

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: via Zoom
December 1, 2023

Present: Member Gayle Miller, Chairperson
Representative of the Director of the Department of Finance
Member Lee Adams
County Supervisor
Member David Oppenheim
Representative of the State Controller, Vice Chairperson
Member Jennifer Holman
Representative of the Director of the Office of Planning and Research
Member Renee Nash
School District Board Member
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 10:07 a.m. Executive Director Heather Halsey called the roll. Members Adams, Holman, Miller, Nash, Olsen, Oppenheim, and Walker all indicated that they were present.

APPROVAL OF MINUTES

Chairperson Miller noted additional errata on page 2, line 3 of the minutes, asked that “Jose” be corrected to “Joe” Stephenshaw. Chairperson Miller then asked if there were any objections to or additional corrections of the October 27, 2023 minutes. There was no response. Member Olsen made a motion to adopt the minutes with the revision. Member Adams seconded the motion. Chairperson Miller asked if there was any public comment. There was no response. Executive Director Halsey called the roll. The Commission voted to adopt the October 27, 2023, hearing minutes by a vote of 7-0.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

Chairperson Miller asked if there was any public comment. There was no response. Chairperson Miller read a resolution in honor of Member Olsen upon her resignation from the Commission. Member Olsen thanked the Commission for the recognition. Member Adams wished Member Olsen all the best and congratulated her. Executive Director Halsey thanked Member Olsen for her support and stated her hope for a wonderful retirement. Chief Commission Counsel Camille Shelton thanked Member Olsen and stated that Commission staff would miss her.

CONSENT CALENDAR

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

ADOPTION OF ORDER TO INITIATE RULEMAKING

- Item 5* General Cleanup (Order 23-01), Proposed Amendments to California Code of Regulations, Title 2, Division 2, Chapter 2.5, Articles 1, 3, 4, 5, and 7

Executive Director Halsey stated that Item 5 was proposed for consent. Chairperson Miller asked if there were any objections to the proposed consent calendar. There was no response. Member Olsen made a motion to adopt the consent calendar. Member Adams seconded the motion. Chairperson Miller asked if there was any public comment. There was no response. Chairperson Miller called the roll. The Commission voted to adopt the consent calendar by a vote of 7-0.

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

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

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

- Item 2 Appeal of Executive Director Decisions

Executive Director Halsey presented this item, stating that Item 2 is reserved for appeals of Executive Director decisions and that there were no appeals to consider for this hearing.

TEST CLAIMS

- Item 3 *Lead Sampling in Schools: Public Water System No. 3710020, 17-TC-03-R*

On Remand from City of San Diego v. Commission on State Mandates, Court of Appeal, Third Appellate District, Case No. C092800; Judgment and Writ of Mandate issued by the Sacramento County Superior Court, Case No. 34-2019-80003169-CU-WM-GDS; Permit Amendment No. 2017PA-SCHOOLS, City of San Diego Public Water System No. 3710020, effective January 18, 2017

City of San Diego, Claimant

Senior Commission Counsel Elizabeth McGinnis presented this item and recommended that the Commission adopt the Proposed Decision to deny this Test Claim.

Kevin King, Lisa Celaya, and Adam Jones appeared on behalf of the claimant. Marilyn Munoz appeared on behalf of the Department of Finance. David Rice appeared on behalf of the State Water Resources Control Board.

Following statements by Mr. King, Mr. Jones, Ms. Celaya, Ms. Munoz, and Mr. Rice, and Member Olsen, Chairperson Miller asked if there were any other questions from board members. Following discussion between Member Adams, Ms. Celaya, Mr. Jones, Mr. King, Chief Legal Counsel Shelton, Member Olsen, Chairperson Miller, Member Nash, Member Oppenheim, and Executive Director Halsey, Chairperson Miller asked if there was a motion. Member Walker made the motion to adopt the staff recommendation. Chairperson Miller seconded the motion and asked if there was any public comment. There was no response. Executive Director Halsey called the roll. The Commission voted to adopt the Proposed Decision by a vote of 4-2 with Member Adams and Member Nash voting no and Member Olsen abstaining.

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 4 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 presented this item, stating that Item 4 is reserved for county applications for a finding of significant financial distress, or SB 1033 applications, and that no SB 1033 applications have been filed.

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

REPORTS

- Item 6 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 7 Executive Director: Proposed Strategic Plan, Workload Update, and Tentative Agenda Items for the January 2024 and March 2024 Meetings (info/action)

Executive Director Halsey presented and recommended that the Commission adopt the Proposed 2024-2028 Strategic Plan. Member Olsen made the motion to adopt the staff recommendation. Member Walker seconded the motion. Chairperson Miller asked if there was any public comment. There was no response. Executive Director Halsey called the roll. The Proposed 2024-2028 Strategic Plan was adopted by the Commission by a vote of 7-0. Executive Director Halsey continued presenting this item and described the Commission's workload.

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

The Commission adjourned into closed executive session at 11:14 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):

There is currently no litigation pending.

B. POTENTIAL LITIGATION

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):

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.

C. PERSONNEL

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

RECONVENE IN PUBLIC SESSION

At 11:28 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.

ADJOURNMENT

Chairperson Miller asked Ms. Olsen to give some final words of wisdom and that she would entertain a motion to adjourn. Member Olsen stated that although it can seem like the work of the Commission doesn't really affect the real world and is just something in the courts, that what Commission staff and members, agency staff, and the public do in participating in the mandates process matters, so carry on and do good work. Member Olsen made a motion to adjourn the meeting. Member Walker seconded the motion. The December 1, 2023 meeting was adjourned at 11:30 a.m.

 for
Heather Halsey
Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

PUBLIC MEETING

FRIDAY, DECEMBER 1, 2023

10:08 A.M.

ORIGINAL

MEETING HELD

VIA ZOOM

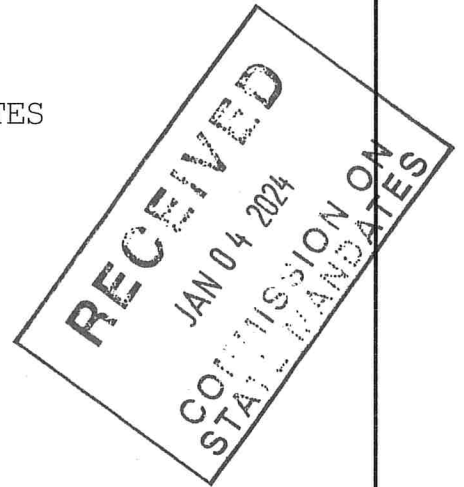
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

REPORTED BY:

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A P P E A R A N C E S

COMMISSIONERS PRESENT

GAYLE MILLER
Director
Department of Finance
(Chairperson of the Commission)

SPENCER WALKER
Representative for FIONA MA
State Treasurer
(Vice Chairperson of the Commission)

DAVID OPPENHEIM
Representative for MALIA COHEN
State Controller

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

JENNIFER HOLMAN
Representative for SAMUEL ASSEFA, Director
Office of Planning & Research

RENEE C. NASH
Eureka Union School District
School District Board Member

SARAH OLSEN
Public Member

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COMMISSION STAFF

HEATHER A. HALSEY
Executive Director

ELIZABETH MCGINNIS
Commission Counsel

CAMILLE N. SHELTON
Chief Legal Counsel

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

PUBLIC PARTICIPANTS

KEVIN KING
City of San Diego
(Item 3)

LISA CELAYA
City of San Diego
(Item 3)

ADAM JONES
City of San Diego
(Item 3)

MARILYN MUNOZ
Department of Finance
(Item 3)

DAVID RICE
State Water Resources Control Board
(Item 3)

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ERRATA SHEET

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Page	Line	Correction
<u>58</u>	<u>9</u>	<u>Yeah. Sorry. ‡ <u>Aye</u> -- sorry. Yes.</u>
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1 FRIDAY, DECEMBER 1, 2023, 10:08 A.M.

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3 CHAIRPERSON MILLER: Good morning, everyone. It is
4 10:07, and we'll call the Commission on State Mandates
5 to order.

6 Welcome to our webinar. We are meeting pursuant to
7 Statute 2023, Chapter 196, that amended the Bagley-Keene
8 Open Meeting Act to extend, until December 31st, 2023,
9 the authority to hold public meetings through
10 teleconferencing.

11 We, of course, continue our commitment to ensure
12 that our public meetings are accessible to the public
13 and that the public has the opportunity to observe the
14 meeting and participate by providing written and verbal
15 comment on Commission matters. The materials, as
16 always, are listed at www.csm.ca.gov, under the
17 "Hearings" tab.

18 And please note that in the event we experience
19 technical difficulties or the meeting is bumped offline,
20 we will restart and allow time for people to rejoin
21 before recommencing the meeting.

