CLAIMS

- Item 3 *Post Election Manual Tally (PEMT)*, 10-TC-08
Former California Code of Regulations, Title 2, Sections 20120, 20121,
20122, 20123, 20124, 20125, 20126 and 20127.
Register 2008, No. 43
County of Santa Barbara, Claimant

This test claim was postponed to July 25, 2014 at the request of the claimant.

- Item 4 *Housing Successor Agency*, 12-TC-03
Health and Safety Code Section 34176
Statutes 2011, First Extraordinary Session, Chapter 5 (ABX1 26);
Statutes 2012, Chapter 26 (AB 1484)
Stanton Housing Authority, Claimant

The Commission members agreed to take this item up at the end of the hearing, since the claimant representative was not yet present.

**PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES
AMENDMENTS**

Item 6 *Sexually Violent Predators*, CSM-4509 (12-MR-01)

Welfare and Institutions Code Sections ~~6250 and 6600 through 6608~~ 6602
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763;
Statutes 1996, Chapter 4

As Modified by:

Proposition 83, General Election, November 7, 2006

California Department of Finance, Requestor

These amended parameters and guidelines pertain to the new test claim decision adopted for the *Sexually Violent Predators* program under the mandate redetermination process.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the proposed decision and parameters and guidelines.

Parties were represented as follows: Timothy Barry, Office of County Counsel, on behalf of the San Diego County District Attorney's Office, Probation Department, and Sheriff; Ed Jewik on behalf of County of Los Angeles; Lee Scott and Michael Byrne, representing Requestor, Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to adopt the staff recommendation was adopted by a vote of 7-0.

INCORRECT REDUCTION CLAIMS

Item 7 *Graduation Requirements*, 05-4435-I-50 and 08-4435-I-52

Education Code Section 51225.3

Statutes 1983, Chapter 498

Fiscal Years: 1998-1999, 1999-2000, 2000-2001, and 2001-2002

Clovis Unified School District, Claimant

This incorrect reduction claim (IRC) challenges reductions made by the State Controller's Office (SCO) to reimbursement claims filed by Claimant, Clovis Unified School District for the *Graduation Requirements* program for fiscal years 1998-1999, 1999-2000, 2000-2001, and 2001-2002.

Senior Commission Counsel Giny Chandler presented this item and recommended that the Commission adopt the proposed statement of decision to deny the incorrect reduction claim.

Parties were represented as follows: Arthur Palkowitz, representing the claimant; Michael Clear, Assistant Superintendent of Business Services, Clovis Unified School District; Chris Ryan and Jim Spano, representing the State Controller's Office.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Alex, the motion to adopt the staff recommendation to deny the incorrect reduction claim was adopted by a vote of 6-1, with Member Saylor dissenting.

TEST CLAIMS

Item 4 *Housing Successor Agency*, 12-TC-03

Health and Safety Code Section 34176

Statutes 2011, First Extraordinary Session, Chapter 5 (ABX1 26);
Statutes 2012, Chapter 26 (AB 1484)

Stanton Housing Authority, Claimant

This item was taken up at the end of the hearing, since the claimant representative was not present at the beginning of the hearing.

Chairperson Ortega confirmed that the claimant representative, Ms. Sigrid Asmundson, was present and recalled the item.

Ms. Halsey swore in Ms. Asmundson.

Parties were represented as follows: Sigrid Asmundson, representing the claimant; Michael Byrne, Kathleen Lynch, and Lee Scott, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Alex, the motion to adopt the staff recommendation to deny the test claim was adopted by a vote of 5-0, Members Ramirez and Saylor abstained from voting.

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

- Item 10 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer
Note: This item will only be taken up if an application is filed.

No applications were filed.

STAFF REPORTS

- Item 11 Legislative Update (info)

Assistant Executive Director Jason Hone presented this item.

- Item 12 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 13 Executive Director: Workload Update and Tentative Agenda Items for Next Meeting (info)

Executive Director Heather Halsey presented this item and reported on the Commission's backlog. She also made note of the upswing in litigation and the fact that it could impact how quickly staff is able to deal with the backlog.

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

A. PENDING LITIGATION

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

1. *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. C070357 (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. *California School Board Association (CSBA) v. State of California et al.*
Alameda County Superior Court, Case No. RG11554698
[2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
3. *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).
California Supreme Court, Case No. S214855
(Los Angeles County Superior Court, Case No. BS130730, Second District Court of Appeal, Case No. B237153)
[*Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3*]
4. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*
San Diego County Superior Court,
Case No. 37-2014-00005050-CU-WM-CTL
Mandate Redetermination, *Sexually Violent Predators*,
(12-MR-01, CSM-4509); Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496)
As modified by Proposition 83, General Election, November 7, 2006
5. *Santa Clarita Valley Sanitation District v. Commission on State Mandates, California Regional Water Quality Control Board, Department of Finance*
Los Angeles County Superior Court, Case No. BS148024
Upper Santa Clara River Chloride Requirements, 10-TC-09
(Los Angeles Regional Water Quality Control Board Resolution No. R4-2008-012, adopted December 11, 2008; approved by United States Environmental Protection Agency April 6, 2010)

B. PERSONNEL

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

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

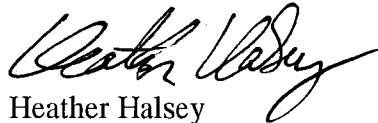
REPORT FROM CLOSED EXECUTIVE SESSION

At 11:11 a.m., Chairperson Ortega reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

Chairperson Ortega also reported an action that was taken in closed session: The Commission acted to delegate to the Personnel Subcommittee the ability to appoint an interim chief legal counsel in the event that the current legal counsel could not continue his or her duties.

ADJOURNMENT

Hearing no further business, Chairperson Ortega adjourned the meeting at 11:11 a.m.



Heather Halsey
Executive Director

PUBLIC MEETING

COMMISSION ON STATE MANDATES



TIME: 10:00 a.m.

DATE: Friday, May 30, 2014

PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomat Reporter, Certified Realtime Reporter

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Commission on State Mandates – May 30, 2014

A P P E A R A N C E S

COMMISSIONERS PRESENT

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

KEN ALEX
Director
Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member

ANDRÉ RIVERA
Representative for BILL LOCKYER
State Treasurer

DON SAYLOR
Yolo County Supervisor
Local Agency Member



COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Items 2, 10, and 13)

JASON HONE
Assistant Executive Director

CAMILLE N. SHELTON
Chief Legal Counsel
(Item 12)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

continued

GINY CHANDLER
Senior Commission Counsel
(Item 7)

MATTHEW B. JONES
Commission Counsel
(Items 4 and 6)

KERRY ORTMAN
Program Analyst
(Item 11)



PUBLIC TESTIMONY

Appearing Re Item 4:

For Claimant Stanton Housing Authority

SIGRID K. ASMUNDSON
Best, Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, California 95814

For Department of Finance

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

LEE SCOTT
Department of Finance
915 L Street
Sacramento, California 95814

KATHLEEN LYNCH
Department of Finance
915 L Street
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6:

For Requestor Department of Finance

MICHAEL BYRNE
Department of Finance

LEE SCOTT
Department of Finance

For San Diego County Sheriff, P.D., and D.A.:

TIMOTHY BARRY
Senior Deputy County Counsel
County of San Diego County Counsel's Office
1600 Pacific Highway, Room 355
San Diego, California 92101

For Claimant County of Los Angeles

ED JEWIK
Program Specialist V
Department of Auditor-Controller Accounting Division
500 W. Temple Street, Room 603
Los Angeles, California 90012

Appearing Re Item 7:

For Claimant Clovis Unified School District

ARTHUR PALKOWITZ
Stutz, Artiano, Shinoff & Holtz
2488 Historic Decatur Road, Suite 200
San Diego, California 92106

