

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: via Zoom

September 24, 2021

Present: Member Gayle Miller, Chairperson
Representative of the Director of the Department of Finance
Member Yvette Stowers
Representative of the State Controller, Vice Chairperson
Member Lee Adams
County Supervisor
Member Natalie Kuffel
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. Chairperson Miller welcomed Member Yvette Stowers back to the Commission as the designee of the Controller and also Vice Chair of the Commission who is replacing Member designee Jacqueline Wong-Hernandez. Chairperson Miller also welcomed Natalie Kuffel, Land Use Counsel and new designee of the Director of the Governor's Office of Planning and Research. Executive Director Heather Halsey called the roll. Members Adams, Kuffel, Miller, Olsen, Stowers, and Walker all indicated that they were present.

APPROVAL OF MINUTES

Chairperson Miller asked if there were any objections or corrections to the July 23, 2021 minutes. Member Adams made a motion to adopt the minutes. With a second by Member Walker, the Commission voted to adopt the July 23, 2021 hearing minutes by a vote of 4-0 with members Olsen and Stowers abstaining.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

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

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 and stated that there were no items on consent for this 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 CLAIMS

Item 3 *California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108, 11-TC-01*

California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108, NPDES Permit No. CAS00-4002, Adopted July 8, 2010; Public Information and Participation Program: Parts 4.C.2(c)(1)(C), 4.C.2(c)(2),(6),(8), 4.C.2(d), 4.C.3(a),(b); Reporting Program and Program Effectiveness Evaluation: 4.I.1; 3.E.1(e); Special Studies: 4.E.III.3(a)(1)(D-E); Attachment F, Section F, Part 4.E.IV.4; Part 4.E.III.2(c)(3)-(4); Watershed Initiative Participation: Part 4.B; Vehicle and Equipment Wash Areas: Part 4.G.1.3(a); and Illicit Connection/Illicit Discharge Elimination: Part 4.H.1.3(a).

County of Ventura and Ventura County Watershed Protection District, Claimants

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt the Proposed Decision to dismiss this Test Claim because it was not timely filed.

Theresa Dunham appeared on behalf of the claimants. Brittany Thompson appeared on behalf of the Department of Finance. Jennifer Fordyce appeared on behalf of the State Water Resources Control Board and Renee Purdy appeared on behalf of the Los Angeles Regional Water Quality Control Board.

Following statements by Ms. Dunham, Ms. Thompson, and Ms. Fordyce, and discussion between Member Stowers, Executive Director Halsey, Chief Legal Counsel Camille Shelton, Ms. Dunham, and Ms. Fordyce, Member Walker made a motion to adopt the staff recommendation. With a second by Member Stowers, the Commission voted to adopt the staff recommendation by a vote of 6-0.

PARAMETERS AND GUIDELINES

Item 4 *Sexual Assault Evidence Kits: Testing, 20-TC-01*

Penal Code Section 680 as Amended by Statutes 2019, Chapter 588 (SB 22)
City of San Diego, Claimant

Commission Counsel Elizabeth McGinnis presented this item and recommended that the Commission adopt the Proposed Decision and Parameters and Guidelines.

Executive Director Halsey stated that the Controller's Office did not contact Commission staff to indicate whether or not they would be participating in this hearing on this matter. Captain Jeffrey Jordon appeared on behalf of the claimant. Brittany Thompson appeared on behalf of the Department of Finance.

Following statements by Captain Jordon and Ms. Thompson, with no further discussion, Member Olsen 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.

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

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

REPORTS

- Item 6 Legislative Update (info)

Program Analyst Jill Magee presented this item.

- Item 7 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Shelton presented this item.

- Item 8 Executive Director: Proposed 2022 Hearing Calendar, Workload Update, and Tentative Agenda Items for the December 2021 and January 2022 Meetings (info/action)

Executive Director Halsey presented and recommended that the Commission adopt the Proposed 2022 Hearing Calendar. Chairperson Miller 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. Executive Director Halsey welcomed new Commission staff, Associate Budget Analyst, Katie Lovell and announced Ms. Lovell's education and experience. Executive Director Halsey continued presenting 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 10:50 a.m., pursuant to Government Code section 11126(e). The Commission met in closed session to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126(e)(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-29)*)

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, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602,

55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]

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 10:57 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). 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.

Chairperson Miller invited other Commission members to speak on the departure of former Member designee Wong-Hernandez. Member Adams congratulated Ms. Wong-Hernandez on her new position and stated that he would miss her thoughtful participation but that we was thrilled that he would continue to work with her at the California State Association of Counties. Member Olsen complimented Ms. Wong-Hernandez on always being quick to understand what she didn’t understand and ask questions. Chairperson Miller agreed that it was a huge compliment. Member Stowers stated that Ms. Wong-Hernandez is a great person and great colleague to work with and congratulated Ms. Wong-Hernandez on her new position. Executive Director Halsey stated that Commission staff has always appreciated her support, that Ms. Wong-Hernandez had led as Chair and as Vice Chair, and that her departure is a loss for the State but a big gain for the counties. Chairperson Miller thanked the Commission for taking the time to do this.

ADJOURNMENT

Hearing no further business, Chairperson Miller made a motion to adjourn the meeting. Member Adams seconded the motion. The Commission adopted the motion to adjourn the September 24, 2021 meeting by a vote of 6-0 at 11:03 a.m.

A handwritten signature in cursive script, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

PUBLIC MEETING



FRIDAY, SEPTEMBER 24, 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

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

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

A P P E A R A N C E S

(All attendees appeared remotely, via Zoom.)

COMMISSIONERS PRESENT

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

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

SPENCER WALKER
Representative for FIONA MA
State Treasurer

NATALIE KUFFEL
Representative for KATE GORDON, Director
Office of Planning & Research

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

SARAH OLSEN
Public Member

---o0o---

COMMISSION STAFF

ERIC FELLER
Senior Commission Counsel

HEATHER A. HALSEY
Executive Director

JILL MAGEE
Program Analyst

ELIZABETH MCGINNIS
Commission Counsel

HEIDI PALCHIK
Assistant Executive Director

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

2
3 *COMMISSION STAFF CONTINUED*

4 CAMILLE N. SHELTON
5 Chief Legal Counsel

6 *PUBLIC PARTICIPANTS*

7 THERESA DUNHAM
8 County of Ventura
9 and
 Ventura County Watershed Protection District

10 JENNIFER FORDYCE
 State Water Resources Control Board
11 and
12 Los Angeles Regional Water Quality Control Board

13 CAPTAIN JEFFREY JORDON
 City of San Diego

14 RENEE PURDY
 State Water Resources Control Board
15 and
16 Los Angeles Regional Water Quality Control Board

17 BRITTANY THOMPSON
 Department of Finance

18 ---o0o---

E R R A T A S H E E T

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

Page	Line	Correction
<u>10</u>	<u>6</u>	<u>to your entire time <u>team</u> for</u>
<u>23</u>	<u>10</u>	<u>My Ms. Fordyce</u>
<u>26</u>	<u>4</u>	<u>proposed and advocated<u>ed</u></u>
<u>41</u>	<u>5</u>	<u>15761 17561</u>
<u>41</u>	<u>17</u>	<u>pPublic sSchool rRestrooms, : fFeminine</u>
<u>41</u>	<u>18</u>	<u>hHygiene pProducts</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

I N D E X

ITEM NO.		PAGE
I.	Call to Order and Roll Call	8
II.	Approval of Minutes	
	Item 1 July 23, 2021	12
III.	Public Comment for Matters Not on the Agenda (none)	12
IV.	Proposed Consent Calendar for Items Proposed for Adoption on Consent Pursuant to California Code of Regulations, Title 2, Articles 7 and 8 (none)	14
V.	Hearings and Decisions Pursuant to California Code of Regulations, Title 2, Article 7	
A.	Appeals of Executive Director Decisions Pursuant to California Code of Regulations, Title 2, Section 1181.1(c)	
	Item 2 Appeal of Executive Director Decisions (none)	14
B.	Test Claims	
	Item 3 California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108, 11-TC-01	15
	California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108, NPDES Permit No. CAS00-4002, Adopted July 8, 2010; Public Information and Participation Program: Parts 4.C.2(c)(1)(C), 4.C.2(c)(2), (6), (8), 4.C.2(d), 4.C.3(a), (b); Reporting Program and Program Effectiveness Evaluation:	