22 And with that, I am happy, if it's helpful,
23 Ms. Halsey, to take the roll just because I can see
24 folks. So why don't I go ahead and do that.

25 Mr. Adams.

1 MEMBER ADAMS: Here.

2 CHAIRPERSON MILLER: Ms. Holman.

3 MEMBER HOLMAN: Here.

4 CHAIRPERSON MILLER: I'm here, of course.

5 Ms. Nash.

6 MEMBER NASH: Here.

7 CHAIRPERSON MILLER: Thank you.

8 Ms. Olsen.

9 MEMBER OLSEN: Here.

10 CHAIRPERSON MILLER: Yay.

11 Mr. Oppenheim.

12 MEMBER OPPENHEIM: Sorry about that. Here.

13 CHAIRPERSON MILLER: Great. Thank you.

14 And Mr. Walker.

15 MEMBER WALKER: Here.

16 CHAIRPERSON MILLER: Great. Thank you.

17 So we have a quorum. Thank you, everyone, for
18 being here.

19 MS. HALSEY: Thank you, Madam Chair, for calling
20 the roll. I now have a gallery -- galley, and I can see
21 everyone --

22 CHAIRPERSON MILLER: Great.

23 MS. HALSEY: -- and can take the future rolls for
24 you.

25 CHAIRPERSON MILLER: Great.

1 Next is Item Number 1. Please note the additional
2 errata on page 2, line 3. Please strike "Jose" and
3 correct to "Joe" Stephenshaw.

4 Are there any objections to or additional
5 corrections of the October 27, '23, minutes?

6 MEMBER OLSEN: Move adoption with revision.

7 CHAIRPERSON MILLER: Thank you, Ms. Olsen.

8 MEMBER ADAMS: Second.

9 CHAIRPERSON MILLER: Seconded by Mr. Adams.
10 Any public comment?

11 Seeing none, are you able to take the roll?

12 MS. HALSEY: Yes.

13 Mr. Adams.

14 MEMBER ADAMS: Aye.

15 MS. HALSEY: Ms. Holman.

16 MEMBER HOLMAN: Aye.

17 MS. HALSEY: Ms. Miller.

18 CHAIRPERSON MILLER: Aye.

19 MS. HALSEY: Ms. Nash.

20 MEMBER NASH: Aye.

21 MS. HALSEY: Ms. Olsen.

22 MEMBER OLSEN: Aye.

23 MS. HALSEY: Mr. Oppenheim.

24 MEMBER OPPENHEIM: Aye.

25 MS. HALSEY: Mr. Walker.

1 MEMBER WALKER: Aye.

2 CHAIRPERSON MILLER: Great. The minutes are
3 adopted.

4 MS. HALSEY: Thank you.

5 And now we will take up public comment for matters
6 not on the agenda. Please note that the Commission may
7 not take action on items not on the agenda; however, it
8 may schedule issues raised by the public for
9 consideration at future meetings. We invite the public
10 to comment on matters that are on the agenda as they are
11 taken up.

12 CHAIRPERSON MILLER: Great. Thank you.

13 Is there -- if anyone wishes to make a public
14 comment, please raise your Zoom hand.

15 (No response.)

16 CHAIRPERSON MILLER: I don't see anyone.

17 So with that, and in a very bittersweet moment,
18 I -- there are few people for whom I have more respect
19 for the honor and service and servant leadership,
20 Ms. Olsen, than you, that you have displayed over your
21 years on the Commission. You will be sorely, sorely
22 missed.

23 I would like to read a resolution we have written
24 for you, truly in deep, deep gratitude. And, obviously,
25 are so grateful for the ways in which you have served.

1 But truly a bittersweet moment for the Commission to
2 want all the best for you but recognize the loss that we
3 will all feel.

4 So I will read it, and then I hope anyone that
5 would like to further comment will please -- please
6 comment.

7 Before the Commission on State Mandates, in honor
8 of Sarah Olsen, Public Member, Commission on State
9 Mandates.

10 Whereas, Ms. Olsen was appointed to the Commission
11 on State Mandates as the public member in 2005 by Arnold
12 Schwarzenegger and has been reappointed every four years
13 ever since by Governors Schwarzenegger, Brown, and
14 Newsom;

15 Whereas, prior to her Commission service, Ms. Olsen
16 was a staff director to fiscal committee in the
17 California State Assembly from 1997 to 1999, and a
18 principal consultant from 1995 to 1997, and was a policy
19 and fiscal analyst for the Office of the Legislative
20 Analyst to 1982 to 1995;

21 Whereas, Ms. Olsen's extensive knowledge of public
22 finance and the legislative process has been invaluable
23 in assisting the Commission to determine if local
24 agencies and school districts should be reimbursed
25 pursuant to Article XIII B, Section 6 of the California

1 Constitution and Section 17514 of the Government Code;

2 Whereas, Ms. Olsen is the longest-serving public
3 member of the Commission on State Mandates and will be
4 remembered for her 18 years of dedicated service that
5 includes work on the Commission's personnel and
6 legislative subcommittees, serving with three executive
7 directors, and her thoughtful deliberation on many
8 dozens of claims and other matters, including Sexually
9 Violent Predator; Peace Officer Procedural Bill of
10 Rights; Minimum Conditions for State Aid; Pupil
11 Suspensions, Expulsions, and Expulsion Appeals; Youth
12 Offender Parole Hearings; and several Stormwater test
13 claims;

14 Whereas, Ms. Olsen has come to meetings better
15 prepared than most scouts and approached matters
16 thoughtfully and impartially with tough questions for
17 staff and observations that are engaging and insightful,
18 and is being honored by the Commission Members and Staff
19 in appreciation of her outstanding dedication,
20 leadership, and service to the Commission and the people
21 of California;

22 Now, therefore, be it resolved that the Members and
23 Staff of the Commission on State Mandates thank Sarah
24 Olsen for her 18 years of service and warmly
25 congratulate her upon her retirement and wish her all

1 the best in making new memories with her new family and
2 civic endeavors.

3 Done this 1st day of December, 2023, in Sacramento.
4 It -- we are all, therefore, witness of the incredible
5 service and our deep, deep, and abiding gratitude to
6 you, Ms. Olsen.

7 Thank you, so, so, so very much.

8 MEMBER OLSEN: Well, thank you for that
9 recognition. I definitely owe as much gratitude to this
10 body as -- certainly as you owe to me. You allowed me
11 to stay engaged in public service when I returned to
12 private life. And it's been hard to figure out when was
13 the right time to leave, but it feels right. And I'm
14 just so thankful to all of you for allowing me to engage
15 in public service for so long. Thank you.

16 CHAIRPERSON MILLER: Thank you very much.

17 Anybody else?

18 Camille and Heather, do you want to --

19 Or Mr. Adams?

20 MEMBER ADAMS: I just want to wish you all the
21 best, Sarah. You are the last familiar face from when I
22 first got on this Commission. So congratulations and
23 all the best.

24 MEMBER OLSEN: Thank you.

25 CHAIRPERSON MILLER: Anybody else?

1 MS. HALSEY: Yeah. On behalf of Commission staff,
2 we just want to thank you for your support, for making
3 us always be on our toes and be prepared, and just the
4 continuity you have provided here at the Commission, and
5 the historical knowledge has been invaluable. We --
6 you -- and we will truly miss you and miss learning
7 about or hearing about your adventures as you travel and
8 hope that you have just a wonderful, wonderful
9 retirement and wonderful adventures ahead with your
10 family and your friends.

11 MS. SHELTON: Sarah, thank you so much. We are
12 going to miss you.

13 MEMBER OLSEN: Thank you.

14 CHAIRPERSON MILLER: Any members of the public?

15 (No response.)

16 CHAIRPERSON MILLER: Seeing none, we will share
17 that resolution with you and hope that you will continue
18 to stay in touch. Thank you, thank you, thank you.

19 MEMBER OLSEN: Thank you.

20 CHAIRPERSON MILLER: Next we will move to the
21 consent calendar.

22 MS. HALSEY: Yes. Item 5 is proposed for consent.

23 CHAIRPERSON MILLER: Are there any objections to
24 the proposed consent calendar from the members or from
25 anyone in the public?

1 (No response.)

2 MEMBER OLSEN: Move the consent calendar.

3 MEMBER ADAMS: And I would second.

4 CHAIRPERSON MILLER: Thank you. Moved by Ms. Olsen
5 and seconded by Mr. Adams.

6 Any public comment?

7 (No response.)

8 CHAIRPERSON MILLER: Great.

9 May we take the roll, please?

10 (No response.)

