

## **Minutes**

### **COMMISSION ON STATE MANDATES**

Location of Meeting: via Zoom  
December 2, 2022

Present: Member Gayle Miller, Chairperson  
Representative of the Director of the Department of Finance  
Member Spencer Walker, Vice Chairperson  
Representative of the State Treasurer  
Member Lee Adams  
County Supervisor  
Member Scott Morgan  
Representative of the Director of the Office of Planning and Research  
Member Renee Nash  
School District Board Member  
Member Sarah Olsen  
Public Member  
Member Shawn Silva  
Representative of the State Controller

*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 10:06 a.m. Executive Director Halsey called the roll. Members Adams, Miller, Morgan, Nash, Olsen, Silva, and Walker all indicated that they were present.

#### **APPROVAL OF MINUTES**

Chairperson Miller asked if there were any objections or corrections to the September 23, 2022 minutes and asked if there was any public comment on this item. There was no response. Member Olsen made a motion to adopt the minutes. Member Walker seconded the motion. The Commission voted to adopt the September 23, 2022 hearing minutes by a vote of 6-0 with Member Morgan 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.

**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      *Juveniles: Custodial Interrogation, 21-TC-01*

Welfare and Institutions Code Section 625.6 as Amended by Statutes 2020, Chapter 335, Section 2 (SB 203)

County of Los Angeles, Claimant

Commission Counsel Mariko Kotani presented this item and recommended that the Commission adopt the Proposed Decision to approve this Test Claim.

Fernando Lemus, Lucia Gonzalez, Crisostomo Mercurio, and Craig Osaki appeared on behalf of the County of Los Angeles. Mr. Osaki provided testimony raising a new legal issue for the first time.

Following discussion between witnesses on behalf of the claimant, Members, and Staff, Chairperson Miller asked if there was any public comment or additional questions from Members. There was no response. Member Olsen made a motion to send the Proposed Decision back to Staff for further consideration. With a second by Member Adams, the Commission voted to send the Proposed Decision back to Staff for further consideration by a vote of 7-0.

**INCORRECT REDUCTION CLAIMS**

Item 4      *Interagency Child Abuse and Neglect Investigation Reports (ICAN), 20-0022-I-02*

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9,<sup>1</sup> 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916; California Code of Regulations, Title 11, Section 903 (Register 98, Number 29);<sup>2</sup> “Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)

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<sup>1</sup> Renumbered as Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

<sup>2</sup> The substantive requirements of section 903 are now found at section 902, pursuant to amendments effected by Register 2010, Number 2.

Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, and 2011-2012

City of South Lake Tahoe, Claimant

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

Annette Chinn, Lieutenant Jeffrey Roberson, and Olga Tikhomirova appeared on behalf of the claimant. Lisa Kearney appeared on behalf of the State Controller's Office and stated that the Controller agreed with the Proposed Decision.

Chairperson Miller asked if there was any public comment or questions from the Members. There was no public comment. Following discussion between Ms. Chinn, Members, and Staff, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Walker, the Commission voted to adopt the staff recommendation by a vote of 7-0.

**HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 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 Item 5 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.

**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: Workload Update and Tentative Agenda Items for the January 2023 and March 2023 Meetings (info)

Executive Director Halsey presented this item and described changes to the Commission's staffing level and the Commission's pending caseload.

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

The Commission adjourned into closed executive session at 11:28 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):

### Trial Courts:

*City of San Diego v. Commission on State Mandates, State Water Resources Control Board, Department of Finance*  
Sacramento County Superior Court, Case No. 2019-80003169  
Third District Court of Appeal, Case No. C092800  
(*Lead Sampling in Schools: Public Water System No. 3710020 (17-TC-03)*)

### 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. *County of San Diego v. Commission on State Mandates, Department of Finance, State Controller*  
Fourth District Court of Appeal, Case No. D079742  
San Diego County Superior Court, Case No. 37-2020-00009631-CU-WM-CTL  
(*Youth Offender Parole Hearings (17-TC-29)*)
3. ***On Remand from the California Supreme Court, Case No. S262663***  
*Coast Community College District, et al. v. Commission on State Mandates*,  
Third District Court of Appeal, Case No. C080349  
Sacramento County Superior Court, Case No. 34-2014-80001842  
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31  
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203,

53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]

## 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 11:59 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

Hearing no further business, Chairperson Miller stated that she would entertain a motion to adjourn the meeting. Chairperson Miller made a motion to adjourn the meeting. Member Olsen seconded the motion. The Commission adopted the motion to adjourn the December 2, 2022 meeting by a vote of 7-0 at 12:01 p.m.