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

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

ITEM NO.		PAGE
	Item 3 (Continued)	
	4.I.1; 3.E.1(e); Special Studies: 4.E.III.3(a)(1)(D-E); Attachment F, Section F, Part 4.E.IV.4; Part 4.E.III.2(c)(3)-(4); Watershed Initiative Participation: Part 4.B; Vehicle and Equipment Wash Areas: Part 4.G.1.3(a); and Illicit Connection/Illicit Discharge Elimination: Part 4.H.1.3(a).	15
	County of Ventura and Ventura County Watershed Protection District, Claimants	
	C. Parameters and Guidelines	
	Item 4 Sexual Assault Evidence Kits: Testing, 20-TC-01	35
	Penal Code Section 680 as Amended by Statutes 2019, Chapter 588 (SB 22)	
	City of San Diego, Claimant	
VI.	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	
	Item 5 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer (none)	40

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

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

ITEM NO.		PAGE
VII.	Informational Hearings Pursuant to California Code of Regulations, Title 2, Article 8	
A.	Reports	
Item 6	Legislative Update	40
Item 7	Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar	44
Item 8	Executive Director: Proposed 2022 Hearing Calendar, Workload Update, and Tentative Agenda Items for the December 2021 and January 2022 Meetings	45
VIII.	Closed Executive Session Pursuant to Government Code Sections 11126 and 11126.2	49
A.	Pending Litigation	
B.	Personnel	
IX.	Report from Closed Executive Session	49
	Adjournment	55
	Reporter's Certificate	56

---o0o---

1 FRIDAY, SEPTEMBER 24, 2021, 10:02 A.M.

2 ---o0o---

3 CHAIRPERSON MILLER: Good morning, everyone. The
4 meeting of the Commission on State Mandates is called to
5 order, and we are so happy to see everyone. And in a
6 minute, we're going to welcome our two new members and
7 also tell you that Jacqueline Wong-Hernandez is not here
8 today and is starting a new position with many of you,
9 actually.

10 Thank you to everyone for participating via Zoom.
11 Please note that in response to COVID-19 and its impact
12 on public meetings, under the Bagley-Keene Open Meeting
13 Act, Governor Newsom's Executive Order N-29-20
14 temporarily suspends, on an emergency basis, pursuant to
15 Government Code section 8571, certain requirements for
16 public meetings.

17 Accordingly, requiring the physical presence of
18 board members at public meetings and providing a
19 physical space for members of the public to observe and
20 participate have been suspended until further notice, so
21 long as the agency makes it possible for members of the
22 public to observe and address the meeting, like we're
23 doing today via Zoom; we can conference this way.

24 The Commission is committed to ensuring that our
25 public meetings are accessible to the public, and that

1 the public, of course, has the opportunity to observe
2 the meeting and to participate by providing written and
3 verbal comment on Commission matters.

4 During this time, as we explore new ways of doing
5 business, we appreciate your patience, and I know we're
6 all getting used to this, and we're always grateful for
7 the ways in which we participate and the incredible team
8 at the Commission.

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

13 And we are thrilled, as I mentioned, to have Yvette
14 Stowers here with us from the Controller's Office.
15 We're welcoming her back. She's the Deputy State
16 Controller for Taxation and the designee of the
17 Controller and also the Vice Chair of the Commission.

18 And as you all know, Ms. Stowers is here, instead
19 of Ms. Wong-Hernandez, who left the State Controller's
20 Office, and is now the Deputy Executive Director for
21 Legislative Affairs at the California State Association
22 of Counties, or CSAC.

23 We obviously owe Ms. Wong-Hernandez a huge debt of
24 gratitude for her interest in the Commission and her
25 real keen awareness of how mandates affect all of us at

1 the state level and the county level. She enjoyed
2 working with each of you. I know -- hopefully you have
3 heard from Jacqueline directly. But it really was a
4 true pleasure and, I know, so appreciated, especially to
5 all the Commission team -- to Ms. Shelton and Ms. Halsey
6 and Ms. Palchik -- but, really, to your entire time for
7 the incredible work you did in -- really, in educating
8 us and helping us learn more about something that we
9 have, I think, grown in leaps and bounds. And I know
10 that Ms. Wong-Hernandez especially appreciated that.

11 So just another opportunity to really shout out to
12 the Commission team for the really remarkable work you
13 do in explaining some really tough issues.

14 So we'll obviously miss her a lot.

15 Thrilled to have you back, Ms. Stowers, and really
16 looking forward to working together. So thank you very,
17 very much.

18 And please also welcome our new Commission member,
19 Ms. Natalie Kuffel. Am I saying that right? Is it
20 Kuffel?

21 MEMBER KUFFEL: Kuffel is right.

22 CHAIRPERSON MILLER: Kuffel. Okay. Great.

23 And Ms. Kuffel is the land use counsel and designee
24 of the Director of the Governor's Office of Planning and
25 Research. Ms. Kuffel assists the Legal, Legislative,

1 and Planning teams at OPR, with work related to CEQA,
2 housing, and transportation policy.

3 Prior to serving in this role, Ms. Kuffel was OPR's
4 leg director, and Ms. Kuffel is replacing Ms. Jeannie
5 Lee, who is on assignment to the White House Council on
6 Environmental Quality. So we will certainly miss
7 Ms. Lee as well. And so pleased that you are here to
8 join us and look forward also to working together.

9 So, with that, we are thrilled to be able to join
10 together here on Zoom.

11 And Ms. Halsey, will you please take the roll.

12 MS. HALSEY: Sure.

13 Mr. Adams.

14 MEMBER ADAMS: Here.

15 MS. HALSEY: Ms. Kuffel.

16 MEMBER KUFFEL: Here.

17 MS. HALSEY: Ms. Miller.

18 CHAIRPERSON MILLER: Here.

19 MS. HALSEY: Ms. Olsen.

20 MEMBER OLSEN: Here.

21 MS. HALSEY: Ms. Stowers.

22 MEMBER STOWERS: Here.

23 MS. HALSEY: Mr. Walker.

24 MEMBER WALKER: Here.

25 CHAIRPERSON MILLER: Great. We have a quorum.

1 Thank you, all, for being here.

2 Next item is Item Number 1.

3 Are there any objections or corrections to the
4 July 23rd, 2021, minutes?

5 MEMBER ADAMS: I would move approval.

6 CHAIRPERSON MILLER: Thank you, Mr. Adams.

7 MEMBER WALKER: I will second.

8 CHAIRPERSON MILLER: Thank you, Mr. Walker.

9 Any public comment?

10 MS. PALCHIK: I see none, Madam Chair.

11 CHAIRPERSON MILLER: Thank you, Ms. Palchik.

12 Seeing none, moved by Mr. Adams; seconded by
13 Mr. Walker.

14 We have to do this by roll call. Right,
15 Ms. Halsey?

16 MS. HALSEY: Yes, please.

17 CHAIRPERSON MILLER: Ms. Palchik, could you take a
18 roll call vote on the minutes, please.

19 MS. HALSEY: Mr. Adams.

20 MEMBER ADAMS: Aye.

21 MS. HALSEY: Ms. Kuffel.

22 MEMBER KUFFEL: Same.

23 MS. HALSEY: Ms. Miller.

24 CHAIRPERSON MILLER: Aye.

25 MS. HALSEY: Ms. Olsen.

1 MEMBER OLSEN: Abstain due to absence.

2 MS. HALSEY: Ms. Stowers.

3 MEMBER STOWERS: Abstain.

4 CHAIRPERSON MILLER: Do you need -- so especially
5 the designees, who are here as a designee of an
6 office -- so Ms. Kuffel and Ms. Stowers -- it is
7 possible, because you are here as the designee of the
8 Controller, it is possible to vote on her behalf.