11 CHAIRPERSON MILLER: Okay. I think I'm going to
12 take the roll because it looks like Ms. Halsey's
13 computer froze.

14 Mr. Adams.

15 MEMBER ADAMS: Aye.

16 CHAIRPERSON MILLER: Ms. Holman?

17 MEMBER HOLMAN: Aye.

18 CHAIRPERSON MILLER: Gayle Miller, aye.

19 Ms. Nash?

20 MEMBER NASH: Aye.

21 CHAIRPERSON MILLER: Ms. Olsen.

22 MEMBER OLSEN: Aye.

23 CHAIRPERSON MILLER: Mr. Oppenheim.

24 MEMBER OPPENHEIM: Aye.

25 CHAIRPERSON MILLER: Mr. Walker.

1 MEMBER WALKER: Aye.

2 CHAIRPERSON MILLER: Great. The consent calendar
3 is approved.

4 And now, Ms. Halsey, may we move to the swearing
5 in?

6 MS. HALSEY: Absolutely.

7 Will the parties and witnesses for Item 3 please
8 turn on your video and unmute your microphones and
9 please rise and state your names for the record.

10 MR. RICE: David Rice.

11 MS. HALSEY: I guess you want to stay in camera
12 view; so if you want to stay seated, maybe raise your
13 hand instead. So -- okay.

14 MS. MUNOZ: Marilyn Munoz for the Department of
15 Finance.

16 MS. HALSEY: Thank you.

17 (Parties/witnesses stood to be sworn or
18 affirmed.)

19 MS. HALSEY: Do you solemnly swear or affirm that
20 the testimony which you are about to give is true and
21 correct based on your personal knowledge, information,
22 or belief?

23 MS. MUNOZ: I do.

24 CHAIRPERSON MILLER: Mr. Rice. We just need a
25 verbal from you.

1 MR. RICE: I do.

2 CHAIRPERSON MILLER: Thank you.

3 MS. HALSEY: And also all the other witnesses that
4 will be presenting.

5 CHAIRPERSON MILLER: If you are a witness, if you
6 can unmute yourself, we just need to hear you say "I do"
7 verbally.

8 So Mr. King and Ms. Celaya.

9 MR. KING: Kevin King with the City Attorney's
10 Office in San Diego.

11 Do you want me to -- are you -- do you need to
12 swear in again, or you just want me to say "I do"?

13 MS. HALSEY: "I do" is sufficient.

14 MR. KING: I do.

15 MS. HALSEY: Thank you.

16 MR. JONES: Adam Jones, City of San Diego.

17 I do as well.

18 MS. HALSEY: Thank you.

19 MS. CELAYA: Lisa Celaya, City of San Diego.

20 I do also.

21 MS. HALSEY: Thank you.

22 CHAIRPERSON MILLER: Thank you, everyone.

23 MS. HALSEY: Item 2 is reserved for Executive
24 Director decisions, and there are no appeals to consider
25 for this hearing.

1 Next is Item 3. Senior Commission Counsel
2 Elizabeth McGinnis will please turn on her video and
3 unmute her microphone and present the proposed decision
4 on lead sampling in schools, Public Water System No.
5 3710020, 17-TC-03-R.

6 At this time we invite the parties and witnesses
7 for Item 3 to please turn on their videos and unmute
8 their microphones.

9 MS. MCGINNIS: Hello. Good morning. This test
10 claim alleges reimbursable State-mandated activities
11 arising from a permit amendment for the City of San
12 Diego's public water system, which requires the
13 claimant, beginning January 18th, 2017, to submit to the
14 State Water Board a list of all K through 12 schools it
15 serves, and to sample and test drinking water in K
16 through 12 schools, for the presence of lead, upon the
17 request of an authorized representative of the school
18 made prior to November 1st, 2019.

19 The Commission previously issued a decision denying
20 this test claim, which the claimant challenged by way of
21 administrative writ of mandate. In April 2022, the
22 Third District Court of Appeal found that the test claim
23 order imposes a new program or higher level of service
24 and directed the Commission to set aside its original
25 decision and to determine the remaining mandate issues.

1 Based on the information in the record, staff finds
2 that the test claim order imposes new requirements on
3 the claimant, but those requirements are not mandated by
4 the State.

5 All parties agree that the claimant is not legally
6 compelled to comply with the test claim order because
7 owning and operating a public water system is not
8 mandated by State law.

9 Nor is the claimant practically compelled to comply
10 with the permit for the three reasons alleged: Staff
11 finds that the record does not contain substantial
12 evidence showing that the claimant will face certain and
13 severe penalties or other draconian consequences, as is
14 required for a finding of practical compulsion, if it
15 decides not to participate in the underlying program and
16 provide water service or to comply with the permit.

17 A long history of operating a public water system
18 is insufficient on its own to establish that the
19 claimant is practically compelled to comply with the
20 test claim order.

21 Moreover, the record does not -- does not support
22 the claimant's assertion that it would face immediate
23 repayment of bonds and other financing, totaling nearly
24 \$1 billion, if it ceased operating its water system.

25 Finally, the State Water Board is authorized but

1 not required to suspend or revoke the claimant's
2 operating permit for noncompliance with the test claim
3 order. And the claimant has not presented substantial
4 evidence showing that the State, with certainty, would
5 impose a severe penalty if the claimant did not comply
6 with the permit.

7 Therefore, staff finds that the test claim order
8 does not impose a reimbursable State-mandated program
9 and recommends the Commission adopt the proposed
10 decision denying this test claim, and direct staff to
11 make any technical, nonsubstantive changes to the
12 decision after the hearing.

13 Yesterday, after 5:00 p.m., the claimant submitted
14 late comments on the proposed decision and two
15 declarations in support of their claim.

16 However, those documents do not comply with the
17 filing requirements under the Commission's regulations
18 and have not been considered by staff.

19 The Commission's regulations further provide that
20 the Commission need not rely on written evidence filed
21 after the comment period expires.

22 Thank you.

23 CHAIRPERSON MILLER: Thank you very much,
24 Ms. McGinnis.

25 Now, the parties and witnesses, if you could please

1 state your names for the record, I will call on you.

2 Mr. King and Ms. Celaya and Mr. Jones for the
3 claimants, if you could state your names for the record
4 and then begin, please.

5 MR. KING: Kevin King, Deputy City Attorney with
6 the San Diego City Attorney's Office.

7 CHAIRPERSON MILLER: Thank you.

8 MS. CELAYA: Lisa Celaya.

9 Sorry. Were we supposed to do our title or just
10 our name and where we work?

11 CHAIRPERSON MILLER: Your title and name and where
12 you work is fine. Just because Mr. King did that too.
13 Thank you. I know that was a little different. Sorry,
14 Ms. Celaya.

15 MS. CELAYA: That's all right.

16 Executive Assistant Director for the City of San
17 Diego's Public Utilities Department.

18 CHAIRPERSON MILLER: Great.

19 MR. JONES: Adam Jones, Deputy Director of Finance
20 for the City of San Diego Public Utilities Department.

21 CHAIRPERSON MILLER: Thanks, all, for being here.
22 So if you want to go ahead and begin then, please.

23 MR. KING: So first I would just ask that the --
24 that the Commission consider -- consider the
25 declarations that were filed yesterday and also the

1 comments that we filed along with those. It includes
2 details that are very important to the heart of the
3 issue here on practical compulsion.

4 You will hear from -- you will hear from Mr. Jones
5 and Ms. Celaya, but then you will hear from me as well
6 on the substance.

7 But I think to make sure you have every single
8 point that's relevant, those should be considered by the
9 board. They are not extensive. A few pages each. It
10 is not a -- I don't think it's a burden on this
11 Commission; so I would ask them to be considered.

12 I will move on from that.

13 So today, I am going to focus on whether the City
14 is practically compelled to comply with the permit
15 amendment. And our position is even before we filed
16 these comments and declarations today, and then before
17 we present this testimony today, there was already
18 substantial evidence that we were practically --
19 practically compelled.

20 There's three factors to -- there are several
21 factors to consider. I will focus on three of those.
22 Just as a reminder, the first one being how long the
23 locale has been providing the service; the second being
24 whether that locale will be penalized for not complying
25 with the new requirements; and the third being whether

1 there's any legal or practical consequences for not
2 complying.

3 And, again, there was already -- even outside of
4 what we submitted yesterday, there was already
5 substantial evidence. It is undisputed the City has
6 been providing water service since 1901. I don't think
7 a service gets any older than that.

8 In addition, the -- there is a -- there is
9 potentially a penalty for not complying with the permit,
10 being a revocation or suspension of the water permit.
11 Along those lines, that would have drastic consequences,
12 as we have already argued and put in the record.

13 So outside of that, myself and Mr. Jones and
14 Ms. Celaya would like to focus on additional points in
15 evidence. And that first one being why defaulting on
16 the City's billion dollars in loans is not an option for
17 the City.