MICHAEL CLEAR
Assistant Superintendent
Business Services
Clovis Unified School District

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 7:

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
Division of Audits
State Controller's Office
300 Capitol Mall, Suite 725
Sacramento, California 95814

CHRIS RYAN
Audit Manager
Mandated Cost Audits Bureau
Division of Audits
State Controller's Office
300 Capitol Mall, Suite 725
Sacramento, California 95814



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1 BE IT REMEMBERED that on Friday, May 30, 2014,
2 commencing at the hour of 10:05 a.m., thereof, at the
3 State Capitol, Room 447, Sacramento, California, before
4 me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the
5 following proceedings were held:

6 --oOo--

7 CHAIR ORTEGA: Good morning, everyone.

8 I'd like to call the May 30th meeting of the
9 Commission on State Mandates to order.

10 MS. HALSEY: I'll call the roll.

11 Mr. Alex?

12 MEMBER ALEX: Here.

13 MS. HALSEY: Mr. Chivaro?

14 *(No response)*

15 MS. HALSEY: Ms. Olsen?

16 MEMBER OLSEN: Here.

17 MS. HALSEY: Ms. Ortega?

18 CHAIR ORTEGA: Here.

19 MS. HALSEY: Ms. Ramirez?

20 MEMBER RAMIREZ: Here.

21 MS. HALSEY: Mr. Rivera?

22 MEMBER RIVERA: Here.

23 MS. HALSEY: Mr. Saylor?

24 MEMBER SAYLOR: Here.

25 CHAIR ORTEGA: Let's see. We have a quorum.

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1 Are there any objections or corrections to the
2 March 28th meeting minutes?

3 *(No response)*

4 CHAIR ORTEGA: Any public comment on
5 the minutes?

6 *(No response)*

7 CHAIR ORTEGA: Okay, do we have a motion?

8 MEMBER OLSEN: I'll move adoption.

9 CHAIR ORTEGA: Moved by Ms. Olsen.

10 MEMBER RAMIREZ: Second.

11 CHAIR ORTEGA: A second.

12 All in favor of the minutes?

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

14 CHAIR ORTEGA: The minutes are approved.

15 MS. HALSEY: Now, we'll take up public comment
16 for matters not on the agenda.

17 Please note that the Commission cannot take
18 action on items not on the agenda. However, it can
19 schedule issues for consideration at future meetings.

20 CHAIR ORTEGA: Any public comment?

21 *(No response)*

22 CHAIR ORTEGA: Seeing none, we can move to the
23 consent calendar.

24 MS. HALSEY: The next item is the proposed
25 consent calendar which consists of Items 5, 8, and 9.

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1 CHAIR ORTEGA: Okay, any objections to any of
2 the items on the consent calendar?

3 *(Mr. Chivaro entered the meeting room.)*

4 MEMBER RAMIREZ: No.

5 MEMBER SAYLOR: Move approval.

6 MEMBER OLSEN: Second.

7 CHAIR ORTEGA: A motion and a second.

8 Any public comment on any of the items on the
9 consent calendar?

10 *(No response)*

11 CHAIR ORTEGA: Okay, seeing none, all in favor?

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

13 CHAIR ORTEGA: Any opposed or abstentions?

14 *(No response)*

15 CHAIR ORTEGA: The consent calendar is adopted.

16 MS. HALSEY: Let's go ahead and move to the
17 Article 7 portion of the hearing.

18 Item 3 has been postponed to the July 25th,
19 2014, hearing, at the request of the claimant.

20 Will the parties and witnesses for Items 4, 6,
21 and 7, please rise?

22 *(Parties and witnesses stood to be sworn*
23 *or affirmed.)*

24 MS. HALSEY: Do you solemnly swear or affirm
25 that the testimony which you are about to give is true

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1 and correct, based on your personal knowledge,
2 information, or belief?

3 (A chorus of affirmative responses was
4 heard.)

5 MS. HALSEY: Thank you.

6 Item 2 is reserved for appeals of Executive
7 Director decisions. There are no appeals to consider
8 under Item 2.

9 As previously noted, Item 3 has been postponed
10 to the July 25th hearing.

11 Item 4, Commission Counsel Matt Jones will
12 present a test claim on *Housing Successor Agency*.

13 Will the parties and witnesses please come to
14 the table?

15 Ms. Asmundson -- is Ms. Asmundson here? Or
16 anyone for claimant?

17 (No response)

18 MS. HALSEY: No.

19 MR. JONES: Good morning.

20 This test claim alleges reimbursable state
21 mandated activities arising from the dissolution of the
22 former Stanton Redevelopment Agency and the transfer of
23 that agency's assets and obligations to the Stanton
24 Housing Authority pursuant to Health and Safety Code
25 section 34176.

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1 Staff finds that the Stanton Housing Authority,
2 like other housing authorities, enjoys an exemption from
3 the taxing and spending restrictions of Articles XIII A
4 and B of the California Constitution and is, therefore,
5 ineligible to claim mandate reimbursement. Staff
6 therefore recommends that the Commission adopt the
7 proposed decision denying the test claim.

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

10 MS. LYNCH: Kathy Lynch, Department of Finance.

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

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

14 CHAIR ORTEGA: Okay, Department of Finance, go
15 ahead.

16 MS. LYNCH: We agree with the Commission's
17 analysis.

18 MR. BYRNE: Yes, we concur with that.

19 CHAIR ORTEGA: So seeing no representative for
20 the claimant, do we want to postpone action for a
21 few minutes? Or what is the will of the Members here?

22 MS. HALSEY: It's up to the Members. If you'd
23 like to hold it to the end of the agenda.

24 CHAIR ORTEGA: Were there any questions that
25 folks wanted to ask?

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1 MEMBER OLSEN: Yes.

2 MEMBER SAYLOR: Yes.

3 CHAIR ORTEGA: Okay, so why don't we not take
4 action at this minute and move on to the next item; and
5 then we will take it up if there is no one here to
6 represent the claimant.

7 MS. HALSEY: Item 5 was on the Consent
8 Calendar.

9 Item 6, Matt Jones will present Item 6, amended
10 parameters and guidelines for *Sexually Violent Predators*.

11 MR. JONES: These proposed amended parameters
12 and guidelines pertain to the *Sexually Violent Predators*
13 test claim as modified by the Commission's new test-claim
14 decision adopted by December 6th, 2013.

15 The proposed parameters and guidelines and
16 proposed decision have been revised since the last
17 hearing to incorporate new evidence submitted by eligible
18 county claimants pertaining to the state-mandated
19 probable-cause hearings.

20 Staff recommends that the Commission adopt the
21 proposed decision and parameters and guidelines.

22 Will the parties and witnesses please state
23 your names for the record?

24 MR. BARRY: Timothy Barry, Office of County
25 Counsel, on behalf of the San Diego County District

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1 Attorney's office, Public Defender, and Sheriff.

2 MR. JEWIK: Ed Jewik, L.A. County.

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

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

6 CHAIR ORTEGA: Okay, Mr. Barry?

7 MR. BARRY: Your Honor -- excuse me. I'm used
8 to being in court.

9 CHAIR ORTEGA: I got a promotion.

10 MR. BARRY: We appreciate the staff's
11 consideration of the comments that we submitted. We
12 agree with those comments. And while we disagree with
13 the underlying decision on the test claim, we do agree
14 with the status of the parameters and guidelines, and ask
15 that the Commission adopt the parameters and guidelines
16 as recommended by the staff.

17 CHAIR ORTEGA: Okay, Mr. Jewik?

18 MR. JEWIK: We appreciate the Commission, the
19 Commission staff, and all the hard work they've put into
20 this. And we also concur with the adoption of the
21 parameters and guidelines.