9 MEMBER STOWERS: Absolutely. And I did review it
10 and then meet with Ms. Wong, so I will be voting yes.

11 CHAIRPERSON MILLER: Oh, great. Thank you very
12 much, Ms. Stowers. We appreciate that.

13 MS. HALSEY: Okay. And Mr. Walker.

14 MEMBER WALKER: Aye.

15 MS. HALSEY: Thank you.

16 So with four votes, that motion carries.

17 CHAIRPERSON MILLER: Great. Thank you very much.

18 MS. HALSEY: Thank you.

19 CHAIRPERSON MILLER: So we are now moving to public
20 comment, Ms. Halsey.

21 MS. HALSEY: Now we will take up public comment for
22 matters that are not on the agenda. Please note that
23 the Commission cannot take action on items not on the
24 agenda. However, it can schedule issues raised by the
25 public for consideration at future meetings.

1 We invite the public to comment on matters that are
2 on the agenda as they are taken up.

3 CHAIRPERSON MILLER: Great. Thank you.

4 Any public comment, Ms. Palchik? I don't see
5 anyone with a hand raised.

6 MS. PALCHIK: I see none.

7 CHAIRPERSON MILLER: Just as a reminder to please
8 raise your hand if you'd like to make a public comment
9 for any matter not on the agenda.

10 Seeing none, we will move on to Article 7 of the
11 hearing, please.

12 MS. HALSEY: Now will the parties and witnesses for
13 the Items 3 and 4 please turn on your video and unmute
14 your microphones and please rise.

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

17 MS. HALSEY: Thank you. I hear several yeses and
18 nods in the affirmative from all of the witnesses and
19 parties.

20 Thank you. Please be seated and turn off your
21 video and mute your microphone.

22 There are no items on consent for this hearing.

23 Item 2 is reserved for appeals of executive
24 director decisions. There are no appeals to consider
25 for this hearing.

1 Next is Item 3. Senior Commission Counsel Eric
2 Feller will please turn on his video and unmute his
3 microphone and present a proposed decision on a test
4 claim on California Regional Water Quality Control
5 Board, Los Angeles Region, Order Number R4-2010-0108.
6 At this time, we invite the parties and witnesses for
7 Item 3 to turn on their videos and unmute their
8 microphones.

9 CHAIRPERSON MILLER: Thank you, everyone. Welcome,
10 Mr. Feller. Nice to see you.

11 MR. FELLER: Thank you.

12 CHAIRPERSON MILLER: Please begin.

13 MR. FELLER: Good morning. This test claim was
14 filed on a national pollutant discharge elimination
15 system stormwater permit issued by the Los Angeles
16 Regional Water Quality Control Board.

17 Staff finds that the test claim was not timely
18 filed. Based on the administrative record of the state
19 and regional water boards, the period of limitation for
20 the permit sections pled by the claimant began to run on
21 August 5th, 2009, the effective date of the prior order,
22 or the latest on July 8, 2010, the effective date of the
23 test claim permit noticed by the regional board.

24 So the test claim filed August 26, 2011, was not
25 timely filed within 12 months following the effective

1 date of the executive order as required by law.

2 The claimants argue that the claim was timely filed
3 because the effective date of the test claim permit was
4 delayed 50 days, pursuant to the Memorandum of Agreement
5 between the State and U.S. EPA.

6 Under the provisions of the agreement, a delay in
7 the operative date of the permit is provided when
8 significant public comments are filed. The parties
9 agree that the 50-day delay is to give U.S. EPA time to
10 review and consider the comments. The record does not
11 support the claimant's argument. The agreement is a
12 contract between the State and U.S. EPA. It does not
13 provide notice to the permittees of the effective date
14 of the permit, which is required by the regional board
15 when it adopts a quasi-judicial order.

16 All notices issued by the regional board indicate
17 that the test claim permit became effective on July 8,
18 2010. There's no evidence in the report or in documents
19 publicly available that delay the effective date, and
20 the records shows the U.S. EPA received all comments and
21 agreed with the provisions in the test claim permit
22 before adoption.

23 So staff recommends that the Commission adopt the
24 proposed decision to dismiss the test claim, and
25 authorize staff to make any technical, nonsubstantive

1 changes to the proposed decision following the hearing.

2 CHAIRPERSON MILLER: Thank you, Mr. Feller, for
3 that.

4 Could the parties and witnesses, as I call you,
5 please state your names for the record. Ms. Dunham for
6 the County of Ventura and Ventura County Watershed
7 Protection District. Would you like to begin.

8 MS. DUNHAM: Sure. I would be glad to.

9 CHAIRPERSON MILLER: Thank you so much. I didn't
10 see you for a second. Please begin --

11 MS. DUNHAM: Thank you.

12 CHAIRPERSON MILLER: -- and if you could just state
13 your name one more time for the record as well.

14 MS. DUNHAM: Absolutely. Theresa Dunham with Kahn,
15 Soares & Conway, here on behalf of Ventura County and
16 the Ventura County Watershed Protection District, the
17 claimants in this matter.

18 And we have -- we have provided you responses to
19 the draft decision and have reviewed the proposed
20 decision. Clearly, little has changed between the draft
21 decision and the proposed decision, and we continue to
22 dispute the contentions that are contained within the
23 proposed decision.

24 We believe it incorrectly characterizes two key
25 elements: That, of course, being that the action taken

1 on July 8th, 2010, to readopt the 2009 permit was done,
2 actually, in its entirety, and, of course, with respect
3 to the application of the Memorandum of Agreement and
4 the context of which the memorandum applies in this
5 case.

6 So, first, let's take the first issue in order,
7 which is that the -- you know, the proposed decision and
8 its claim that the actual beginning date was the
9 August 9th -- of the resolution 2000 -- too many dates.
10 The August 2009 permit.

11 Now, clearly even the proposed decision illustrates
12 that there was considerable procedural irregularities
13 and concerns related to the adoption of the 2009 permit,
14 which was adopted in 2009 and, by the terms of the
15 permit, was delayed for an effective date of 90 days.

16 The regional board's action that it then took was
17 to, in essence, revoke the 2009 permit and to reissue
18 and readopt the permit in 2010. There's significant
19 evidence within the record that clearly shows that the
20 action by the regional board in 2010 was to revoke the
21 permit as adopted in 2009. It was not a modification,
22 it was not an alteration of the August 2009 permit, but
23 was directed to be renoticed and reconsidered in its
24 entirety, which is exactly what the board did.

25 So we do contest that the 2009 permit is not the

1 appropriate order to make its determination, and, in
2 fact, the 2010 permit is the one that was reissued.

3 Based upon the number of procedural irregularities
4 that occurred during the time frame between 2009 and
5 2010, including an interim action in January, where the
6 permit was reissued on the board's own discretion, with
7 significant changes that they claim were not expressed
8 in the originally unissued permit.

9 So, you know, putting aside, you know, the number
10 of petitions and requests for stays and challenges that
11 occurred, the board, the regional board, did agree,
12 based upon the request of the state board, to reconsider
13 in its entirety the 2009 order, which it did.

14 Based upon this process, it then adopted the next
15 permit on July 8 of 2010. This new permit was
16 considered a revocation and, in fact, there is evidence
17 within the language of the 2010 permit that clearly
18 shows the 2009 permit was terminated and that there was
19 a new effective date of July 8th, 2015.

20 I think it's important to note that, there, I
21 believe the proposed decision confuses the difference
22 between an expiration date and an effective date. The
23 expiration date of a permit, based upon the date it's
24 adopted, serves a different purpose than the effective
25 date. And I believe that is the key dispute here today

1 is there is a -- seems to be a misunderstanding that
2 just because a permit is adopted on a certain date, that
3 the expiration would match the effective date, which is
4 not the case.

5 Expiration dates and NPDES permits are necessary
6 because it triggers reports and waives its discharge and
7 other issues. It is not necessarily indicative of when
8 the permit actually becomes effective.