18 So Mr. Jones will explain the consequences, the
19 practical consequences of defaulting on these loans.
20 And that will include the consequences that a default
21 for the water utility would have on the City itself. In
22 the -- in the proposed decision, the Commission focuses
23 on that they are separate entities and says, because of
24 that, the City itself, their general fund won't be
25 affected. But that doesn't -- that ignores the

1 interconnectivity between the City and its water
2 utility.

3 So, for example, if the -- if the water utility
4 defaults, that will be basically imputed on the City
5 itself because it is under the guise of the -- under the
6 control of the City. It is under the control of the
7 Mayor and City Council.

8 And this isn't just -- this isn't theory. This has
9 happened to the City in particular, where we cite an
10 example in the declarations again, which I hope you
11 consider and review.

12 There's a 2006 issue that the City had with the --
13 with the SEC. And in that case, the City was dinged for
14 basically underselling its -- how underfunded its
15 pension problem was. And the SEC dinged the City for
16 that, and then along with that, dinged everything that
17 the City owns, and that included the water utility. And
18 that consequence was that the water utility couldn't
19 offer bonds for five years. So it shows that these two
20 entities are financially interrelated.

21 And there's another example out of Jacksonville
22 which is also cited in my comments and also in
23 Mr. Jones's declaration, where the electric company
24 owned by Jacksonville -- they ended up suing -- suing to
25 get out of a contract with another power utility since

1 they didn't want to -- they didn't want to purchase the
2 power. They wanted to get out of that contract.

3 And their credit rating -- the City of Jacksonville
4 itself, their credit rating was -- took a hit along with
5 the general -- the electric authority itself.

6 So, again, the details of that -- both of those
7 examples are in the declaration, and I would ask the
8 Commission to consider those, in addition to the
9 testimony today.

10 So outside of that, the second point we would like
11 to focus on today would be why selling the City's water
12 utility is not an option. And, again, we have the
13 declaration from Ms. Celaya, who is the Executive
14 Assistant Director for the Public Utilities Department.
15 And in that declaration, she explains practically why
16 selling is not possible. She will break it down in her
17 testimony, but there's not a buyer out there for a
18 system that is this massive.

19 And outside of that even, there are practicalities
20 that would come -- that would make it be huge hurdles to
21 selling. The City has a pure water system, which
22 Ms. Celaya will explain in detail, the project there,
23 and how that is interconnected with our water system.
24 And how we -- if we sold the water utility itself, we
25 would have to also sell with that all operations for

1 pure water. Not practical. And I will let Ms. Celaya
2 explain that.

3 And there are other -- there are other things as
4 well, like the -- our emergency storage system that
5 supports the region, that it would make it difficult to
6 sell. So you will hear more details from that in a bit.

7 But I want to go back to kind of the legal -- the
8 legal standard here. And part of that legal standard is
9 whether the alternatives proposed are so far beyond the
10 realm of practical reality that we, as the City, have no
11 choice but to comply.

12 And it is our position that everything that the
13 Commission and the -- and the State has proposed here is
14 outside -- is beyond the realm of practical reality. It
15 is not realistic for the City to default on a billion
16 dollars in loans and then just expect multiple debtors
17 to not come calling and asking for that debt. It is not
18 realistic for the City to sell its \$4.1 billion water
19 utility instead of complying with this water permit.

20 And lastly, it is not realistic for the City to
21 just ignore the Water Board's authority and hope that
22 it's -- the Water Board doesn't enforce that authority.
23 I think that is bad precedent, as a prosecutor. I would
24 never advise someone to disregard an authority.

25 So with that said, you will hear more details,

1 again, from our head of the Department of Finance for
2 PUD, Adam Jones; and Ms. Lisa Celaya. And we would ask
3 that the Commission reconsider its proposed decision and
4 find that there's practical compulsion here.

5 And if the Commission does do that, we would also
6 ask that they decide the issue on whether we can recoup
7 the costs associated. And that's all I have. Thank
8 you.

9 Are there any questions?

10 CHAIRPERSON MILLER: We'll go to questions in a
11 minute.

12 I'm just going to see if Ms. Celaya or Mr. Jones --
13 or, Mr. Jones, if you have anything to add?

14 MR. JONES: Because of the order of the operations,
15 I will go first.

16 So as we mentioned, again, Adam Jones, Deputy
17 Director of Finance for the Public Utilities Department.
18 I'm responsible for the rate development, the annual
19 disclosures, grant application, loan application, and
20 the budget development for both the City's water utility
21 as well as its wastewater utility.

22 As mentioned by Mr. King, the City has over
23 \$1.39 billion of outstanding principal for senior and
24 subordinate lien debt. Of that debt, 66 million is owed
25 to the State under the State revolving loan program.

1 And \$240 million of that is owed to the federal EPA
2 under the Water Infrastructure Financing [sic] and
3 Innovation Act.

4 With that, as of June 30, 2023, per the draft
5 financial statements, the water utility has cash and
6 investments of over \$271 million.

7 Under the scenarios talked about under a default,
8 likely all issuers of the City's debt have the right to
9 ask for accelerated payment upon a default on
10 notification. And so if all debtors ask for this, the
11 City would have to immediately start liquidating several
12 of its assets, as we mentioned, \$271 million in cash on
13 hand, which could support some of those claims. And I
14 will talk a little bit more about why that -- paying
15 off -- using all of that is also unrealistic.

16 But several of the City's assets are jointly owned
17 with the City's general fund. There's certain
18 infrastructure specifically related to financial and
19 asset management that are shared, joint projects between
20 the utility.

21 So even if the City -- even if the utility were to
22 have to sell itself to a third party, the general fund
23 would have to buy out the assets from the Public
24 Utilities Department as part of that -- as part of
25 that -- part of that sale.

1 One of the key things talking about those -- so the
2 systems I'm talking about, this would be the enterprise
3 resource management or the accounting system, which in
4 the City of San Diego is based on SAP, as well as an
5 enterprise asset management and its 311 or "Get It Done"
6 systems. These are all items that have joint benefits
7 across the City, that include the City's water utility
8 systems and, therefore, they are a payer in those
9 projects.

10 Excluding -- just looking at the larger assets --
11 as mentioned by Mr. King, the City has roughly
12 \$4.1 billion of water assets. As mentioned, there's a
13 difficulty in selling the City's overall assets of
14 \$4.1 billion. That's a large capital commitment to run
15 a complex -- a complex enterprise, that Ms. Celaya will
16 talk more about later.

17 But due to the size/complexity of those assets and,
18 of course, the historic challenges in the United States
19 of large-scale privatization of utility systems, a
20 overall sale of the system is highly unlikely from a
21 financial perspective.

22 If the City were to sell pieces of its system, that
23 also provides challenges here. So, of course, the
24 likely solution, a seller is going to be a municipal
25 agency or a private enterprise. So I will have

1 Ms. Celaya talk more about the municipal side of things.

2 But for a private -- a private water entity, they
3 are going to be most interested in the most profitable
4 areas of the city, which is going to include large areas
5 with customers that have a large ability to pay, newer
6 infrastructure, as well as areas that are most up to
7 date.

8 The City, as mentioned, has been running water
9 service since 1901 and has many -- a long history of
10 assets that are reaching their end of life, that require
11 significant amount of additional investment, that do
12 eventually have to be paid for by their -- by our
13 customers.

14 And the ability for our customers to pay can differ
15 very differently from someone in our upscale area of La
16 Jolla to some of our more challenging areas like Barrio
17 Logan. That's the positive of the City's large swath of
18 service area is that all of those customers are paying
19 into these services and not unduly falling on one
20 individual class.

21 So in the event that we sold more profitable pieces
22 of our assets to a third party, the system that would be
23 left at whole would have noncontiguous borders. So you
24 would have to be serving different sections and paying
25 to use additional assets.

1 You would also need to -- you would also have --
2 the remaining costs need to be shared across a
3 smaller -- a smaller pool of customers, making them
4 already -- who already find their rates rather
5 unaffordable in our region, where the San Diego region,
6 as a whole, has some of the highest water rates
7 nationwide, leaving the haves and have-nots in our
8 system is -- provides incredible challenges not -- for
9 our customers.

10 But kind of moving on from that one, we have talked
11 about the impact to our customers and to the impact of
12 our -- of our -- of the City as a whole. The other
13 aspect related to this, which Mr. King talked about, is
14 that the City has interrelated credit with itself and
15 the public utilities section of it, as well as the
16 general obligations of the City or what -- from an
17 accounting perspective, the general funded operations.

18 Both utilities do -- are rated separately by the
19 credit-rating agencies. This is Moody's, S&P, Fitch,
20 etc. For those that aren't into municipal finance or
21 the bond market, they issue ratings such as AAA, AA,
22 that you may hear in the news, which gives an investor
23 the idea of how risky the obligator is.