22 CHAIR ORTEGA: Okay, Department of Finance?

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

25 When we prepared the 2014-15 budget for the

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1 SVP funding, we contacted the State Controller's Office
2 and asked for the actual claims they received for
3 Activities 4 and 8, the two activities that are going to
4 continue to be funded. And they provided us details.
5 Activity 4, which is the attendance and preparation for
6 the hearing, had claims totaling \$3 million; and
7 Activity 8, the transportation and housing, had claims
8 totaling \$2.7 million.

9 So on top of the \$5.7 million, we added
10 additional monies to the budget for indirect cost and
11 for any possible inflation. So we put \$7 million in
12 the budget. That \$7 million was sustained by both the
13 Assembly and the Senate, and it's in the Conference
14 Committee budget that will be heard next week.

15 So the budget we put together contains a
16 housing component equal to what it was prior to the
17 mandate redetermination.

18 So if the proposed P and G continues housing
19 costs at that level, then we're good with it and
20 everything else. However, if it is intended to increase
21 the volume or the size of the housing, then we may have a
22 problem.

23 I think we're okay there, but I thought it
24 would be a good idea to raise the issue.

25 CHAIR ORTEGA: Okay, does staff have any

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1 comments on that?

2 MS. SHELTON: Just that the housing component
3 related specifically to the probable-cause hearing and
4 the original set of parameters and guidelines was not,
5 you know, specifically identified in the P's & G's.

6 I do understand that counties were claiming
7 costs for those.

8 The proposal here limits the housing. I mean,
9 just to the time when the court orders that the person
10 be detained pending a probable-cause hearing, until the
11 probable-cause hearing, and then it's done.

12 So it fits within the statutory scheme and
13 would fit within -- based on the evidence in the record
14 that it's reasonably necessary to comply with the mandate
15 to hold the probable-cause hearing.

16 MS. HALSEY: And also once the probable-cause
17 hearing is held, if the person is found to be SVP, they
18 go to a state mental health facility, in any event. So
19 that would end the county's responsibility to house them
20 under normal circumstances.

21 CHAIR ORTEGA: Mr. Saylor?

22 MEMBER SAYLOR: I appreciate understanding the
23 constraints that the state budget is facing. However,
24 I don't believe that that's a relevant fact for us to
25 consider here. I think our decision has to be based on

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1 the merits of the case, the merits that are presented in
2 evidence to us; and the budget aspect of this would be
3 something for the State to work out in whatever manner
4 appropriate, subsequent to the decision here.

5 So I appreciate hearing it, but I don't see its
6 relevance, regardless of the facts and how the numbers
7 play out.

8 MR. BYRNE: And we're not opposing the
9 recommendation. I just wanted to put the facts of what
10 we did on the budget on that, before the Commission.

11 MEMBER SAYLOR: And I wanted to state on record
12 that I don't think that's a relevant piece of information
13 for this Commission.

14 CHAIR ORTEGA: Okay, thank you.

15 MEMBER CHIVARO: I'll move staff
16 recommendation.

17 MEMBER RAMIREZ: Second.

18 CHAIR ORTEGA: Okay, are there any other
19 comments from the Commission?

20 *(No response)*

21 CHAIR ORTEGA: Are there any other public
22 comments on this item?

23 *(No response)*

24 CHAIR ORTEGA: Okay, we have a motion and a
25 second.

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1 All those in favor -- oh, sorry.

2 Do you want to call the roll?

3 MS. HALSEY: Call the roll?

4 CHAIR ORTEGA: Sure.

5 MS. HALSEY: Mr. Alex?

6 MEMBER ALEX: Aye.

7 MS. HALSEY: Mr. Chivaro?

8 MEMBER CHIVARO: Aye.

9 MS. HALSEY: Ms. Olsen?

10 MEMBER OLSEN: Aye.

11 MS. HALSEY: Ms. Ortega?

12 CHAIR ORTEGA: Aye.

13 MS. HALSEY: Ms. Ramirez?

14 MEMBER RAMIREZ: Aye.

15 MS. HALSEY: Mr. Rivera?

16 MEMBER RIVERA: Aye.

17 MS. HALSEY: Mr. Saylor?

18 MEMBER SAYLOR: Aye.

19 MS. HALSEY: The motion carries.

20 MS. HALSEY: Senior Commission Counsel Giny

21 Chandler will present Item 7, an incorrect reduction

22 claim on *Graduation Requirements*.

23 MS. CHANDLER: Good morning.

24 This incorrect reduction claim addresses costs

25 reduced by the Controller on reimbursement claims filed

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1 under the *Graduation Requirements* program for teachers'
2 salaries and benefits, materials and supplies, and
3 related indirect costs.

4 The Controller's reductions were made on the
5 grounds that the claimant's documentation was
6 insufficient to support all of the claimed costs.

7 Staff finds that the claimant did not file
8 documentation to support the amounts claimed for salaries
9 and benefits and materials and supplies.

10 Staff further finds that the Controller's use
11 of the quarter-load method to reimburse the claimant for
12 these costs was reasonable and not arbitrary or
13 capricious or entirely lacking in evidentiary support.
14 Thus, staff recommends that the Commission adopt the
15 statement of decision to deny the incorrect reduction
16 claim.

17 Will the parties and witnesses please state
18 your names for the record?

19 MR. PALKOWITZ: Good morning. Art Palkowitz
20 on behalf of Clovis Unified School District.

21 MR. CLEAR: Michael Clear, Assistant
22 Superintendent of Business Services, with Clovis Unified
23 School District.

24 MR. RYAN: Chris Ryan, Audit Manager, State
25 Controller's office.

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1 MR. SPANO: Jim Spano, Audit Bureau Chief,
2 State Controller's Office.

3 CHAIR ORTEGA: Okay, Mr. Palkowitz?

4 MR. PALKOWITZ: Yes, thank you.

5 I don't believe it was mentioned in that brief
6 summary of one of our arguments.

7 And the claimant is contending that the audit
8 performed by the State Controller's Office was past the
9 statutory period of time. The applicable Government Code
10 section 17558.5 stated that districts or claimants needed
11 to have audits performed -- and the word is "subject to."

12 The District has interpreted the words "subject
13 to," meaning, that that is the period of time they're
14 subject to the initiation and completion of the audit.

15 The facts in this case are that the District
16 filed audit reimbursement claims for 1998-99 and
17 1999-2000 fiscal years. The two-year period of time for
18 those claims to be audited would be 12/31/2003 for the
19 1998-99 claim, and the 1999-00 fiscal claim audit period
20 would be 12/31/02.

21 The State Controller had an entrance conference
22 with the District on November 18th, 2002; and the audit
23 was completed nearly two years later.

24 So, in effect, both fiscal reimbursement claims
25 were completed -- the audit -- beyond the two-year

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1 period.

2 The interpretation by staff and State
3 Controller is that the words "subject to" should be
4 interpreted that that period of time when the audit must
5 be commenced.

6 Such an interpretation as stated in staff
7 comments does not require their completion of the audit.

8 This proposed interpretation creates several
9 problems for the District. And Mr. Clear will comment on
10 that for that type of interpretation.

11 We believe that interpretation is not supported
12 by law. To the contrary, the Supreme Court case that we
13 cite in our papers, *California Department of Corrections*
14 *and Rehab versus Personnel Board*, 147 Cal.App.4th 797,
15 discusses what is the purpose of these time limitations.

16 If we follow the course of interpretation of
17 "subject to" recommended by staff and the Controller,
18 that results in the District having an unlimited period
19 of time to defend an audit. It puts them in a position
20 of maintaining documents for unlimited periods of time;
21 it creates a hardship as people move on, and history for
22 the claims are lost due to various reasons.