9 One of the other issues, of course, is taking the
10 2010 permit, as the adopted permit is, when does that
11 permit become effective. We continue to contend that
12 the proposed decisions -- decision with respect to how
13 it characterizes the Memorandum of Agreement between the
14 State of California and the U.S. EPA in essence
15 nullifies the impact of the MOA between the State and
16 EPA. It tries to characterize the Memorandum of
17 Agreement as nothing more than a mere contract between
18 the State and U.S. EPA, which is clearly not the case.

19 The Memorandum of Agreement between the State and
20 U.S. EPA is required under the federal regulations and
21 is part of how the state receives its delegated
22 authority under the Clean Water Act to administer the
23 NPDES program. To suggest that this MOA is nothing more
24 than a contract completely undermines the intent and
25 purposes of a Memorandum of Agreement between states and

1 U.S. EPA in administering the Clean Water Act.

2 I also would note that, you know, there goes to be
3 some arguments within the proposed decision that EPA
4 staff's comments, before or after the July 10, 2010,
5 hearing, suggests that they did not object to or -- the
6 July 2010 permit, and, therefore, it was not necessary
7 for the effective date to be delayed, which is one of
8 the primary intents of the Memorandum of Agreement
9 language.

10 However, the proposed decision overlooks the fact
11 that EPA's staff actions to submit comments or testify
12 at the hearing does nothing to change the plain language
13 of the Memorandum of Agreement itself. And even in the
14 proposed decision, where it does include the language of
15 the Memorandum of Agreement, on page 47 of the proposed
16 decision, nothing in the plain language in the
17 Memorandum of Agreement suggests that staff of EPA can
18 waive the 50-day effective date by testifying in advance
19 that it does not object to the permit.

20 So we dispute some of the arguments within the
21 proposed decision that claims that EPA's actions by
22 staff somehow nullified the actual plain language of the
23 Memorandum of Agreement.

24 We also contend that -- I lost my notes here for a
25 minute -- that the provisions in the NPDES permit

1 itself, where it suggests that the order became
2 effective on the date of adoption, unless EPA objects,
3 that language itself is inconsistent with the Memorandum
4 of Agreement, and it too cannot nullify the terms of the
5 Memorandum of Agreement, which, by its terms, as agreed
6 by the State and U.S. EPA, delay the effective date of
7 all NPDES permits that are considered to be
8 controversial for that 50-day permit per the terms of
9 the MOA.

10 So we contest the proposed decision in that we
11 believe it does -- it is inconsistent, it
12 mischaracterizes the Memorandum of Agreement, as well as
13 the actions that were taken by the regional board with
14 the revocation of the 2009 permit. And we ask that this
15 Commission reconsider the proposed decision and reject
16 what's been put forward by the staff.

17 Thank you for your time today, and I'm open to any
18 questions.

19 CHAIRPERSON MILLER: Thank you very much, Ms.
20 Dunham. I appreciate that.

21 I think I will go through all the witnesses and
22 then come back to the board for questions, if that's
23 okay with you.

24 MS. DUNHAM: Absolutely.

25 CHAIRPERSON MILLER: Thank you.

1 Ms. Thompson, for the Department of Finance, do you
2 have any comments? And please state your name one more
3 time for the record.

4 MS. THOMPSON: Sure. Brittany Thompson with the
5 Department of Finance.

6 We have no objections to the staff recommendation
7 on this.

8 CHAIRPERSON MILLER: Great. Thank you very much,
9 Ms. Thompson.

10 My Fordyce, I hope I'm saying that right, and
11 Ms. Purdy, for the State Water Resources Control Board
12 and the Los Angeles Regional Water Control Board, do you
13 have any comments?

14 MS. FORDYCE: We do. And I will be speaking on
15 behalf of the water boards.

16 CHAIRPERSON MILLER: Great. Thank you. Do you
17 mind just stating your name again for the record,
18 please.

19 MS. FORDYCE: Yes.

20 CHAIRPERSON MILLER: Thank you.

21 MS. FORDYCE: So my name is Jennifer Fordyce. I'm
22 an assistant chief counsel for the State Water Board,
23 and I'm here representing both the Los Angeles Regional
24 Water Board and the State Water Board.

25 Also along with me is Renee Purdy, who is the

1 executive officer of the Los Angeles Water Board, though
2 I -- for these initial comments, I plan to speak for
3 both of us.

4 So as we mentioned in our comment letter, we very
5 much appreciate the thoughtful work that your staff have
6 done and concur with the conclusions reached in the
7 proposed decision: That the period of limitations for
8 the sections pled by the claimant and the test claim
9 began to run on August 5th, 2009, which is the effective
10 date of order number 090057, what I will call the 2009
11 permit; or at the latest, July 8th, 2010, the effective
12 date of order number R4-2010-0108, or the 2010 permit.
13 And that's the permit that's the subject of the test
14 claim.

15 So I'm going to -- I plan to keep -- hopefully keep
16 our comments brief and just want to touch upon a few
17 things in response to the claimant's comments in
18 their -- prior comments and some of their comments
19 today.

20 So as to the 2009 permit, we certainly don't think
21 that it is irrelevant to the analysis here. It is
22 completely relevant, as that was the operative permit
23 for the claimants, from August 5th, 2009, to July 7,
24 2010. The 2009 permit was never rescinded, revoked,
25 invalidated, set aside, or stayed during this time. And

1 it was the 2009 permit that first ordered the
2 requirements pled by the claimants in this test claim.

3 So there is no evidence in the record that any of
4 that -- that the permit was rescinded or revoked.
5 Specifically as to the 2010 permit, that permit became
6 effective upon adoption on July 8th, 2010, and there is
7 no evidence to the contrary.

8 It is the permit and not the MOA between the State
9 Water Board and EPA that is -- the permit is controlling
10 regarding the effective date of the 2010 permit.

11 What the claimants are asking this Commission to do
12 is to completely ignore, invalidate, or change a permit
13 provision and to seemingly do that retroactively for a
14 permit that was issued more than 11 years ago, and
15 that's not something this Commission has the authority
16 to do.

17 The regional board decision to have the 2010 permit
18 take effect immediately upon adoption was entirely
19 intentional. It was not necessary for the board to
20 delay the effective date of the 2010 permit, as the
21 requirements in that permit were virtually the same and
22 are virtually the same as those in the 2009 permit,
23 including the contested provisions in the test claim.
24 And the permittees had already been implementing those
25 terms for about ten months.

1 And let's not forget that the reconsideration of
2 the permit in 2010 was to allow public comment on the
3 very language that the claimants, Natural Resources
4 Defense Council, and Heal the Bay proposed and advocate
5 for.

6 The regional board also did not, in any way, hide
7 the ball in the intended effective date of the 2010
8 permit. It was clear through the publicly noticed draft
9 and tentative permit to the board, prior to July 8,
10 2010, but it was the board's intent that the 2010 permit
11 would take effect upon adoption.

12 So if the claimants had any concerns about that
13 intended effective date or thought that it was not
14 consistent with the MOA, they should have raised that
15 issue before the regional board, either in writing or in
16 oral comments, and it did neither. And it also did not
17 challenge the permit after it was adopted, and this is
18 not the proper forum for the claimants to first
19 challenge that.

20 And as your staff noted very well, there is clear
21 evidence that EPA fully supported both the 2009 and the
22 2010 permits. And specific to the 2010 permit, they
23 submitted a written comment letter on the draft permit
24 and testified at the July 8, 2010, hearing. In support,
25 EPA was well aware of the comments, all 21 comments

1 received. EPA does not object to the 2010 permit in any
2 way. And, again, as your staff noted in the proposed
3 decision, given EPA's support, the purpose of EPA
4 scrutiny post-adoption would not have been furthered by
5 a delayed effective date.

6 So, accordingly, the proposed decision, we think,
7 appropriately analyzed the evidence in the record and
8 documents publicly available, and correctly concludes
9 that the test claim must be dismissed as under either
10 the 2009 or 2010 permit. The test claim was not timely
11 filed.