24 This is similar to your personal credit score from
25 TransUnion or Equifax, giving an idea of how likely the

1 borrower is to be able to repay its debts and charging
2 an appropriate level of financing costs related to that.

3 So like with your personal finance -- you know,
4 late payments, bankruptcies, taking your credit limit
5 all the way up to your cap, would be considered negative
6 marks on your credit score; the City also has these
7 types of marks in its debt ratings.

8 For the utility itself, one of the biggest --
9 there's two large ones that are used a lot in our credit
10 scores, which is our debt service coverage ratio or how
11 much existing debt versus free cash flow the utility
12 has; and the other one is your days of cash on hand.
13 That's the amount of cash you have in liquid assets,
14 able to support your operations if on some day you are
15 getting zero revenue.

16 So an example of a major earthquake where customers
17 aren't able to pay their bill in the region, how long
18 could you continue running your operations with the cash
19 you have on hand? This is a key measure of liquidity
20 and, again, an ability to determine if you are able to
21 pay your outstanding debts given the obligations you
22 have out there.

23 An acceleration of a portion of the City's debt
24 would have negative impacts on our cash on hand. This
25 would mean that to the credit-rating agencies, we would

1 be at more of a risk to be able to continue paying
2 our -- to paying our existing loans outstanding in the
3 event not all of the debt was called at once.

4 But also, in a long-term perspective, the City
5 constantly needs to borrow money. We have a capital
6 program that runs into the billions of dollars in order
7 to -- continued capital renewal as well as new, reliable
8 sources of water such as the Pure Water Program, which,
9 again, Ms. Celaya will talk more detail on.

10 These ones require the City, that of our large
11 capital investments, almost 80 percent are financed with
12 debt. This is a best practice to ensure that we are
13 buying long-term assets and paying them off with
14 long-term debt so that our customers today are paying
15 the same amounts that our customers -- you know, 20
16 years from now, for use of these assets.

17 When our credit score goes down -- so going from
18 something like a AA to an A or a B or to junk status,
19 your corresponding interest rates will climb
20 substantially. When your interest rates climb
21 substantially, that means you are paying hundreds of
22 millions of dollars in additional interest that you
23 wouldn't otherwise be required if you were able to do
24 these things. So those have a cost to our customers.

25 On a larger scale, as we mentioned, in the past,

1 the City of San Diego, as a whole entity, was under an
2 SEC order that limited the ability to go to the bond
3 market. As Mr. King mentioned, the City had
4 intentionally underfunded and underreported the status
5 of its pension.

6 And through that and through the resulting issues
7 on it, the SEC ordered the City to take several new
8 precautions in order to issue new debt, which
9 practically and explicitly barred them from issuing new
10 debt until those orders were satisfied.

11 For something like the City of San Diego, we
12 generally, as we -- as we mentioned, in the next
13 five-year period, we're expecting to issue -- my
14 apologies. I have this written down. So I apologize
15 again -- but in orders of hundreds of millions of
16 dollars. And the difference of doing a debt service
17 where you are paying \$70 million off -- or \$70 million
18 of debt service over a 30-year period "versing" what is
19 called a PAYGO, or paying as you go, where you pay
20 \$255 million in any given year, is a substantial
21 difference.

22 And just to give the Commission an idea of what
23 that equates to from a dollar amount. Every 1 percent
24 increase in our water rates can generally raise about
25 \$3 million of revenue. So going from 70 million to

1 250 million is, you know, outrageous numbers of 20, 30,
2 40 percent rate increases that would have to be
3 implemented immediately, going through the Proposition
4 218 process in order to raise those types of funds to
5 continue our operations and provide safe and clean
6 drinking water as required under state and federal
7 regulation.

8 In addition, we also mentioned the case about the
9 City of Jacksonville. So as mentioned, Jacksonville
10 had -- has their general government entity, which does
11 general obligation bonds, as well as its power utility.
12 The power utility, with the City, made a dispute against
13 someone that had made contractual obligations, and the
14 rating agency, specifically Moody, issued that this was
15 a major concern from them by the way that the -- the way
16 that the entity had acted. It had reneged on an
17 agreement it had made that it was clearly liable for and
18 was now trying to get out of making those payments.

19 There's a lot of similarities between this scenario
20 and the scenario that was presented by the Commission
21 staff related to the true impact of sort of defaulting
22 on portions of your loan.

23 One of the factors we mentioned in my declaration
24 is the Economic Insights from the Federal Reserve. And
25 they report out in 2011 that from the period of 1986 to

1 2011, there were 5,000 -- 54,000, roughly, municipal
2 bond issuances during that period. Of that amount, only
3 118 resulted in issuer defaults.

4 So, again, to provide the Commission, "default" is
5 a terrible word in the debt market, especially in the
6 municipal market, where our word is our bond, and being
7 able to be seen as reliable payers of our debt is
8 incredibly important.

9 So that is why one of the things that we would be
10 very concerned about is any mention of the City
11 realistically defaulting on its debt would be considered
12 extraordinarily -- extraordinarily impactful to the debt
13 markets both for the water utility as well as the City
14 as a whole.

15 As mentioned again in the Jacksonville and here,
16 the City's water utility and its general obligation --
17 or its general fund operations have similar management.
18 We are run by the same City Council, the same Mayor, the
19 same Chief Financial Officer, the same Chief Operating
20 Officer. These individuals are involved in both the
21 issuance of water and general obligation debt.

22 So a decision to default on the City's water bonds
23 could and would likely be considered a risk for the City
24 to default on other general obligations, which, again,
25 has similar dire impacts to the City's general fund,

1 which has a similar level of debt to the water utilities
2 but lacks the ability to immediately increase revenues
3 or sell its very diversified asset portfolio.

4 With all of these -- with all of these factors,
5 again, that are described in my declaration, I feel that
6 the City is practically compelled, based on its
7 obligation to its debt and finances, to comply with the
8 permit amendment, and it should be a considered a
9 mandate. And that selling its operations in whole or in
10 part really don't -- and the results received by staff
11 really don't reflect the interconnectivity between the
12 City and its public water system.

13 And with that, I will turn it over to Ms. Celaya to
14 talk about the operational side.

15 CHAIRPERSON MILLER: Thank you.

16 Ms. Celaya.

17 MS. CELAYA: Thank you for the opportunity to speak
18 before you.

19 As previously stated, I am Lisa Celaya. I'm the
20 Executive Assistant Director for the City's Public
21 Utilities Department. I am responsible for the
22 day-to-day operations to ensure the safe -- the delivery
23 of safe, clean drinking water to our 1.4 million
24 customers and also the treating of wastewater in an
25 environmentally friendly -- environmentally safe manner.

1 As Kevin and Adam have stated, the City does
2 believe it is practically compelled to provide water
3 service to the nation's eighth-largest city.

4 Based on my own personal experience and knowledge,
5 I cannot envision a path where selling the water system
6 could be successful. Due to our size and complexity,
7 the ability to identify a qualified and capable buyer is
8 nonexistent. The City's system is significantly larger,
9 more complex, and that is as a result of our topography
10 here in San Diego, where in order to ensure that we meet
11 our regulations, we have to have a significant number of
12 pressure statements -- stations because we have an
13 elevation that goes from sea level all the way up to
14 1600 feet. And this requires qualified individuals to
15 operate in accordance with all state and federal
16 regulations.

17 Whether another system has the capacity to purchase
18 the City's system is also in serious doubt. In the San
19 Diego region, the City's water system serves five times
20 the next-largest water system, which would be the Otay
21 Water District. The City's water utility, as stated
22 previously, has \$4.1 billion in assets, whereas the Otay
23 Water District has \$600 million worth of assets. With
24 our size and experience in providing water service, it
25 is more realistic to assume the City could absorb any of

1 the other water providers versus their ability to absorb
2 the City.

3 As Kevin noted, the City's Pure Water San Diego
4 development further complicates the possibility of
5 selling the City's water system. And I would like to
6 explain a little bit of this, so if you would bear with
7 me.

8 The City of San Diego operates the Point Loma
9 Wastewater Treatment Plant, which currently processes
10 the wastewater generated by 2.5 million people, not only
11 from the City of San Diego but also 15 adjacent cities
12 within this region.

13 Upgrading this facility from its current advanced
14 primary treatment level to the federal standard of
15 secondary treatment would be logistically challenging
16 and exceedingly expensive due to the difficult location
17 of the Point Loma Wastewater Treatment Plant.

18 In an effort to identify an alternative to the
19 expensive and environmentally impact upgrades to our
20 Point Loma Wastewater Treatment Plant, the City pursued
21 the idea of potable reuse for San Diego, which
22 ultimately became the -- Pure Water San Diego.