23 As a result, we don't believe that's a fair
24 interpretation. And this is further reinforced by the
25 statute that was passed by the Legislature in 2002. That

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1 statute says that the language is -- I just don't want to
2 misquote the language -- "subject to the initiation of
3 the audit."

4 Now, why would the Legislature have a statute
5 passed after that, to add in their language "initiate,"
6 if the interpretation, as we're led to believe here, is
7 that "subject to" means "initiate?"

8 There is case law that says legislators don't
9 pass bills unless they're meaning to make a change or an
10 attempt to resolve it. So to interpret -- and that new
11 legislation further goes on, and then clarifies that
12 completion should be within two years.

13 So it's the claimant's contention that to
14 interpret "subject to" would create an undue hardship for
15 the District, and leaving open the door for a lengthy
16 period of time to complete an audit. As a result,
17 coupled with the subsequent legislation, that says
18 "subject to the initiation of the audit," it's just not
19 a fair interpretation.

20 In staff's comments, they cite several cases
21 in an attempt to show the retroactive application. We
22 believe that not only is "subject to" an incorrect
23 interpretation; also, the new statute of 2002 can also
24 be applied to this case.

25 Nowhere does the 2002 statute say that it's not

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1 applicable to claims that were previously filed or audits
2 that were already started.

3 The plain language of that statute goes on to
4 say that audits must be completed within two years. We
5 don't see why that statute could be also applied in this
6 case, based on the plain language.

7 So for two reasons, we believe those two fiscal
8 years -- for 1999-00 -- should be barred by these two
9 statutes; and, therefore, the Commission -- I'm sorry,
10 the Controller's reduction of those claims should be
11 disallowed.

12 Mr. Clear would like to make some comments.

13 MR. CLEAR: Yes, the interpretation of the
14 audit period is such that whenever districts receive
15 reimbursement -- mandate reimbursements from the State,
16 typically, we reserve those funds for a two- or
17 three-year period to wait for an audit period to lapse,
18 therefore, spend the money, just in case there's an audit
19 finding where the District would have to return funds to
20 the State.

21 This interpretation is such that that could be
22 an indefinite period of time.

23 So when can we release these funds and actually
24 use them in our operational budget? So obviously we
25 would like to release those funds and use them versus

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1 holding them for an indefinite period of time.

2 MR. PALKOWITZ: We'd just like an opportunity
3 to respond to any comments by the State Controller or any
4 the Commissioners might have.

5 CHAIR ORTEGA: Mr. Ryan or Mr. Spano, do you
6 have any comments?

7 MR. RYAN: Basically, we agree with the
8 conclusions and recommendations in the staff's final
9 analysis.

10 CHAIR ORTEGA: Okay, any questions or comments
11 from the Commissioners?

12 MR. SPANO: And also we believe that the
13 decision made relating to the statute of limitations is
14 consistent with the previous statement of decision
15 determined by the Commission in the IRC statement of
16 decision relating to San Diego Unified School District
17 for the *Emergency Procedures, Earthquake and Disaster*,
18 Case Number 01-4241-IO3.

19 CHAIR ORTEGA: Thank you.

20 Ms. Ramirez?

21 MEMBER RAMIREZ: I'd like to ask staff to
22 comment on the discussion about the two-year limit and
23 the fairness argument, which I -- it strikes me.

24 MS. CHANDLER: I can comment on the legality of
25 it.

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1 I think to read into the previous statute, the
2 statute that we believe covers these first two fiscal
3 years claimed here, would be to add a word into that
4 statute that is not presently there, which is to complete
5 an audit. The statute says "subject to audit," it does
6 not say "subject to completion of an audit." And I think
7 that that is an overreading of the statute to require
8 that completion be read into that statute, when it's not
9 there.

10 I think that the change in the statute in 2002
11 was a clarification. It was not an intention to address
12 completion of an audit. There are other changes in the
13 statute. It also adds a three-year period, you know, for
14 the initiation of the audit. But I think in terms of
15 fairness, the districts are on notice that an audit can
16 take place. And they're very aware of the State's audit
17 process. So to suddenly say that the District is
18 importuned because the audit is not completed within
19 two years, I think is unfair to the process.

20 There is a lot of back and forth that goes on
21 between the District and the auditor once the audit
22 begins. And I think that that may not take place if it's
23 a complicated audit within a two-year period. But I
24 think, fundamentally, the legality here is that the
25 statute doesn't say "audit must be completed within two

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1 years.”

2 MEMBER RAMIREZ: But would it allow audit to
3 take place at a very indefinite period in the future?
4 Five years, ten years? Is there a limit? A reasonable
5 limit?

6 MS. CHANDLER: I can only speak to the language
7 in the statute. The statute does not address the issue
8 of when an audit is to be completed. It does, in the
9 newer version of the statute. That may be one of the
10 reasons why the statute was changed, was to try to
11 compress that period.

12 MS. SHELTON: Could I just mention the facts,
13 too?

14 I mean, the initial statute -- everything is
15 on page 15, if you want to refer back to your proposed
16 decision. But the initial statute did require them to
17 initiate the audit -- you know, or the audit was subject
18 to initiation. And in this particular case, the audit
19 concluded in October 2004. So I think that there
20 probably is common law, when there's not a completion
21 requirement in statute, that you complete ministerial
22 duties within a reasonable period of time. And here,
23 you know, this audit started in 2002 and was completed
24 in 2004.

25 CHAIR ORTEGA: Mr. Saylor?

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1 MEMBER SAYLOR: Thank you, Camille. That's
2 helpful.

3 So it started in 2002; and the years in
4 question are 1998-99 and 1999-2000?

5 MS. SHELTON: Correct.

6 MEMBER SAYLOR: So the audit didn't begin until
7 more than two years after the completion?

8 MS. SHELTON: It depends on if funds are
9 appropriated for the program.

10 They can -- the Controller can hold off on any
11 commencement of an audit until funds are appropriated.
12 So in this particular case, they didn't start until funds
13 were appropriated, if I'm correct.

14 MR. PALKOWITZ: Funds were appropriated, and
15 that was why it started within two years.

16 MS. CHANDLER: It started --

17 MR. PALKOWITZ: What practically happened was,
18 I believe that there was an attempt by the State
19 Controller to audit several districts. So they sent out
20 this letter within the two-year period, in an attempt to
21 say, "We're now timely starting this." But, in effect,
22 the audit was completed four years after it was
23 submitted.

24 And I think the fairness is exactly the issue
25 here, and that's the purpose of statutes of limitations.

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1 It's not only to create fairness and not to make it an
2 undue burden on the claimant, it also is to force the
3 agency to diligently pursue the claims and to timely
4 complete them.

5 And I still haven't heard why the new statute
6 would not apply. The plain language of that statute does
7 not say that it doesn't apply to reimbursement claims
8 that might have been filed or to audits that were filed.
9 And so, therefore, even if we apply that rule, that said
10 a two-year period must be completed.

11 CHAIR ORTEGA: Camille?

12 MS. SHELTON: Can I address that last point?

13 CHAIR ORTEGA: Yes.

14 MS. SHELTON: That amendment to 17558.5 did not
15 become effective until January 1st, 2003, after these
16 audits had started, after these claims had been filed.
17 We cannot presume that that statute was intended to be
18 retroactive unless the Legislature says you need to apply
19 this statute going back to an earlier fiscal year. So
20 there is no basis in law to apply it retroactively. You
21 have to apply the law that exists when the claims were
22 filed. And in this case, that law is the original
23 17558.5.

24 And I'll just read it to you so you can hear
25 the language. It says, "A reimbursement claim for actual

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1 costs filed by a local agency or school district pursuant
2 to this chapter is subject to audit by the Controller no
3 later than two years after the end of the calendar year
4 in which reimbursement claim was filed or last amended.
5 However, if no funds are appropriated for the program for
6 the fiscal year for which the claim is made, the time for
7 the Controller to initiate an audit shall commence to run
8 from the date of initial payment of the claim."