12 Thank you, and that concludes our comments at this
13 time, and we're available for questions should you have
14 any.

15 CHAIRPERSON MILLER: Great. Thank you very much,
16 Ms. Fordyce, and sorry for mispronouncing your name.

17 Ms. Purdy, are you adding anything at this time?

18 MS. PURDY: No. I don't have anything else to add.
19 Thank you.

20 CHAIRPERSON MILLER: Great. Thank you very much.
21 Thank you for being here.

22 With that, are there any questions from members for
23 any of the witnesses today?

24 (No response.)

25 CHAIRPERSON MILLER: Seeing none, is there any

1 public comment?

2 MS. PALCHIK: I see none, Madam Chair.

3 CHAIRPERSON MILLER: Thank you, Ms. Palchik.

4 Is there any further discussion?

5 (No response.)

6 CHAIRPERSON MILLER: Seeing none, I will entertain
7 a motion on this item.

8 MEMBER STOWERS: Madam Chair?

9 CHAIRPERSON MILLER: Please, Ms. Stowers. Yes.

10 MEMBER STOWERS: Thank you.

11 Just -- I just -- I have a question regarding the
12 process and the timing, and I'm not sure if this is the
13 proper forum. But just looking at the date, it seems
14 like there's a lot of gaps here as far as coming to the
15 final recommendation, and I'm really concerned with the
16 time period of September 8th, 2011, to March 3rd, 2017.

17 I understand that, you know, there was an extensive
18 legal review, but I'm concerned about that gap there.
19 And I'm also concerned about the time frame of January
20 8th, 2018, and May 19, 2021.

21 Can anyone speak about what was going on?

22 CHAIRPERSON MILLER: Thank you, Ms. Stowers, for
23 that question.

24 Mr. Feller, do you want to go ahead and respond?

25 You may not know. And then we will turn it over to

1 Ms. Dunham.

2 MR. FELLER: Is what you -- what you are referring
3 to the length of time for this to be heard by the
4 Commission? Is that the time gaps you are concerned
5 about?

6 MEMBER STOWERS: Yes. Specifically those date
7 frames that I cited.

8 MR. FELLER: I will let management address those.

9 MS. HALSEY: I can actually speak to the filing
10 date issue. That would be an administrative issue.

11 Sorry. I'm going to have to go back into this.

12 But I can tell you, just from my memory, that this
13 was filed, that it was rejected as incomplete for a
14 variety of reasons, but mainly because it was not
15 timely. There was a lot of back and forth.

16 Eventually the claimant, I believe, did file an
17 appeal of an executive director decision, but instead of
18 hearing that, we needed to take jurisdiction so that the
19 Commission could decide this very matter of timeliness,
20 and particularly because of the complexity of the facts,
21 that we wanted to lay it all out for the Commission to
22 see.

23 And as you can see, it's quite a big record, just
24 on that -- just on this issue.

25 MEMBER STOWERS: Okay.

1 MS. DUNHAM: Can I --

2 CHAIRPERSON MILLER: Ms. Dunham, hold on one
3 second.

4 Go ahead, Ms. Stowers.

5 MEMBER STOWERS: Okay. I followed that part of it,
6 but I still thought that there were some gaps there.
7 And I don't know -- just coming back to the Commission,
8 I don't know if that was normal. Do the Commission and
9 staff have some kind of statutory requirement to get the
10 claims reviewed and a recommendation in a particular
11 time frame? Does the claimant have to file within a
12 particular time frame?

13 MS. HALSEY: There's -- the claimant has to file
14 within -- there's a statute of limitations of a year.
15 And then --

16 MEMBER STOWERS: Right. But what about -- what's
17 our responsibilities in this?

18 MS. HALSEY: For notice of complete filing, it
19 is -- I'm sorry. Let me go back into this. I believe
20 it's -- is it -- I'm sorry. I have to look at our
21 timelines, and this was not something that was raised by
22 anyone else before the hearing.

23 CHAIRPERSON MILLER: No worries. Why don't you --
24 why don't you look that up, Ms. Halsey. Ms. Shelton,
25 and then we're going to let Ms. Dunham --

1 MS. SHELTON: Just to maybe help a little bit.
2 One, there were a number of requests for extensions of
3 time to file comments and to file the admin records in
4 this case. And that is not counted towards any time
5 under our regulations for completion of this matter.

6 Two, this was lumped together with all the other 39
7 stormwater claims, which have -- substantial issues of
8 first impression have been pending in the courts. They
9 still are pending in the courts, yet we are starting to
10 get those going, and we will start releasing those draft
11 proposed decisions on those matters.

12 So we had a backlog of other items that needed to
13 come. We weren't having to wait until the court
14 resolved even the main, you know, mandate issue in those
15 stormwater claims, and those came first.

16 CHAIRPERSON MILLER: And this issue --

17 MS. HALSEY: Okay. Now I've got -- I'm sorry. Now
18 I have gotten into the record because I had to dig in.

19 There are a number of extension requests. Many.
20 And they come from different parties to respond to our
21 requests, to respond -- to make a time for comments.
22 There was a notice of incomplete. It did take quite a
23 long time just to issue that notice of complete to the
24 2013 date that you mentioned. And there was a lot of
25 back and forth on this issue.

1 And also, as I mentioned, there was a filing for an
2 appeal, which we then mooted by bringing it for a full
3 hearing to you, rather than in the form of an appeal of
4 rejection on the statute of limitations issue, which
5 could have been the other way we could have brought it
6 to you.

7 CHAIRPERSON MILLER: Thank you, Ms. Halsey.

8 Ms. Dunham, do you want to respond?

9 MS. DUNHAM: Yes. I just want to clarify that, you
10 know, I think our matter was determined complete at one
11 point, and then, a number of years later, was found to
12 be incomplete.

13 I don't believe there was any appeal as part of
14 this process. We -- for some reason, the staff
15 determined, after finding it complete, that it was an
16 incomplete. Gave us another opportunity. We provided
17 that.

18 I think my understanding, it has been more as
19 expressed by Ms. Shelton, that this matter has been
20 lumped with a number of claims which have been sitting
21 in front of the Commission for well over a decade,
22 waiting to be resolved.

23 So I don't recall there being some type of an
24 executive appeal, and I have been representing the
25 county on this matter since its -- since it started. So

1 just to clarify -- a clarification for the record.

2 CHAIRPERSON MILLER: Thank you.

3 Ms. Fordyce, do you want to speak to this?

4 MS. FORDYCE: Yeah. I just -- I just want to know,
5 I think what it looks like, aside of the chronology
6 also, the biggest gap was about five years. Starting
7 around June 2012 is when the claimants requested that
8 the test claim be put in inactive status, given
9 pending one of the --

10 MS. HALSEY: Thank you.

11 MS. FORDYCE: So there was about a five-year gap
12 that was -- I think was just that, and then it -- the
13 process seemed to start up again about 2017. So if
14 that's helpful.

15 MEMBER STOWERS: Thank you, everyone. It is very
16 helpful. Like I said, I just needed more background.
17 Make sure that we're being timely.

18 MS. HALSEY: Sorry. And I -- because of -- because
19 of this meeting, actually, my VPN is really slow, so I'm
20 having a hard time accessing the documents.

21 But I do now find, in 2012, that the claimant did
22 submit a request to put this on inactive, and it was
23 indeed kept on there for many years pending the outcome
24 of litigation in the Supreme Court, which just came down
25 in 2017.

1 Is that correct, Camille?

2 MS. SHELTON: I believe it was 2016.

3 And, at that point, we asked for a request for
4 additional information and asked for the full
5 administrative records from the regional board and the
6 State Water Resources Control Board, which took time to
7 get submitted with the Commission.

8 CHAIRPERSON MILLER: Great. Thank you very much
9 for all of that information from all of you.

10 Ms. Dunham, any final words before we go to a
11 motion?

12 MS. DUNHAM: No. We thank you for your
13 considerations and look forward to hearing from you all.

14 CHAIRPERSON MILLER: Thank you very much.

15 Okay. With that, any further questions?

16 (No response.)