23 The City has been able to work with the federal
24 government as -- on proposed modifications to the Clean
25 Water Act, by agreeing to advance Pure Water San Diego,

1 which significantly curtails future wastewater flows to
2 Point Loma.

3 Ultimately, San Diego Pure Water will significantly
4 reduce treated discharges into the Pacific Ocean. In
5 addition, it will provide a local water supply source
6 for this region.

7 Upon completion of Pure Water, the City's water and
8 wastewater systems will be a fully integrated system.
9 We call it One Water San Diego.

10 Any sale of the water system would be further
11 complicated by the interconnectivity of both systems,
12 including assets joined by both utilities and how
13 actually the systems work in conjunction together, and
14 will be actually fully integrated.

15 Furthermore, the City's extensive dams
16 infrastructure -- we have nine dams in this region --
17 and it is the backbone for this region's emergency
18 storage system that ensures this region has enough water
19 during a massive earthquake and wherein we are
20 disconnected, because 80 percent of our water is
21 supplied through the Colorado River Program and imported
22 water from the Metropolitan Water District in LA and the
23 pipelines from there.

24 If we got disconnected, our dam system works
25 together to ensure this region has six months of water.

1 Without that, we would be without a water source during
2 that point in time.

3 So any purchaser would need to take over this
4 management and operation of this and have to work
5 through. And our dams are -- although we would own
6 them, the water in them is also represented from other
7 districts.

8 So in our Lake Hodges Dam, we have three partners
9 that all store water there. At our San Vicente
10 Reservoir there's two partners. At our El Capitan
11 there's an additional partner. And we would have to
12 figure out the nuance of how to be able to sell our
13 assets and still meet those obligations of storage
14 rights.

15 So given the complexity outlined above, and the
16 serious doubt in finding a willing, capable, and funded
17 buyer is, in my opinion, that the City must comply with
18 the permit amendment to avoid the impossible task of
19 selling its water system. All of this information is
20 included in my declaration, and I hope you will take
21 that under consideration.

22 And I think with that, we are finished with our
23 comments, and we would be open to any questions.

24 CHAIRPERSON MILLER: Thank you very much,
25 Ms. Celaya. We appreciate it.

1 Ms. Munoz, for the Department of Finance, do you
2 have any comments?

3 MS. MUNOZ: Marilyn Munoz, for the California
4 Department of Finance.

5 We concur with the proposed decision and also
6 concur with staff's recommendation for adoption of this
7 decision.

8 Thank you.

9 CHAIRPERSON MILLER: Great. Thanks, Ms. Munoz.

10 Mr. Rice, for the State Water Resources Control
11 Board, do you have any comments?

12 MR. RICE: Thank you. (Inaudible.) Thank you very
13 much for your time.

14 CHAIRPERSON MILLER: Mr. Rice, I'm having a hard
15 time hearing you. I don't know if you want to get
16 closer to your microphone.

17 MR. RICE: Okay. Is this a little bit better?

18 CHAIRPERSON MILLER: It's a tiny bit better, but
19 definitely speak up. And if you could state your name
20 and organization again for the record.

21 MR. RICE: Okay. Good. I will -- I will speak a
22 little louder.

23 Is this better?

24 CHAIRPERSON MILLER: It is, but you are definitely
25 faint; so keep speaking -- even if it sounds, like,

1 loudly to you, I don't want anyone not to be able to
2 hear you.

3 MR. RICE: Okay. Sure. I just moved my laptop to
4 see if this would be a little bit better.

5 Still not?

6 CHAIRPERSON MILLER: No. Just speak as though --
7 like, just really, really project, I think.

8 MR. RICE: Okay. Well, I'm certainly sorry about
9 that.

10 CHAIRPERSON MILLER: Thank you.

11 MR. RICE: But good morning. I will make my
12 comments very brief. Thank you very much for your time
13 and consideration of this matter.

14 The State Water Board supports the proposed
15 decision as drafted. It is thorough. It is well
16 reasoned. The State Water Board's -- commends the
17 Commission staff for their hard work and diligence.

18 I guess I would add that I'm a little troubled by
19 this late declaration -- several declarations. You
20 know, obviously, the State Water Board has had no
21 opportunity to review these documents. And so we would
22 support staff's recommendation not to include them in
23 the record.

24 With that, I'm happy to answer any questions. And
25 thank you for your time.

1 CHAIRPERSON MILLER: Thank you very much.

2 I think, with that, I will turn it over to the
3 Water Board --

4 MR. KING: Sorry. Can I -- can I add a couple of
5 things just for the record?

6 CHAIRPERSON MILLER: Nope. We already did that.
7 So I'm going to leave it to questions for now. We
8 did -- we gave the City a really long time. So just
9 want to -- we can certainly come back, especially since
10 I don't know that there's a lot to respond to from any
11 of the witnesses yet. But why don't we have a few
12 questions from the board.

13 Any board questions?

14 Mr. Rice, were you going to say anything more?

15 (No response.)

16 CHAIRPERSON MILLER: No? Okay. If you don't mind
17 muting your microphone, please.

18 Ms. Olsen, please.

19 MEMBER OLSEN: Well, I'm actually interested in
20 hearing Mr. King's comments if they can be kept brief.

21 CHAIRPERSON MILLER: Okay.

22 Mr. King, I will say, we have given a huge amount
23 of leeway, and that was 45 minutes of presentation; so I
24 would hope everything you had to say was stated for the
25 record, but we will respect Ms. Olsen if they are very,

1 very brief.

2 MR. KING: I appreciate that. And it is very
3 brief.

4 So on one point on the piecemealing -- some of the
5 piecemealing and selling that Adam mentioned, there's
6 another layer to that, and it is that we have a pump
7 station at 69th and Mohawk. And that would -- we --
8 you -- we got a loan agreement with the State, State
9 revolving funds. So that -- under that agreement we
10 would have to sell that pump to a government entity. So
11 that is just another layer of piecemealing that we would
12 have to do that makes it impractical to sell the water
13 system.

14 Outside of that, again, for the record, I just want
15 to note, there's a lot of focus on imminence in the
16 proposed decision. I would just object to that kind of
17 being included in the legal standard. That's not part
18 of the legal standard in the case law.

19 That's all. Thank you.

20 CHAIRPERSON MILLER: Great. Thank you.

21 Ms. Olsen, do you have a follow-up question?

22 (No response.)

23 CHAIRPERSON MILLER: No? Okay.

24 Any other questions from the board?

25 MEMBER ADAMS: Madam Chair, if I can.

1 CHAIRPERSON MILLER: Please.

2 MEMBER ADAMS: Thanks. And I -- if these are
3 inappropriate, please let me know.

4 I'm a little -- what I would like to know is we
5 have talked a little bit about selling the resource.
6 What is the option for putting this into a special
7 district or a public utility district that is completely
8 separate from the City of San Diego to where it relies
9 on its own and it's based on fees and not any proceeds
10 of taxes? I realize the City decided to combine all of
11 this into City government, but is that ever an option to
12 escape this conundrum they are in?

13 MS. CELAYA: To clarify -- oh, sorry.

14 CHAIRPERSON MILLER: No, please, Ms. Celaya.

15 MS. CELAYA: Thank you.

16 To clarify, as a water utility, we actually are
17 distinct and separate from the general fund, and we do
18 not receive taxes as the regular general fund does.

19 We are dependent on ratepayer funds. And so we
20 kind of do operate as a special utility, but you would
21 have to -- in order for us to actually completely
22 separate, especially a utility, we would have to go
23 through the legislative process with LAFCO. But I did
24 want to make that clarity that we do have our own fees,
25 in accordance with Proposition 218, and we do set those

1 and have that on our own rates.

2 MEMBER ADAMS: Thank you for that. So now I'm
3 going to apologize for my ignorance.

4 If fees can be raised to pay for this additional
5 level of service, why is this before us -- before us if
6 it does not involve proceeds of taxes? Or your general
7 fund?

8 MS. CELAYA: The primary issue is in accordance --
9 in accordance with Proposition 218, we must set rates
10 based on the services provided. Because this service is
11 provided to a -- the lead sampling is provided to a
12 private entity, that cannot be recovered by other
13 ratepayers. The only person who could recover that is
14 the schools, but we were not permitted to charge the
15 schools for this service.

16 And I would ask my Finance Deputy Director if I
17 missed anything else.

18 MR. JONES: No, Lisa.

19 It was there, and then the lack of the ability to
20 do this, in order to ensure that we are in compliance
21 with Proposition 218, as the water users, we have to
22 make a request to the City's general fund to provide the
23 general revenues to support something which we are not
24 able to correctly charge the customers receiving the
25 service.