Heather Halsey  
Executive Director

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STATE OF CALIFORNIA  
COMMISSION ON STATE MANDATES

**RECEIVED**  
JAN 04 2023  
COMMISSION ON  
STATE MANDATES

PUBLIC MEETING

FRIDAY, DECEMBER 2, 2022

10:06 A.M.

**ORIGINAL**

MEETING HELD

VIA ZOOM

A VIDEO COMMUNICATIONS PLATFORM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

REPORTED BY:

GARETH BRISCOE  
Certified Shorthand Reporter No. 13950

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Roseville, California 95661  
Telephone (916) 390-7731  
KathrynSwankCSR@sbcglobal.net

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**A P P E A R A N C E S**

**COMMISSIONERS PRESENT**

GAYLE MILLER  
Representative for JOE STEPENSHAW, Director  
Department of Finance  
(Chair of the Commission)

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

LEE ADAMS III  
Sierra County Supervisor  
Local Agency Member

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

SARAH OLSEN  
Public Member

SHAWN SILVA  
Representative for BETTY T. YEE  
State Controller

SCOTT MORGAN  
Representative of the Director of the Office  
of Planning and Research

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**COMMISSION STAFF**

HEATHER HALSEY  
Executive Director

HEIDI PALCHIK  
Assistant Executive Director

CAMILLE N. SHELTON  
Chief Legal Counsel

MARIKO KOTANI  
Commission Staff

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

ELIZABETH MCGINNIS  
Commission Staff

JILL MAGEE  
Program Analyst

**PUBLIC PARTICIPANTS**

FERNANDO LEMUS  
County of Los Angeles

LUCIA GONZALEZ  
County of Los Angeles

CRISOSTOMO MERCURIO  
County of Los Angeles

CRAIG OSAKI  
County of Los Angeles

ANNETTE CHINN  
City of South Lake Tahoe

LIEUTENANT JEFFREY ROBERSON  
City of South Lake Tahoe

OLGA TIKHOMIROVA  
City of South Lake Tahoe

LISA KEARNEY  
State Controller's Office

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E R R A T A S H E E T

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Page	Line	Correction
13	4	<del>seat</del> <u>city</u> of South
13	20	on <u>a</u> test
13	21	<del>j</del> Juveniles; <del>e</del> Custodial <del>+</del> Interrogation
14	15	<del>5</del> and 17
14	16	<del>negative</del> <u>mandated</u>
14	18	<u>affirmatively</u>
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24	21	already in <u>the</u> test
30	10	language that says <del>you</del> <u>who</u> do not
34	23	<del>s</del> State <del>d</del> Department of <del>j</del> Justice
37	19	<u>Chapters</u>
42	9	is <u>so</u> that <del>se</del> like costs are
45	21	<del>with</del> <u>which</u> the city describes
53	1	commission <del>in</del> <u>of</u> law enforcement duties
53	13	<del>hauls</del> <u>calls</u>
55	15	acted <del>arbitrary</del> <u>arbitrarily</u> ,
61	16	Chris <del>Steinworth</del> <u>Steinwert</u>
61	25	<del>Hernande Sansina</del> <u>Pranati Saxena</u>
65	4	Government Code Section <u>11126(e)</u>

I N D E X

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FRIDAY, DECEMBER 2, 2022, 10:06 A.M.

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CHAIRPERSON MILLER: Thank you so much. The meeting of the Commission on State Mandates will come to order. Welcome to the webinar. Statutes of 2022, Chapter 48, amended the Bagley-Keene Open Meeting Act to extend until January 1, 2023, the authority to hold public meetings through teleconferencing and to make meetings accessible electronically to all members of the public seeking to observe and to address the State body in order to protect the health and safety of civil servants and the public.