17 CHAIRPERSON MILLER: Any further public comment?

18 MS. PALCHIK: I see none, Madam Chair.

19 CHAIRPERSON MILLER: Thank you, Ms. Palchik.

20 With that, we will entertain a motion.

21 MEMBER WALKER: I move to adopt the proposed
22 decision dismissing the test claim.

23 CHAIRPERSON MILLER: Thank you, Mr. Walker.

24 MEMBER STOWERS: Second.

25 CHAIRPERSON MILLER: Who was that? I'm sorry.

1 Ms. Stowers. Thank you, Ms. Stowers.

2 It's been moved by Mr. Walker to adopt the staff
3 recommendation; seconded by Ms. Stowers.

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

5 MS. HALSEY: Mr. Adams.

6 MEMBER ADAMS: Aye.

7 MS. HALSEY: Ms. Kuffel.

8 (No audible response.)

9 CHAIRPERSON MILLER: Ms. Kuffel, we couldn't hear
10 you.

11 MEMBER KUFFEL: Aye.

12 CHAIRPERSON MILLER: Thank you.

13 MS. HALSEY: Ms. Miller.

14 CHAIRPERSON MILLER: Aye.

15 MS. HALSEY: Ms. Olsen.

16 MEMBER OLSEN: Aye.

17 MS. HALSEY: Ms. Stowers.

18 MEMBER STOWERS: Aye.

19 MS. HALSEY: Mr. Walker.

20 MEMBER WALKER: Aye.

21 CHAIRPERSON MILLER: Thank you. That motion
22 carries.

23 We will now move on to Item 4, please, Ms. Halsey.

24 MS. HALSEY: Next is Item 4. Commission Counsel

25 Elizabeth McGinnis will please turn on her video and

1 unmute her microphone and present a proposed decision
2 and parameters and guidelines on Sexual Assault Evidence
3 Kits: Testing.

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

7 The Controller's Office did not contact the
8 Commission staff to indicate whether or not they would
9 be participating in this hearing on this matter.

10 CHAIRPERSON MILLER: Thank you.

11 Hi, Ms. McGinnis. Please begin.

12 MS. MCGINNIS: Hi. Good morning.

13 This is the proposed decision and parameters and
14 guidelines for the Sexual Assault Evidence Kits:
15 Testing program, which provides reimbursement for law
16 enforcement agencies to perform specified activities
17 within set time frames to ensure the DNA testing of all
18 sexual assault forensic evidence received by the law
19 enforcement agency on or after January 1st, 2016.

20 Reimbursement is not required for conducting
21 follow-up investigations on evidence tested pursuant to
22 the test claim statute.

23 No comments were received on the draft expedited
24 parameters and guidelines.

25 The proposed parameters and guidelines identify

1 only the reimbursable activities approved by the
2 Commission in the test claim decision with the
3 reimbursement period beginning January 1st, 2020.

4 Staff recommends that the Commission adopt the
5 proposed decision and parameters and guidelines and
6 authorize staff to make any nonsubstantive, technical
7 changes to the proposed decision following the hearing.

8 Thank you.

9 CHAIRPERSON MILLER: Thank you, Ms. McGinnis.

10 If the parties and witnesses could please remember
11 to state your names for the record. Captain Jordon, for
12 the City of San Diego, would you like to begin, please.

13 CAPTAIN JORDON: Sure. I'm Captain Jeffrey Jordon
14 with the City of San Diego.

15 And I just spent a lot of time reading and thinking
16 about the very, very thoughtful analysis and agree with
17 the board's findings.

18 Again, I've always been impressed with the things
19 that I have read from the Commission on State Mandates,
20 and I just wanted to say, I appreciate your efforts and
21 thank you in consideration of these matters, because
22 it's the work and providing the funding that goes a long
23 way with allowing us to carry out our duties and to
24 perform the tasks mandated by the legislature --
25 legislation and the legislators who are thinking about

1 it and crafting it and approving it.

2 So, once again, thank you. And I have no further
3 comments.

4 CHAIRPERSON MILLER: Thank you, Mr. Jordon. And I
5 agree with your assessment of the thoughtful analysis.

6 Ms. Thompson, will you state your name for the
7 record, please, and let us know the -- if the Department
8 of Finance has any comments.

9 MS. THOMPSON: Brittany Thompson with the
10 Department of Finance.

11 We have no objection to the staff recommendation on
12 this one.

13 CHAIRPERSON MILLER: Great. Thank you very much,
14 Ms. Thompson.

15 Are there any questions from the board members on
16 this matter?

17 (No response.)

18 CHAIRPERSON MILLER: Seeing none, is there any
19 public comment?

20 MS. PALCHIK: I see none, Madam Chair.

21 CHAIRPERSON MILLER: Thank you, Ms. Palchik.

22 With that, I will entertain a motion.

23 MEMBER OLSEN: I move adoption of the proposed
24 decision and proposed parameters and guidelines.

25 CHAIRPERSON MILLER: Thank you, Ms. Olsen.

1 MEMBER ADAMS: Ms. Miller, I would second that
2 motion.

3 CHAIRPERSON MILLER: Thank you, Mr. Adams.

4 It's been moved by Ms. Olsen; seconded by
5 Mr. Adams.

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

7 MS. HALSEY: Sure.

8 Mr. Adams.

9 MEMBER ADAMS: Aye.

10 MS. HALSEY: Ms. Kuffel.

11 MEMBER KUFFEL: Aye.

12 MS. HALSEY: Ms. Miller.

13 CHAIRPERSON MILLER: Aye.

14 MS. HALSEY: Ms. Olsen.

15 MEMBER OLSEN: Aye.

16 MS. HALSEY: Ms. Stowers.

17 MEMBER STOWERS: Aye.

18 MS. HALSEY: Mr. Walker.

19 MEMBER WALKER: Aye.

20 CHAIRPERSON MILLER: Great. Thank you. That
21 motion carries.

22 And we will now move to Item 5.

23 CAPTAIN JORDON: Thank you.

24 MS. HALSEY: Thank you.

25 We now ask presenters to turn off -- please turn

1 off their videos and mute their microphones.

2 Item 5 is reserved for county applications for a
3 finding of significant financial distress, or SB 1033
4 applications. No SB 1033 applications have been filed.

5 CHAIRPERSON MILLER: We are now moving to Item 6,
6 Ms. Halsey.

7 MS. HALSEY: Thank you.

8 Program Analyst Jill Magee will please turn on her
9 video and microphone and present Item 6, the Legislative
10 Update.

11 MS. MAGEE: Good morning.

12 CHAIRPERSON MILLER: Thank you for joining us.

13 MS. MAGEE: The following are the legislative
14 updates since the last time the Commission met:

15 The trailer bill language posted on the Department
16 of Finance's website, Bagley-Keene Open Meeting Act:
17 Remote Participation in Meetings, was not enacted.

18 Next, AB 1291, State Bodies: open meetings, was
19 chaptered on July 9th, 2021. This bill amended the
20 Bagley-Keene Open Meeting Act to require a state body,
21 when it limits time for public comment, to provide at
22 least twice the allotted time to a member of the public
23 who utilizes translating technology to address the state
24 body.

25 Next, AB 130, Education finance: Education Omnibus

1 budget trailer bill, was chaptered on July 9th, 2021.
2 Most of the changes made by this bill are technical in
3 nature or are unrelated to the mandates process except
4 for the following amendments, which are relevant to
5 Government Code sections 15761 and 17581.6.

6 Specifically, this bill requires a decrease of the
7 appropriations limits of K-14 school districts to no
8 more than the amount of their proceeds of taxes and a
9 commensurate increase of the State's appropriations
10 limit; requires that each school district report to the
11 Superintendent of Public Instruction and the Director of
12 Finance, and that each community college district report
13 to the Chancellor of the California Community Colleges
14 and the Director of Finance, at least annually, any
15 increase or decrease to its appropriations limit; and
16 amends Government Code section 17581.6(f)(36) to
17 include, in the block grant, public school restrooms,
18 feminine hygiene products, 18-TC-01, Statutes 2017,
19 Chapter 687.