1 MEMBER ADAMS: Thank you for that.

2 CHAIRPERSON MILLER: Any other questions,
3 Mr. Adams?

4 MR. KING: Just to let you know --

5 CHAIRPERSON MILLER: Oh, Mr. King.

6 MR. KING: Just to let you know, this was
7 briefed -- this was briefed previously, and a lot of the
8 comment back and forth by the Department of Finance, the
9 Water Board, and us.

10 CHAIRPERSON MILLER: In the previous brief?

11 MR. KING: In the previous comment. Yeah. Not
12 this current brief.

13 CHAIRPERSON MILLER: Got it. Okay.

14 Do you want to add anything to that, Mr. King, to
15 Mr. Adams's question? No?

16 MR. KING: No. Just that there's a whole host of
17 reasons. And, again, this has been litigated
18 extensively; so I want to be respectful of time. So if
19 you'd -- I don't know. If there's a -- if -- how --
20 somehow this isn't voted on in a second, then please go
21 look back at that -- at those arguments.

22 CHAIRPERSON MILLER: Thank you.

23 Ms. Shelton, were you going to add anything to
24 that?

25 MS. SHELTON: No. There -- you know, the

1 litigation -- it was only surrounding one element of
2 reimbursement, whether or not the permit imposed a new
3 program or higher level of service. So there are still
4 additional elements that have to be found. And the
5 proposed decision before you was based on the record
6 that we had.

7 We certainly have received new testimony today that
8 is not considered in this proposed decision at all. But
9 the additional elements would be whether or not the
10 permit imposes a State-mandated program, which is what
11 is analyzed before you, based on the record we had.

12 And then there would be -- if you find that there
13 is a mandate, there still are additional issues on the
14 fee authority, which, as Mr. King mentioned, has been
15 briefed by the parties, but an analysis has not gone out
16 on that.

17 CHAIRPERSON MILLER: Great. Thank you.

18 Ms. Olsen.

19 MEMBER OLSEN: So, Ms. Shelton, does that mean that
20 that analysis would be part of P and Gs? I'm --

21 MS. SHELTON: Well, no. Well, no. So this
22 proposed decision that is before you right now was
23 recommending a denial. So anytime you have multiple
24 elements that have to be satisfied in order for
25 reimbursement to be required; so if you don't meet one

1 element, the whole thing is denied.

2 So this analysis, based on the information that we
3 had, was recommending a denial, and no further action
4 would be required.

5 There's a lot of options for the Commission right
6 now. I mean, we have new information that we have not
7 analyzed. You can continue the matter and let the staff
8 analyze that. Or you can vote today. It's up to you.

9 If at some point you vote to find that there is a
10 State-mandated program, then we would have to analyze
11 whether or not there are costs mandated by the State and
12 whether they have fee authority under 17556.

13 So that has been briefed by the parties. But the
14 Commission staff has not had -- doesn't have a proposed
15 decision on that element yet.

16 MEMBER OLSEN: So this is a little awkward for me
17 because it's my last meeting. But --

18 CHAIRPERSON MILLER: I thought you were going to
19 retire.

20 MEMBER OLSEN: Yeah. That's right.

21 I find, at this point, that I would be -- I would
22 not be capable of voting for the staff's recommendation
23 at this point, given the testimony we have heard today.

24 And so my recommendation -- and I'm not making the
25 motion because, again, it's my last meeting. But my

1 recommendation would be that it be held over so that the
2 staff could, in fact, consider the information. So...

3 CHAIRPERSON MILLER: Is there sort of a general --
4 so I do think Ms. Shelton has laid out a couple of
5 options, one of which is that because there's new
6 information that we could direct staff to analyze and
7 then bring it back.

8 I will note, though, that the reason there's new
9 information is that we have to have a process in order
10 for this to be fair for everyone. So the -- I'm always
11 torn on this because I think it is important to analyze
12 information.

13 I also think it's really difficult to get --
14 because the process is so clear and laid out and fair to
15 everyone, that this essentially is a departure from that
16 because the information wasn't provided timely. And as
17 we have discussed, there is -- this is a long history,
18 and it is back on remand.

19 So I -- you know, I never know how -- I -- just
20 honestly, whether we -- how to protect the integrity of
21 the process, because it does concern me that the more
22 people do this, the harder our team's job becomes if
23 folks don't follow the process all the time.

24 And that is true for everyone in this state. So
25 that -- that's the difficulty here. Like, if this were

1 to be precedential, we also wouldn't ever get our work
2 done. So...

3 But let's just hear thoughts on -- I think our
4 option is request staff to analyze and review the
5 additional information or if there is a motion.

6 Other board members?

7 MEMBER NASH: I concur with Ms. Olsen.

8 CHAIRPERSON MILLER: Thank you, Ms. Nash.

9 MEMBER OPPENHEIM: David Oppenheim for State
10 Controller.

11 I do generally align my thoughts with Ms. Miller,
12 that we have spent a considerable amount of time. I
13 understand this is a complex issue. But certainly here
14 at the SCO, Finance, and others, that the timelines are
15 critical for us to do our public business.

16 So I will certainly consider what the
17 recommendation of the board is. But I too am very
18 frustrated by getting late information, as I can't
19 evaluate its merit. I haven't had an opportunity to
20 brief our own counsel or staff.

21 So I will just honestly say that I'm very
22 conflicted and honestly somewhat disappointed to hear
23 last-minute information that I don't have the ability to
24 judge is persuasive or not in my thought process.

25 CHAIRPERSON MILLER: Ms. Shelton, do you want to --

1 MS. SHELTON: I need to just maybe clarify
2 something because it is something that has happened
3 before.

4 I mean, anytime witnesses come to a hearing, that
5 is evidence. So even if you don't have it written down
6 in a declaration or in written comments, a party, at any
7 point, can come to the Commission hearing and testify
8 and provide evidence.

9 And what is routinely done in that case is we --
10 regardless of the Commission's decision on the matter,
11 we still need to take the proposed decision back to
12 incorporate that evidence into the decision.

13 So we do have a -- you know, we do have a process.
14 The process is that there are no written comments after
15 the proposed decision comes out. But they can provide
16 testimony at the hearing. But we would still need to
17 incorporate that testimony in the proposed decision.

18 CHAIRPERSON MILLER: So you are saying that the
19 testimony provided today, if the board were to take
20 action, would still be incorporated into the decision?

21 MS. SHELTON: Yes. Because it is -- it is -- yes.
22 It's oral testimony.

23 CHAIRPERSON MILLER: Ms. Olsen.

24 MEMBER OLSEN: So -- okay. So does that mean that
25 when it is incorporated, the staff then has to -- I

1 mean, it is incorporated. It gets put in the record.
2 But does that also mean that the staff must evaluate it?
3 So if your evaluation were to find that there is
4 something that needed to be dealt with, you would bring
5 it back, or is it just stuck in the record?

6 MS. HALSEY: I want to circle back to our
7 regulations for a moment, which provide that comments
8 submitted late, within five days of the hearing, may,
9 but need not be considered by the Commission at all.

10 There is a process. There is a process for filing
11 comments on the claim. There's a process for rebuttal
12 comments. There's a process for commenting on the draft
13 staff analysis. There is not a process, really, for
14 commenting on the proposed decision, which is what is
15 happening here.

16 Of course we do have Bagley-Keene. So anyone can
17 come testify. So it gets a little complicated because
18 this is a quasi-judicial hearing, but also in the
19 context of a public meeting under Bagley-Keene.

20 CHAIRPERSON MILLER: Ms. Shelton, but just to
21 Ms. Olsen's question, the additional information goes in
22 the record. Is it evaluated?

23 MS. SHELTON: It depends on what the Commission
24 wants to do. If the Commission feels comfortable in
25 voting for a decision today, you can direct staff to

1 prepare the decision in that particular manner, with the
2 evidence that has been testified to today.

3 Or you can send it back to staff and leave the
4 decision open for yourself to consider again at a -- at
5 a subsequent hearing.

6 CHAIRPERSON MILLER: So I think that those are the
7 choices before the board.

8 But just to be clear, Ms. Shelton, a decision today
9 on the staff recommendation, with the requirement to
10 further evaluate, would still -- the decision would
11 stand. How would that work if you were evaluating?

12 MS. SHELTON: You can direct staff to -- if you
13 feel comfortable making the decision today, based on
14 everything that you have heard and the information in
15 the record, you may do that. We would still have to
16 incorporate the testimony from today. I mean, that is
17 not anything new.

18 MS. HALSEY: Could -- could I clarify for a moment.
19 What Camille means by that is we would -- we would say
20 in the recap that this evidence was submitted as part of
21 the background. It wouldn't change the decision.