9 MEMBER OLSEN: So let me see if I've got this,
10 because on its face, I'm actually very sympathetic to the
11 claimant's position. But in 2002, the Legislature looked
12 at the world out there and said, "Oh, there's a problem.
13 We're going to correct it," and they prospectively
14 corrected it, knowing that the problem existed in the
15 past, and they did not retroactively apply it.

16 Is that...?

17 MS. SHELTON: That's a presumption. I don't
18 have the leg. history right here.

19 And I believe we looked at the leg. history,
20 and it was just -- I don't think there's a lot of leg.
21 history on this statute.

22 MS. CHANDLER: The leg. history was really
23 silent on this issue.

24 MS. SHELTON: We're basing it on plain language
25 and laws interpreting how to read statutes.

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1 MEMBER OLSEN: Okay.

2 MS. SHELTON: So there aren't any committee
3 analyses saying, "Yes, we know there's a problem for
4 the -- there's no completion date for these audits in
5 statute right now. Let's put one in." I mean, that
6 completion date is new, as of January 1st, 2003.

7 MEMBER OLSEN: Okay.

8 MR. SPANO: Could I just clarify that the 2002
9 change in the statutory provision basically indicated
10 that you had to complete an audit two years from the time
11 in which you started it.

12 In this case here, we actually started the
13 audit -- which does now apply -- but we started the audit
14 in November 2002. We issued the final report on
15 October 22nd, 2004, which is one year and 11 months after
16 we started the audit.

17 So the current statute or provision is not two
18 years from when you file a claim, it's two years of when
19 you actually initiate an audit from a claim subject to
20 audit.

21 CHAIR ORTEGA: Ken?

22 MEMBER ALEX: So a couple of legal
23 observations.

24 First, it is standard legal interpretation that
25 retroactive application is only when it's explicit in the

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1 law. And here, it is not.

2 Second, the Legislature could have used wording
3 other than "subject to." It could have said "completed"
4 or "started." It could have -- "initiated." It did not.

5 And then the third point for me, is that
6 this -- because the Legislature has corrected this issue
7 and put an end date on it, this applies only to a very
8 narrow set of claims.

9 So I share some of the sympathy of the other
10 members, but I think it's a very narrow issue with a
11 legal solution.

12 CHAIR ORTEGA: Yes?

13 MEMBER SAYLOR: So when I read the language
14 that existed prior to the amendment in 2002, just as a
15 layperson, I would conclude that that means that the
16 audit would be done. It says, "Subject to an audit no
17 later than two years." I would, as a -- if I was in the
18 shoes of the business manager from the school district,
19 I would interpret that, that the audit would be
20 completed, frankly, without going into detailed language
21 when it says "subject to an audit no later than two
22 years." That seems, to me, as a layperson, that that
23 says it's going to be done.

24 So I'm wondering about other precedent. The
25 Controller's Office made mention to "precedent." Are

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1 there other precedents on this kind of language that we
2 can draw meaning from, that suggests that when it says
3 “no later than two years after,” that that actually
4 doesn’t mean that it has to be done?

5 MS. SHELTON: Well, we’ve done a lot of
6 research. I mean, we didn’t find any other case
7 interpreting that precise language. You know, the
8 Commission has adopted this analysis before in several
9 IRCs. We did it in *Health Fee Elimination*, and I think
10 there’s nine of those *Emergency Procedures*.

11 We have viewed it this way, applying rules of
12 interpretation.

13 MEMBER SAYLOR: Okay.

14 MS. SHELTON: We absolutely see the other side,
15 and have made a legal call and recommendation based on
16 the plain language of the statute.

17 MEMBER SAYLOR: Okay, so this recommended
18 finding, this recommended action, is consistent with
19 prior actions by this Commission?

20 MS. SHELTON: By the Commission, correct, yes.

21 MEMBER ALEX: I would actually say that the
22 later provision that says “subject to initiation”
23 actually supports staff’s interpretation because the
24 Legislature could have used different words. I think
25 “subject to” is actually broader than “subject to

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1 initiation," for what it's worth.

2 MEMBER SAYLOR: I agree. I think that the
3 amended language is more confining than the prior
4 language.

5 MEMBER ALEX: I agree.

6 MEMBER SAYLOR: Which makes me feel like the
7 prior language -- if we're applying the prior language to
8 the case at hand, that I would support the claimant's
9 position.

10 MEMBER OLSEN: Although I do think it's -- go
11 ahead.

12 MS. SHELTON: Well, I was just going to say,
13 when you look at that old statute, and there are two
14 sentences --

15 MEMBER OLSEN: Right. That's what I was going
16 to...

17 MS. SHELTON: -- right?

18 And the second sentence says "however." The
19 "however" portion is just talking about the situation
20 where no funds have been appropriated. And there, the
21 Legislature clearly says it's subject to the initiation
22 of an audit.

23 So when applying rules of construction, you are
24 reading those two sentences consistently. One, meaning,
25 the first sentence, when no funds are appropriated --

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1 or excuse me, when funds are appropriated; the second
2 sentence, "When no funds are appropriated."

3 MR. PALKOWITZ: But the facts in this case, the
4 funds were appropriated. So to me, that entire sentence
5 is not relevant to what we're here for today.

6 MS. SHELTON: It's relevant when you're doing
7 interpretation because you can't read a sentence in
8 isolation. You've got to read it in light of the whole.

9 CHAIR ORTEGA: Ms. Olsen?

10 MEMBER OLSEN: I was going to talk about the
11 same thing.

12 CHAIR ORTEGA: Are there any other questions or
13 comments?

14 *(No response)*

15 CHAIR ORTEGA: Is there any other public
16 comment on this item?

17 MR. PALKOWITZ: I would --

18 CHAIR ORTEGA: Go ahead.

19 MR. PALKOWITZ: If I may say, the question
20 about precedent on other Commission decisions, I wonder
21 if staff could point that out to me in their analysis of
22 referencing these other rulings.

23 MS. SHELTON: It's not referenced because our
24 decisions are not precedential. But there is law saying
25 that that a body making judicial -- quasi-judicial

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1 decisions needs to remain reasonable and not arbitrary.
2 They're all public records on our Web site.

3 MR. PALKOWITZ: But I think the key is, it is
4 not precedent.

5 MS. SHELTON: No, it's not precedent.

6 MR. PALKOWITZ: Thank you.

7 MS. SHELTON: But it is the same analysis.

8 CHAIR ORTEGA: Okay, any other comments or
9 questions?

10 *(No response)*

11 CHAIR ORTEGA: Do we have a motion?

12 MEMBER CHIVARO: I'll move the staff
13 recommendation.

14 CHAIR ORTEGA: Moved by Mr. Chivaro.

15 Is there a second?

16 MEMBER ALEX: Second.

17 CHAIR ORTEGA: Seconded by Mr. Alex.

18 Please call the roll.

19 MS. HALSEY: Ms. Ortega?

20 CHAIR ORTEGA: Aye.

21 MS. HALSEY: Mr. Rivera?

22 MEMBER RIVERA: Aye.

23 MS. HALSEY: Mr. Chivaro?

24 MEMBER CHIVARO: Aye.

25 MS. HALSEY: Mr. Alex?

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MEMBER ALEX: Aye.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: No.

MS. HALSEY: Mr. Ramirez?

MEMBER RAMIREZ: Unfortunately, aye.

MR. PALKOWITZ: Thank you very much.

CHAIR ORTEGA: Thank you. The motion has passed.

MS. HALSEY: We'll be going back to Item 4.

If the parties are here -- Ms. Asmundson, Finance?