20 Next, AB 361, Open meetings: state and local
21 agencies: teleconferences, was chaptered on
22 September 16, 2021. This bill amends the Brown Act for
23 local public meetings, the Bagley-Keene Open Meeting Act
24 for public meetings of most state agencies, and the
25 Gloria Romero Open Meetings Act of 2000 for state

1 universities, and is an urgency measure with an
2 immediate effective date.

3 As relevant to Commission proceedings, the
4 Governor's Executive Order number N-29-20 suspends,
5 until September 30th, 2021, the requirements of the
6 Bagley-Keene Open Meeting Act for teleconferencing
7 during the COVID-19 pandemic, provided that notice and
8 accessibility requirements are met, that public members
9 are allowed to observe and address the state body at the
10 meeting, and that a state body has a procedure for
11 receiving and swiftly resolving requests for reasonable
12 accommodation for individuals with disabilities, as
13 specified.

14 This bill, until January 31st, 2022, extends the
15 suspension of requirements for teleconferencing
16 contained in the Act, and declares the Legislature's
17 intent consistent with the Governor's Executive Order
18 number N-29-20, to improve and enhance public access to
19 state and local agency meetings during the COVID-19
20 pandemic and future emergencies by allowing broader
21 access through teleconferencing options.

22 On September 20th, 2021, the Governor signed
23 Executive Order N-15-21 that waives the application of
24 this bill until October 1st, 2021, when provisions of
25 the prior executive order will expire.

1 This executive order specifies that a local
2 legislative body that meets to take a majority vote,
3 pursuant to Government Code section 54953(e)(1)(B), to
4 determine if remote meetings are justified beyond
5 September 30, 2021, they must follow the statutory
6 requirements established by AB 361.

7 Executive Order N-15-21 does not have any effect on
8 the conduct of state agency meetings beyond the waiver
9 of the provisions of AB 361 until October 1st, 2021.

10 Next, AB 473, California Public Records Act:
11 conforming revisions, was enrolled and presented to the
12 Governor on September 8th, 2021. This bill would
13 recodify and reorganize the provisions of the act and
14 would become operative on January 1st, 2023.

15 Finally, AB 474, California Public Records Act:
16 conforming revisions, was enrolled and presented to the
17 Governor on September 9th, 2021. This bill would enact
18 various conforming and technical changes related to
19 AB 473. Most of the changes made by this bill,
20 including amendments to Government Code sections
21 11124.1, 11125.1, 11126, and 11126.1 are technical in
22 nature or unrelated to the mandates process.

23 Staff will continue to monitor legislation for
24 bills that impact the mandates process.

25 Thank you.

1 CHAIRPERSON MILLER: Thank you very much,
2 Ms. Magee.

3 Any questions for Ms. Magee?

4 (No response.)

5 CHAIRPERSON MILLER: Seeing none, I think we're
6 going to go to the Chief Counsel Report.

7 MS. HALSEY: Chief Legal Counsel Camille Shelton
8 will please turn on her video and microphone and present
9 Item 7, the Chief Legal Counsel Report.

10 MS. SHELTON: Good morning.

11 Since the last Commission hearing, we have not
12 received any new filings.

13 We do have a new decision issued by the San Diego
14 County Superior Court issued on September 1st, on the
15 challenge to the Commission's decision on the Youth
16 Offender Parole Hearing Program.

17 The court fully affirmed the Commission's decision,
18 finding that the test claim statutes did not impose any
19 state-mandated activities on counties, and also found
20 that the test claim statutes change the penalty for a
21 crime within the meaning of 17556(g), and, therefore,
22 there were no costs mandated by the State.

23 As far as the litigation calendar, we don't have
24 any hearings scheduled at this time.

25 Thank you.

1 CHAIRPERSON MILLER: Thank you, Ms. Shelton.

2 Any questions for Ms. Shelton?

3 (No response.)

4 CHAIRPERSON MILLER: Seeing none, Ms. Halsey.

5 MS. HALSEY: Thanks.

6 Item 8 is the Executive Director's Report, and I
7 have an information and action item for you today.

8 We'll start with the action item, which is the
9 proposed 2022 Hearing Calendar. Commission meetings are
10 generally held on the fourth Fridays of odd months
11 unless they conflict with a holiday.

12 In 2022, the fourth Friday of November is a
13 holiday, and, therefore, the first Friday of December is
14 proposed for this hearing.

15 Additionally, the May hearing is proposed to remain
16 on the Friday of the Memorial Day weekend, as is usual.

17 Therefore, all 2022 regular meetings are proposed
18 for fourth Fridays of odd months except for the November
19 hearing, which is proposed for the first Friday of
20 December.

21 In addition, tentative hearing dates are proposed
22 for April 22nd, 2022, and October 28th, 2022.

23 Staff recommends that the Commission adopt the
24 proposed 2022 Hearing Calendar.

25 CHAIRPERSON MILLER: Great. I will move approval

1 of the calendar.

2 Is there a second?

3 MEMBER OLSEN: Second.

4 CHAIRPERSON MILLER: Thank you, Ms. Olsen.

5 Ms. Halsey, will you take the roll to accept the
6 calendar.

7 MS. HALSEY: Sure.

8 Ms. Stowers.

9 MEMBER STOWERS: Aye.

10 MS. HALSEY: Ms. Olsen.

11 MEMBER OLSEN: Aye.

12 MS. HALSEY: Mr. Walker.

13 MEMBER WALKER: Aye.

14 MS. HALSEY: Ms. Miller.

15 CHAIRPERSON MILLER: Aye.

16 MS. HALSEY: Ms. Kuffel.

17 MEMBER KUFFEL: Aye.

18 MS. HALSEY: Mr. Adams.

19 MEMBER ADAMS: Aye.

20 CHAIRPERSON MILLER: Great. The calendar is
21 approved.

22 MS. HALSEY: Thank you.

23 For administrative developments, I wanted to let
24 you know that the Commission recently hired an associate
25 budget analyst, Katie Lovell. Katie graduated from

1 Sacramento State with a Bachelor's in Psychology. She
2 has approximately four years' experience working for --
3 in public agency budgeting, first as an AGPA at Covered
4 California, where she performed a variety of monthly
5 budget planning activities for complex budget
6 assignments and performed duties to develop the annual
7 budget, which included transitioning to Fi\$Cal; and then
8 as a Budget Analyst I at the Sacramento Superior Court,
9 where she performed duties relating to the preparation,
10 administration, maintenance, and review and control of
11 the court's budget.

12 We're very happy to have Katie join us at the
13 Commission.

14 CHAIRPERSON MILLER: Okay. Welcome, Katie. We're
15 happy too.

16 MS. HALSEY: And then, finally, our workload
17 update: After this hearing, there are 38 pending test
18 claims, 37 of which are regarding NPDES stormwater
19 permits.

20 There are also one active parameters and guidelines
21 and four statewide cost estimates pending.

22 There is one additional parameters and guidelines
23 regarding a stormwater NPDES permit. That is on
24 inactive status regarding the outcome of litigation
25 regarding the test claim decision underlying that

1 matter.

2 And, finally, there are six incorrect reduction
3 claims pending.

4 Commission staff currently expects to complete all
5 currently pending test claims and IRCs by approximately
6 the January 2025 Commission meeting, depending on
7 staffing and other workload. Some of the test claims
8 may be heard and decided earlier than currently
9 indicated if they are consolidated for a hearing.

10 And please check the tentative agenda items on the
11 Executive Director's Report to see if an item you are
12 interested in is likely to come up in the next couple of
13 hearings. You can also check the pending caseload
14 documents on the Commission's website -- and those are
15 updated bimonthly -- to see when something is
16 tentatively set for hearing.