22 If you wanted us to reanalyze and change the
23 decision or maybe come up with alternative
24 recommendations, that would require us to take it back
25 for a full, new analysis; issue a new proposed decision

1 for another hearing.

2 But if the Commission wanted to adopt the staff --
3 staff recommendation, we would just include in that
4 background, you know, that these comments were
5 submitted. And we wouldn't say anything else about them
6 in the decision. That is how -- when the decision is
7 not changed.

8 CHAIRPERSON MILLER: Right. Right. So it is not
9 an evaluation per se; it is inclusion in the record.

10 MS. HALSEY: Right.

11 CHAIRPERSON MILLER: Okay.

12 MS. HALSEY: Or taking it back for a reanalysis.
13 Those are kind of the two options.

14 CHAIRPERSON MILLER: What is the will of the board?
15 Does anyone want to make a motion for the staff
16 recommendation or to have the staff analyze the new
17 information?

18 MEMBER WALKER: I move to adopt staff
19 recommendation.

20 CHAIRPERSON MILLER: I will second.

21 Thank you, Mr. Walker.

22 So we have a motion and a second.

23 Ms. Halsey, will you take the roll, please.

24 Any -- excuse me. Any further public comment?

25 (No response.)

1 CHAIRPERSON MILLER: Seeing none, it has been moved
2 and seconded.

3 Ms. Halsey.

4 MS. HALSEY: Sure.

5 Mr. Adams.

6 MEMBER ADAMS: No.

7 MS. HALSEY: Ms. Holman.

8 Ms. Holman, your --

9 MEMBER HOLMAN: Yeah. Sorry. I -- sorry. Yes.

10 MS. HALSEY: Ms. Miller.

11 CHAIRPERSON MILLER: Aye.

12 MS. HALSEY: Ms. Nash.

13 MEMBER NASH: No.

14 MS. HALSEY: Ms. Olsen.

15 MEMBER OLSEN: Abstain.

16 MS. HALSEY: Mr. Oppenheim.

17 MEMBER OPPENHEIM: Aye.

18 MS. HALSEY: Mr. Walker.

19 MEMBER WALKER: Aye.

20 CHAIRPERSON MILLER: So what is that vote?

21 MS. SHELTON: That is a -- the ayes are --

22 MS. HALSEY: 4-2 again, yeah.

23 MS. SHELTON: So that is action taken.

24 CHAIRPERSON MILLER: Okay. So the

25 recommendation -- the motion to approve staff's

1 recommendation carries. Thank you for that.

2 And thank you very much to everyone for being here
3 today and for helping educate us. We really, really
4 appreciate it.

5 MS. HALSEY: Now we will ask parties and witnesses
6 for Item 3 to please turn off their videos and mute
7 their microphones.

8 Item 4 is reserved for County applications for a
9 finding of significant financial distress, or SB 1033
10 applications. No SB 1033 applications have been filed.

11 Item 5 was on consent.

12 And next, Chief Legal Counsel Camille Shelton will
13 please turn on her video and microphone and present
14 Item 6, the Chief Legal Counsel Report.

15 MS. SHELTON: Yes.

16 So for this hearing we have no new filings and no
17 recent decisions, and our litigation calendar is open
18 right now with nothing pending.

19 MS. HALSEY: Thank you.

20 Item 7 is Executive Director Report, and for this
21 report I have an action item as well as some
22 information. And we will take the action item first.

23 That is on January -- or, sorry -- December 1st,
24 2021, the Commission adopted its strategic plan for
25 January 2022 through December 2023. The majority of

1 goals in the current plan have been met or required
2 updating.

3 Therefore, the Commission staff have developed a
4 new proposed strategic plan for January 2024 to
5 December 2028. And you will see that now, strategic
6 plans are being done for five-year periods; so they're
7 going to be longer lived. And this has several new and
8 revised goals proposed for adoption by the Commission.
9 And those are attached as Exhibit A to my Executive
10 Director Report.

11 Staff recommends adoption of the strategic plan.

12 CHAIRPERSON MILLER: Great. Thank you --

13 MEMBER OLSEN: So moved.

14 CHAIRPERSON MILLER: Oh, sorry.

15 MEMBER OLSEN: So moved.

16 CHAIRPERSON MILLER: Oh, thank you, Ms. Olsen.

17 MEMBER WALKER: Second.

18 CHAIRPERSON MILLER: Great. Thank you, Mr. Walker.

19 Any other public comment?

20 (No response.)

21 CHAIRPERSON MILLER: Okay. It has been moved --
22 the adoption of the '24 through '28 strategic plan has
23 been moved and seconded.

24 May we call the roll, please.

25 MS. HALSEY: Mr. Adams.

1 MEMBER ADAMS: Aye.

2 MS. HALSEY: Ms. Holman.

3 MEMBER HOLMAN: Aye.

4 MS. HALSEY: Ms. Miller.

5 CHAIRPERSON MILLER: Aye.

6 MS. HALSEY: Ms. Nash.

7 MEMBER NASH: Aye.

8 MS. HALSEY: Ms. Olsen.

9 MEMBER OLSEN: Aye.

10 MS. HALSEY: Mr. Oppenheim.

11 MEMBER OPPENHEIM: Aye.

12 MS. HALSEY: Mr. Walker.

13 MEMBER WALKER: Aye.

14 CHAIRPERSON MILLER: Great. The strategic plan is
15 adopted.

16 What is our next order of business?

17 MS. HALSEY: For workload we have 39 pending test
18 claims, 35 of which are regarding stormwater, and there
19 are three parameters and guidelines regarding
20 stormwater, including one with lengthy comment periods
21 pursuant to a stipulation of the parties. So those will
22 take quite a while to be adopted, just for your
23 information. Additionally, there are two statewide cost
24 estimates pending and one IRC pending.

25 And that was all I have for my Executive Director

1 Report.

2 CHAIRPERSON MILLER: Great. Thank you very much.

3 Next we will recess into closed executive session
4 pursuant to Government Code Section 11126(e) to confer
5 with and receive advice from legal counsel for
6 consideration and action as necessary and appropriate,
7 upon the pending litigation listed on the published
8 notice and agenda; and to confer with and receive advice
9 from legal counsel regarding potential litigation. We
10 will also confer on personnel matters pursuant to
11 Government Code Section 11126(a)(1).

12 And we will reconvene in open session in
13 approximately 15 minutes. And the link that you all
14 received is from Ms. Shelton. It is from Camille
15 Shelton. You will see it. And it is the link for the
16 closed session. So please let us know by email if you
17 have any problems with that. And if not, we will see
18 you on the closed session link in a few moments.

19 Thanks, everyone.

20 (Closed session was held from
21 11:14 a.m. to 11:28 a.m.)

22 CHAIRPERSON MILLER: Thank you, everyone.

23 The Commission met in closed executive session
24 pursuant to Government Code Section 11126(e) to confer
25 with and receive advice from legal counsel for

1 consideration and action, as necessary and appropriate
2 upon the pending litigation listed on the published
3 notice and agenda; and also to confer with and receive
4 advice from legal counsel regarding potential
5 litigation. The Commission also conferred on personnel
6 matters pursuant to Government Code Section 11126(a)(1).

7 I would like to turn it over to Ms. Olsen to give
8 us some final words of wisdom, and, at that time, we
9 will entertain a motion to adjourn.

10 MEMBER OLSEN: Well, I just wanted to say, in final
11 comments, that, you know, what we do is really filled
12 with legalese; and as the public member, of course, I
13 fought with that and had to really work through it. And
14 it can sort of feel like what we do doesn't really
15 affect the real world; it is just something in the
16 courts.

17 I want to say to all of you that, you know, what I
18 said in -- to my colleagues was, "You have to not
19 believe in the Borgian philosophy that 'resistance is
20 futile.' What you do matters."

21 State Department staff, what you do matters.

22 Commission staff, what you do matters.

23 And Commissioners, what you do matters.

24 And if the public were still here -- and I don't
25 know that they are -- what they do matters in coming

1 before us and stating their case.

2 So carry on. Do good work.

3 CHAIRPERSON MILLER: Thank you very much. We
4 appreciate you.

5 So we will take that as a motion to adjourn.

6 Mr. Walker, will you second that?

7 MEMBER WALKER: I will second that.

8 CHAIRPERSON MILLER: Thank you very much.

9 Any objection to the adjournment motion?

10 (No response.)

11 CHAIRPERSON MILLER: Well, thank you. We are
12 adjourning, Ms. Olsen, in gratitude to you. Thank you
13 for your service.

14 Take care, everyone. Have a great weekend.

15 (Proceedings concluded at 11:30 a.m.)

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CERTIFICATE OF REPORTER

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

That I am a disinterested person herein; that the foregoing proceedings, heard via Zoom, 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 30th day of December 2023.



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

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