And also, I need to swear in.

CHAIR ORTEGA: Is she here?

MS. HALSEY: If I could swear you in.

Do you solemnly swear or affirm that the testimony which you are about to give is true and correct, based on your personal knowledge, information, or belief?

MS. ASMUNDSON: I do.

MS. HALSEY: Thank you.

CHAIR ORTEGA: Okay, so we have heard from staff on this item.

So, Ms. Asmundson, it's to you.

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1 MS. ASMUNDSON: Great. Thank you so much for
2 having me, and thank you for moving this to the end.
3 I'm, unfortunately, not moving very quickly at the
4 moment.

5 Thank you for the opportunity to discuss the
6 proposed statement of decision.

7 The Stanton Housing Authority respectfully
8 disagrees with the proposed Statement of Decision on
9 multiple points.

10 To start out with, under the "introduction"
11 section, the analysis of the dissolution law is
12 incorrect.

13 On page 15 of the statement of decision, it
14 states that the dissolution law created two new entities.
15 This is incorrect. The dissolution law created a
16 successor agency to the redevelopment agency, pursuant to
17 Health and Safety Code section 34173.

18 What we're arguing is that the Stanton Housing
19 Authority, which was already a public agency pursuant to
20 the Housing Authority law, was already in existence, and
21 Health and Safety Code section 34176 mandated that
22 certain duties and responsibilities be transferred to an
23 existing public agency.

24 So I did want to clarify that point on page 15,
25 that that statement that there are two new public

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1 entities is an incorrect statement.

2 Second, I wanted to clarify that when the
3 redevelopment agency dissolved as of February 1st of
4 2012, the assets that were transferred -- non-housing
5 assets were transferred to the successor agency. Housing
6 assets were transferred to the housing authority.

7 Upon the dissolution of the redevelopment
8 agency, and upon this transfer, these are no longer
9 considered pursuant to the dissolution law to be
10 redevelopment agency assets, using our housing authority
11 assets. So they are not governed by redevelopment agency
12 law.

13 In going through the statement of decision,
14 there were three arguments. And I'll address each one
15 separately.

16 Under the first argument, we respectfully
17 disagreed because the housing authority is, in fact,
18 subject to the tax and spend limitations of Article XIII
19 A and XIII B.

20 ABX 126, which formed the Dissolution Act, has
21 two provisions which specifically state that the revenue
22 granted to the housing authority -- or that is now
23 granted to the housing authority is actually deemed to be
24 property taxes. This is set forth in the uncodified
25 language of ABX 126, which provides that upon the

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1 redevelopment agency's dissolution, any property taxes
2 that were formally deemed to be tax increments are now
3 deemed to be property taxes. This is additionally stated
4 in Health and Safety Code section 34182(c)(1), which
5 states that this revenue is now property taxes within the
6 meaning of subdivision (a) of section 1 of Article XIII A
7 of the California Constitution.

8 So clearly, this revenue is now considered to
9 be property taxes subject to Article XIII A.

10 Section A of the statement of decision also
11 goes on in depth to talk about redevelopment agencies.
12 Specifically, that redevelopment agency tax increment is
13 allocated pursuant to Article XVI, section 16 of the
14 California Constitution.

15 As I stated before, the housing authority -- or
16 I'm not sure if I did state it before -- but the housing
17 authority is not the redevelopment agency. They are two
18 completely separate entities.

19 The redevelopment agency was created pursuant
20 to the Community Redevelopment law. The housing
21 authority was created pursuant to the Housing Authority
22 law.

23 So to apply Article XVI, section 16 of the
24 California Constitution to the housing authority is
25 incorrect, because it only applies to redevelopment

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1 agencies; it does not apply to housing authorities.

2 Additionally, the statement of decision
3 references Health and Safety Code section 33678, to
4 provide that tax increments of a redevelopment agency
5 are not deemed to be the proceeds of taxes pursuant to
6 Article XIII A.

7 That's correct, but we're not talking about a
8 redevelopment agency here. So section 33678, which is
9 contained in the Community Redevelopment Law, is again
10 inapplicable to the housing authority.

11 Under section B of the statement of decision,
12 we again respectfully disagree. The housing authority
13 has as much statutory authority to levy taxes as other
14 eligible claimants.

15 Under the basis of the statement of decision,
16 no claimants are eligible other than the county to submit
17 a test claim to the Commission on State Mandates.
18 Article XIII A, section 1(a), provides that the 1 percent
19 tax -- i.e., property taxes -- are collected by the
20 counties and apportioned according to law to the
21 districts within the counties.

22 Furthermore, Revenue and Taxation Code
23 section 2602 provides that the tax collector shall
24 collect all property taxes.

25 Under both of these provisions and the reading

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1 of the statement of decision, that means that by denying
2 the housing authority as an eligible claimant, you're
3 denying the cities, you're denying community college
4 districts, you're denying school districts, and you're
5 denying special districts that receive special property
6 taxes.

7 Section B also addresses how the housing
8 authority does have the authority to issue bonds and
9 compares them to redevelopment agencies. Again, the way
10 that redevelopment agencies raised revenue is completely
11 different than a housing authority.

12 A housing authority's ability to issue bonds is
13 very similar to other public agencies such as a city, a
14 school district, a community college district.

15 A redevelopment agency could generate tax
16 increments to pay for its bonds. And that's what the
17 *Bell Community Redevelopment Agency* case was discussing.

18 In this instance, the housing authority cannot
19 receive tax increments. It has a very limited source of
20 revenue; it has a very limited amount of proceeds of
21 taxes that it can receive.

22 Argument C, again, we disagree with this
23 analysis.

24 Based on what I have previously stated, this
25 one, I believe, sums up, again, a lot of what was stated

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1 in section A and section B.

2 The thing that I did want to note is that I
3 disagree on page 30 it states that "The activities and
4 statutes pled in this test claim, the acceptance by the
5 housing authority, or the mandate of -- that the housing
6 assets be transferred to the housing authority, are the
7 very activities that the proceeds of taxes do go towards.
8 And that's stated in section 34171(p), which allocates
9 the proceeds of taxes to a housing authority that is
10 serving as a housing successor.

11 The other thing that I did want to clarify
12 under section C, is that the successor -- references to
13 the successor agency and the dissolution law, and
14 particularly in ABX 126, don't actually reference the
15 housing authority. Nowhere in the dissolution law, as it
16 was created under ABX 126, or as subsequently amended, is
17 the housing authority ever actually referred to as a
18 housing successor agency.

19 The Legislative Analyst's Office refers to it
20 as a housing successor agency just for, you know,
21 purposes of clarification. And a lot of housing
22 authorities, when they refer to the housing assets that
23 they receive, they refer to it as, themselves, as a
24 housing successor agency. But the statute itself never
25 refers to a housing authority as the housing successor

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1 agency. So any references in the dissolution law to
2 restrictions on the successor agency's funding is
3 inapplicable to the housing authority because the
4 dissolution law does not consider them to be a successor
5 agency.

6 The successor agency, it's only the successor
7 agency that was created by the dissolution law.

8 So when it says in section 34171(p) that the
9 administrative costs -- or that the proceeds of taxes
10 allocated to the housing authority to pay administrative
11 costs, you can't use the same definition as is done in
12 the statement of decision for administrative costs
13 allowance of a successor agency, because a successor
14 agency is a completely different beast.

15 Regarding a successor agency, their
16 administrative cost allowance is limited. It says that
17 the successor agency will receive administrative costs,
18 but that those administrative costs do not include
19 certain things such as litigation costs or other costs.

20 The reason why the dissolution law created it
21 that way is because the successor agency can receive
22 additional funding for those; whereas the housing
23 authority, under section 34171(p), can only receive a
24 very set amount of the proceeds of taxes. And those
25 proceeds of taxes are put into the housing authority's

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1 general fund, and are used for the general revenue of the
2 housing authority.