17 That is all I have.

18 CHAIRPERSON MILLER: Thank you, Ms. Halsey.

19 Any questions for Ms. Halsey?

20 (No response.)

21 CHAIRPERSON MILLER: No? Any public comment for
22 the leg report, the legal report, or the -- no? Okay.
23 Great. Thank you, everyone.

24 The Commission will now meet in closed executive
25 session -- please see your e-mail from Ms. Palchik with

1 the discrete Zoom link -- pursuant to Government Code
2 section 11126(e) to confer with and receive advice from
3 legal counsel for consideration and action, as necessary
4 and appropriate, upon the pending litigation listed on
5 the published notice and agenda; and to confer with and
6 receive advice from legal counsel regarding potential
7 litigation. The Commission will also confer on
8 personnel matters pursuant to Government Code section
9 11126(a)(1).

10 And we will reconvene on this open session Zoom
11 link in approximately 15 minutes. So please leave this
12 Zoom link and go on to the discrete Zoom link that you
13 have in your e-mail, and then we will come back here to
14 the open meeting.

15 Thank you, everyone.

16 (Closed session: 10:50 a.m. to 10:57 a.m.)

17 CHAIRPERSON MILLER: The Commission met in closed
18 executive session pursuant to Government Code
19 11126(e)(2) to confer with and receive advice from legal
20 counsel for consideration and action, as necessary and
21 appropriate, upon the pending litigation listed on the
22 published notice; and to confer with and receive advice
23 from legal counsel regarding potential litigation. The
24 Commission also conferred on personnel matters pursuant
25 to Government Code section 11126(a)(1).

1 And I was remiss when I was welcoming our new
2 members. In singing Jacqueline Wong-Hernandez's
3 praises, I was remiss in not inviting other board
4 members to speak, and I apologize for that. I know she
5 has a big fan club here.

6 So Mr. Adams, do you want to begin, please?

7 MEMBER ADAMS: Sure. Thank you, Madam Chair.

8 I just wanted to congratulate Jacqueline on her new
9 position as Deputy Executive Director number 2 in charge
10 at CSAC. I will miss her thoughtful participation here.

11 But singularly, I am thrilled that I am one that
12 gets to continue to work with her at her new role at
13 CSAC and as a member of the county family.

14 So thank you for that.

15 CHAIRPERSON MILLER: Yes. Thank you, Mr. Adams. I
16 really appreciate that.

17 Ms. Olsen, please.

18 MEMBER OLSEN: So I just wanted to sing her praises
19 on something that -- I was a little worried about saying
20 this because somebody could think of it as a sort of
21 backhanded compliment, but it really is a completely
22 genuine compliment. And that is, I would be sitting in
23 a meeting thinking, is there something I still need to
24 know or I still don't understand? And I could almost
25 always count on Ms. Wong-Hernandez being a snap of the

1 fingers ahead of me in asking the question. She was
2 quick to understand what she didn't understand and ask
3 that question. And I so appreciate that.

4 CHAIRPERSON MILLER: I love that, and I think that
5 is a huge compliment. I really do. I think we need so
6 much more of that in government in general, and I
7 completely understand that. I think -- and I know, if
8 Jacqueline were here, she would be incredibly grateful
9 for both of those words. And, Jacqueline, you have to
10 go back in the record and see what I said about you at
11 some point.

12 Ms. Stowers, please.

13 MEMBER STOWERS: Thank you.

14 Yes. Jacqueline is a great person, was a great
15 colleague to work with. Worked with her for quite some
16 time with the State Controller's Office and when she was
17 also on the FTB board. So we go way back.

18 Jackie, congratulations on your new position. I
19 know our paths will continue to cross.

20 CHAIRPERSON MILLER: Yes. I love that. Thank you.

21 And I am -- and I am really pleased that she gets
22 to work with the counties, because I think that they
23 always will be well served and it's just nice to see
24 people that are really concerned with serving people,
25 remaining in public service. So that's always such a

1 pleasure to see. So this really, like, brightened my
2 entire day.

3 Anyone else?

4 (No response.)

5 CHAIRPERSON MILLER: And I know -- I texted her, so
6 I know she heard all of this, so that was really -- I'm
7 so happy that we have this opportunity.

8 Thank you, Mr. Adams, for that suggestion.

9 With -- Ms. Halsey?

10 MS. HALSEY: May I?

11 CHAIRPERSON MILLER: Please. Yeah. And
12 Ms. Shelton too. I would love it. Anyone. Please.

13 MS. HALSEY: Well, I can -- just on behalf of
14 Commission staff, we have always really appreciated her
15 support for Commission staff, her -- really been truly
16 awed by her deep interest in mandates, which can be
17 pretty dry and, you know, cause people to glaze over.
18 She was always really -- she would do deep dives into
19 our analyses, and I think staff were really happy to
20 know that someone was reading it at that level, and just
21 always the support she gave to staff was very much
22 appreciated.

23 And we really appreciated, you know, the time that
24 she led as our chair and then serving as vice chair as
25 well. That she's -- she's -- it's a big loss for us,

1 and although we're super happy to have Yvette here, too,
2 I think it's a loss for the State that Jacqueline has
3 moved on, and definitely a big gain for the counties.
4 So happy for them.

5 CHAIRPERSON MILLER: Absolutely.

6 So Jacqueline is listening on the phone, and she
7 did text me to say that, "Please tell them I heard it
8 all," and she's very, very grateful.

9 And obviously, you know, praise from such
10 extraordinary people is -- I think really makes these
11 jobs so worthwhile. And I know I speak for Jacqueline
12 when I say how grateful she is, and she is texting me
13 those exact words as I say them. "So grateful and thank
14 you."

15 So I know that our paths will cross, but thank you,
16 Jacqueline, for your incredible service. We really
17 appreciate it.

18 So I feel like I have -- you know, in these
19 troubling times, it's like -- things like this make me
20 so happy, and you just remember why we do this work and
21 really give so much purpose to why we do it, and also
22 just that we really are making a difference. So thank
23 you, sincerely, for taking the time to do this.

24 She also says, "You are all so wonderful."

25 So with no business to discuss, I move to adjourn

1 the meeting.

2 Is there a second?

3 Everyone wants to stay on. See, this is the
4 highlight of everyone's day.

5 MEMBER ADAMS: I will second that motion.

6 CHAIRPERSON MILLER: Mr. Adams seconds.

7 And I think we do have to do a roll really quickly,
8 just to adjourn the meeting, please, and then we are
9 done for the day.

10 Ms. Halsey.

11 MS. HALSEY: Sure.

12 Mr. Adams.

13 MEMBER ADAMS: Aye.

14 MS. HALSEY: Ms. Kuffel.

15 MEMBER KUFFEL: Aye.

16 MS. HALSEY: Ms. Miller.

17 CHAIRPERSON MILLER: Aye.

18 MS. HALSEY: Ms. Olsen.

19 MEMBER OLSEN: Aye.

20 MS. HALSEY: Ms. Stowers.

21 MEMBER STOWERS: Aye.

22 MS. HALSEY: Mr. Walker.

23 MEMBER WALKER: Aye.

24 MS. HALSEY: Thank you.

25 CHAIRPERSON MILLER: Great. The meeting is

1 adjourned, and thank you, all, very, very much. Take
2 care, everyone. Have a good weekend.

3 (Proceedings concluded at 11:03 a.m.)

4 ---o0o---

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

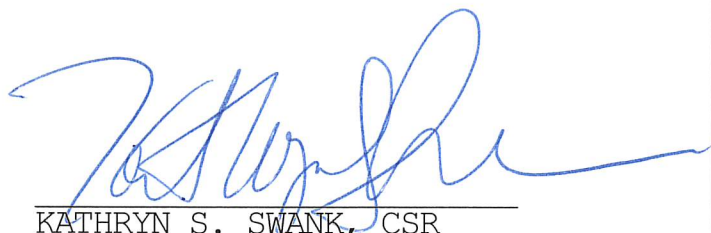
CERTIFICATE OF REPORTER

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 18th day of October 2021.



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