3 And this is actually made clear in the staff --
4 or in the statement of decision, specifically that
5 references to the successor agency in ABX 126 cannot be
6 applied to the housing authority, and any restrictions
7 on taxes allocated to a successor agency or allocated
8 pursuant to the Dissolution Act cannot apply to a
9 successor agency because the proceeds of taxes allocated
10 to a housing authority were not in place when ABX 126 was
11 adopted. Those were adopted in 2013, under AB 471.

12 Additionally, just to note one last thing for
13 clarification. Perhaps we weren't clear enough in our
14 comments.

15 The authority can also receive revenue through
16 charges and fees for its services. And when we said that
17 in order to pay the expenses that were mandated on the
18 housing authority pursuant to 34176(b), we would have to
19 increase these charges and fees above the reasonable
20 cost, we were referring to the fact that in order to pay
21 these expenses, we would have to create a tax. And this
22 tax would have to pay for these funds. And perhaps that
23 position wasn't properly conveyed in our comments.
24 Because the end of section C addresses these fees and
25 charges and states that Article XIII C and XIII D

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1 prohibit the housing authority from increasing fees and
2 charges above the reasonable costs.

3 We agree with that. We absolutely agree with
4 that. But what we're saying is the only way for us to
5 raise funds is for us to impose a tax to pay for these
6 mandated costs. And in that instance, we would be using
7 proceeds of taxes to pay for these costs.

8 And as it's our only source of revenue, under
9 the *County of Fresno* case, it would constitute the
10 proceeds of taxes.

11 So in conclusion, we do disagree with the
12 statement of decision for multiple reasons: First, that
13 the housing authority does receive property taxes subject
14 to Article XIII A and XIII B as stated in the dissolution
15 law, very clearly.

16 The housing authority is a separate entity from
17 the RDA; and so any references to the RDA in the
18 statement of decision are irrelevant.

19 It is also a separate entity from the successor
20 agency, and is not deemed to be a successor agency. So
21 any restrictions on a successor agency in the dissolution
22 law do not apply to housing authority.

23 And finally, the housing authority has as much
24 ability to levy taxes as other eligible claimants other
25 than the county, because the law and the California

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1 Constitution prohibits any public agency other than the
2 county from collecting property taxes.

3 And I'm happy to answer any questions.

4 CHAIR ORTEGA: Thank you.

5 MS. HALSEY: I just wanted to add one thing.
6 I forgot to mention at the beginning of the item, and
7 that is, you may or may not know that Ms. Asmundson is
8 the wife of one of our staff counsel, Tyler Asmundson.
9 And I just wanted it on the record that we have walled
10 him off from this matter and excluded him from access to
11 documents and also meetings on this matter to create an
12 ethical wall. So I wanted to let everyone know.

13 CHAIR ORTEGA: Thank you.

14 Any questions or comments from the
15 Commissioners?

16 Ms. Ramirez?

17 MEMBER RAMIREZ: I just want to say that I'm a
18 city councilperson in the City of Oxnard. We've had to
19 deal with some of these issues related to redevelopment
20 agency and successor agency. And there has been some
21 litigation; and based on that, I'm going to abstain, now
22 that I see the depth of your arguments on both sides. So
23 I'll be abstaining from this.

24 CHAIR ORTEGA: Yes?

25 MEMBER ALEX: Was Stanton obligated to have a

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1 redevelopment agency?

2 MS. ASMUNDSON: No, no one is obligated to have
3 a redevelopment agency.

4 MEMBER ALEX: Okay, so the dissolution of this
5 entity, what you're saying was mandated by the state,
6 even though you created it voluntarily?

7 MS. ASMUNDSON: No. The dissolution of the
8 redevelopment agency was discretionary.

9 What I'm saying is that under 34176(b), it
10 provides that when the redevelopment agency is dissolved,
11 the housing assets and obligations of the redevelopment
12 agency are mandated on the housing authority. The
13 housing authority and the redevelopment agency are two
14 completely separate entities.

15 And one other thing I should clarify, is that
16 if the housing authority did not exist, then
17 section 34176(b) also provides that when no housing
18 authority exists, then these housing assets and
19 obligations are transferred to the state housing --
20 Department of Housing and Community Development. So this
21 would be a state obligation but for the existence of the
22 housing authority.

23 CHAIR ORTEGA: Mr. Jones, can you answer in
24 that regard?

25 MR. JONES: I'll be happy to respond to any

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1 questions that the Members have. But, you know, what
2 you've heard is a fairly complicated argument about how
3 assets that would have been collected by a former
4 redevelopment agency but are now -- are somehow now
5 transferred -- or transmuted into taxes; and I don't
6 see that the law supports that.

7 And in addition, nowhere in the dissolution
8 statutes is there any mention of Article XIII B.

9 There is one or -- there is one reference, and
10 then there's another reference in the uncodified section
11 to the idea that the revenues that were formerly tax
12 increment and formerly belonged to the RDA are deemed
13 property taxes under XIII A. But there is no mention at
14 all of XIII B.

15 And it's staff's position that the reason those
16 revenues are deemed property taxes under XIII A, is that
17 whatever is left over after the RDA winds down its
18 operations, and that being done by the housing agency --
19 the housing authority in this case, and also the city as
20 the successor agency -- which isn't relevant at all your
21 to your decision because the city isn't before you -- but
22 whatever revenues are left over after those activities of
23 the former RDA are wound down, are meant to be
24 distributed back to counties and cities, and reclaimed
25 specifically by school districts, which was the whole

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1 purpose of the redevelopment dissolution, in the first
2 place.

3 Because of Prop. 98, the State was being
4 compelled in a lot of these communities that had RDAs,
5 to make up for the difference in funding that was being
6 taken by -- it was being captured, if you will, by the
7 RDA under a tax increment scheme. And so the whole
8 purpose of this redevelopment dissolution, that you can
9 see in the leg. history and in the LAO report that's part
10 of your record, is to recapture that revenue for the
11 school districts.

12 And so it's staff's position that the only
13 reason XIII A is mentioned is so that those revenues will
14 be correctly distributed back to cities, counties, and
15 school districts and special districts with whatever is
16 left over.

17 And then aside from that, I'd be happy to
18 answer any other questions. But staff feels pretty
19 confident we've wrapped this up in the analysis before
20 you.

21 MS. HALSEY: And just one thing. Housing
22 authorities are entities of limited powers. And we
23 didn't find in their statutes any authority to impose
24 taxes. Although Ms. Asmundson asserts that they have
25 that power, she has not cited to any authority for that.

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1 MS. ASMUNDSON: We receive the proceeds of
2 taxes pursuant to 34171(p) on all the property taxes.
3 And then additionally, we are a local government entity
4 as defined in Article XIII C and XIII D, and, therefore,
5 have the right to propose measures to the electorate to
6 increase fees and charges above the reasonable level of
7 service.

8 CHAIR ORTEGA: Has the housing authority ever
9 proposed such a fee or levy to the voters?

10 MS. ASMUNDSON: No. They're very difficult to
11 pass.

12 CHAIR ORTEGA: Any other questions or comments?

13 *(No response)*

14 CHAIR ORTEGA: Is there a motion on this item?

15 MEMBER CHIVARO: I'll move the staff
16 recommendation.

17 CHAIR ORTEGA: Motion by Mr. Chivaro.

18 MEMBER ALEX: Second.

19 CHAIR ORTEGA: Second by Mr. Alex.

20 Please call the roll.

21 MS. HALSEY: Mr. Alex?

22 MEMBER ALEX: Aye.

23 MS. HALSEY: Mr. Chivaro?

24 MEMBER CHIVARO: Aye.

25 MS. HALSEY: Ms. Olsen?

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MEMBER OLSEN: Aye.

MS. HALSEY: Ms. Ortega?

CHAIR ORTEGA: Aye.

MS. HALSEY: Ms. Ramirez is abstaining.

MEMBER RAMIREZ: Abstain.

MS. HALSEY: Mr. Rivera?

MEMBER RIVERA: Aye.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Abstain.

MS. HALSEY: Thank you.

CHAIR ORTEGA: The motion carries.

Thank you, everyone.

MS. HALSEY: Item 10 is reserved for county applications for a finding of significant financial distress, or SB 1033 applications. No SB 1033 applications have been filed.

Commission Staff Kerry Ortman will present Item 11, the Legislative Update.

MS. ORTMAN: Good morning. This one is a little longer than usual.

As you know, staff monitors legislation for bills related to the mandate process. New to this report is AB 2343, which would have amended underlying statutes of the program known as *Animal Adoption* and would have provided block-grant funding for the mandate.

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1 As of yesterday, that bill was still in the
2 Assembly Local Government Committee awaiting hearing.
3 Today is the deadline for bills to pass out of their
4 house of origin. Therefore, it's likely that that bill
5 is now dead.

6 And then I'm also reporting to you on the
7 Budget Committee hearings. The Commission's 2014-15
8 budget was first heard in the Assembly and Senate Budget
9 subcommittees on state administration in late March.
10 Contrary to the Governor's proposal, the Assembly
11 Subcommittee voted to fund two new mandates: The *Local*
12 *Agency Ethics* and *Tuberculosis Control* programs.
13 The Assembly Subcommittee also took action on May 20th to
14 continue suspension of all currently suspended local
15 government mandates.

16 In March, the Senate Budget Subcommittee
17 approved the funded mandates as proposed, but rejected
18 suspension of eight *Election* mandates.

19 Additionally, the Senate Subcommittee approved
20 suspension of *Local Agency Ethics* and placeholder trailer
21 bill language to revise the underlying statutes.

22 The Senate Subcommittee referred *Tuberculosis*
23 *Control* to the Subcommittee on Health and Human Services
24 and approved conformity with action in that subcommittee.

25 On April 24th, the Senate Subcommittee on

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1 Health and Human Services decided to hold open the issue
2 of suspending the *Tuberculosis Control* mandate because
3 the LAO, administration, and local health officers are
4 discussing potential alternatives.

5 As of yesterday, the Senate Subcommittee on
6 Health and Human Services has not voted on funding or
7 suspending the *Tuberculosis Control* program.

8 Budget May Revise. On May 13th, 2014, the
9 Governor issued the May revision to this budget that
10 included changes to state-mandated local programs as they
11 were initially proposed in January.

12 For local government, the revised budget allots
13 an additional \$100 million to repay a portion of existing
14 mandate reimbursement claims that have been owed since at
15 least 2004.

16 Proposed trailer bill language would allow
17 appropriation of funds in the 2014-15 to accelerate that
18 repayment.

19 For school districts: The Revision increases
20 Prop. 98 General funds by \$1.6 million to align mandate
21 block funding with revised ADA estimates. The May Revise
22 also increases funding to reflect the addition of five
23 new K-12 mandate programs.

24 And finally, regarding community college
25 districts: The revised budget decreases block-grant

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1 funding consistent with revised student enrollment.

2 That's it.

3 CHAIR ORTEGA: Are there any questions on that
4 report?

5 Yes?

6 MEMBER RAMIREZ: I do.

7 As to that last point, is that a reflection
8 that enrollment is decreasing in community college? Is
9 that what that means?

10 MS. ORTMAN: You know, I would assume so.

11 MEMBER RAMIREZ: That's unfortunate.

12 MS. ORTMAN: But I don't know for sure. I'm
13 sorry.

14 MEMBER RAMIREZ: Okay, thank you.

15 MS. HALSEY: Thank you, Kerry.

16 Item 12, Chief Legal Counsel Camille Shelton
17 will present the Chief Legal Counsel Report.

18 MS. SHELTON: Since our last meeting, on
19 April 3rd, Commission was served with a new petition and
20 complaint from Santa Clarita Valley Sanitation District
21 on the Commission's decision on the *Upper Santa Clara*
22 *River Chloride Requirements* test claim.

23 CHAIR ORTEGA: Any questions?

24 MS. HALSEY: Item 13, the Executive Director's
25 Report.

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After today's hearing, the Commission has 14 test claims, one parameters and guidelines, four parameters and guidelines amendments, seven statewide cost estimates, 73 incorrect reduction claims, and two mandate redeterminations remaining to be heard.

Ten of the test claims and the pending P's & G's are on inactive status pending a decision from the California Supreme Court on the *NPDES Permit* mandate.

Commission staff expects to complete all of the currently pending test claims, parameters and guidelines amendments, and mandate redeterminations, except for those on inactive, by the December hearing. Staff also has tentatively set all of the currently pending IRCs for hearing, with the last one tentatively set for May 2016.

Thus, assuming current staffing and few new filings of test claims, parameters and guidelines, and mandate redeterminations, and no other significant increases in workload, the backlog will be completed by the end of fiscal year 2015-2016.

That said, there has been a significant increase in litigation recently, as identified on the notice and agenda. And this will take attorney time away from preparation of hearing items from time to time, and so it may slightly delay the completion of the backlog.

Commission staff is updating pending caseload

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1 on the Commission's Web site on a monthly basis, so that
2 all parties -- interested parties and interested persons
3 can see when the pending items are currently projected to
4 be heard.

5 Please check the tentative agenda items to see
6 if your item is coming up over the next few hearings.

7 And we have several IRCs tentatively set for
8 July and September. And in particular, we're going to be
9 focusing on *Emergency Procedures, Earthquake Procedures,*
10 *and Disasters Program, Health Fee Elimination,* and
11 *Collective Bargaining* over the next few hearings. So if
12 you are a representative on any of those matters, you
13 might want to take a look at the file.

14 And that's all I have.

15 CHAIR ORTEGA: Okay. Any questions?

16 MEMBER RAMIREZ: Madam Chair?

17 CHAIR ORTEGA: Yes.

18 MEMBER RAMIREZ: I'd just like to commend the
19 staff on reducing the backlog. I think it's been --
20 since I have been here, which has been a couple of
21 years, just a tremendous amount of effort. We see it
22 every time we meet. And I thank you for that. Thank
23 you.

24 CHAIR ORTEGA: Anyone else?

25 Okay, so we're ready to recess into closed

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1 session.

2 The Commission will meet in closed executive
3 session pursuant to Government Code section 11126(e) to
4 confer with and receive advice from legal counsel for
5 consideration and action, as necessary and appropriate,
6 upon the pending litigation listed on the published
7 notice and agenda, and to confer with and receive advice
8 from legal counsel regarding potential litigation.

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

11 We will reconvene in open session in
12 approximately 15 minutes.

13 Thank you.

14 *(The Commission met in closed executive*
15 *session from 11:04 a.m. to 11:11 a.m.)*

16 CHAIR ORTEGA: We are now going to return to
17 open session.

18 I have one item to report, an action item that
19 was taken in closed session.

20 The Commission acted to delegate to the
21 Personnel Subcommittee the ability to appoint an interim
22 chief legal counsel in the event that the current legal
23 counsel could not continue his or her duties.

24 And that is all I have to report.

25 If there are no other matters to come before

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the Commission, we will be adjourned.

MEMBER SAYLOR: Thank you.

CHAIR ORTEGA: Thank you.

(The meeting concluded at 11:11 a.m.)

--oOo--

REPORTER'S CERTIFICATE

I hereby certify:

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

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

In witness whereof, I have hereunto set my hand on the 20th of June 2014.



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