The commission continues its commitment to ensure that its public meetings are accessible to the public and the public has the opportunity to observe the meeting and participate by providing written and verbal comment on commission matters.

Please note that the materials for today's meeting including the notice, agenda, and witness list are all available on the commission's website, [www.csm.ca.gov](http://www.csm.ca.gov), under the hearings tab.

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

1           And with that, Ms. Halsey, will you please call the  
2 roll to establish a quorum?

3           MS. HALSEY:    Sure.   Mr. Adams.

4           MEMBER ADAMS:  Here.

5           MS. HALSEY:    Ms. Miller.

6           CHAIRPERSON MILLER:  Here.

7           MS. HALSEY:    Mr. Morgan.

8           MEMBER MORGAN:  Present.

9           MS. HALSEY:    Ms. Nash.

10          MEMBER NASH:    Here.

11          MS. HALSEY:    Ms. Olsen.

12          MEMBER OLSEN:  Here.

13          MS. HALSEY:    Mr. Silva.

14          MEMBER SILVA:  Here.

15          MS. HALSEY:    Mr. Walker.

16          MEMBER WALKER:  Here.

17          CHAIRPERSON MILLER:  Great.  We have a quorum.

18          Next we will go to item one.  Are there any objections  
19 or corrections of the minutes from September 23, 2022?

20          MEMBER OLSEN:  Move adoption.

21          MS. HALSEY:    Thank you, Ms. Olsen.

22          Second?

23          Thank you, Mr. Walker.

24          Any public comment?

25          It's been moved and seconded.

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

2 MS. HALSEY: Mr. Adams.

3 MEMBER ADAMS: Aye.

4 MS. HALSEY: Ms. Miller.

5 MEMBER MILLER: Aye.

6 MS. HALSEY: Mr. Morgan.

7 MEMBER MORGAN: I abstain since I wasn't there.

8 MS. HALSEY: Ms. Nash.

9 MEMBER NASH: Aye.

10 MS. HALSEY: Ms. Olsen.

11 MEMBER OLSEN: Aye.

12 MS. HALSEY: Mr. Silva.

13 MEMBER SILVA: Aye.

14 MS. HALSEY: Mr. Walker.

15 MEMBER WALKER: Aye.

16 CHAIRPERSON MILLER: The minutes are adopted.

17 Ms. Halsey, public comment?

18 MS. HALSEY: Now we will take up public comment for

19 matters not on the agenda. Please note that the

20 commission may not take action on items not on the

21 agenda. However, it may schedule issues raised by the

22 public for consideration at future meetings. We invite

23 the public to comment on matters that are on the agenda

24 as they're taken up.

25 CHAIRPERSON MILLER: Is there any public comment?

1 Ms. Palchik, just making sure you don't see anyone  
2 using the raise hands feature.

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

4 CHAIRPERSON MILLER: Thank you. Seeing no public  
5 comment, we will move to the next item, please.

6 MS. HALSEY: Let's move to swearing in. Will the  
7 parties and witnesses for items three and four please  
8 turn on your video, unmute your microphones, and please  
9 rise and state your names for the record. One at a  
10 time, please, because we need to get that for the  
11 record, first stating your names.

12 Annette, if you want to begin.

13 MS. CHINN: Annette Chinn, cost recovery systems  
14 consultant for the City of South Lake Tahoe.

15 MS. HALSEY: Mr. Mercurio?

16 MR. MERCURIO: Yes, good morning. My name is Chris  
17 Mercurio. I'm with the public defender's office.

18 MS. HALSEY: Thank you.

19 Mr. Lemus?

20 MR. LEMUS: My name is Fernando Lemus. I am the  
21 claimant representative for the County of Los Angeles.

22 MS. HALSEY: Thank you.

23 Lieutenant Roberson?

24 MR. ROBERSON: I'm Jeff Roberson. I'm an  
25 investigative lieutenant, South Lake Tahoe Police

1 Department.

2 MS. HALSEY: Thank you.

3 Ms. Kearney?

4 MS. KEARNEY: Lisa Kearney, complaints, audit  
5 bureau for the State Controller's Office, and I'm the  
6 audit manager.

7 MS. HALSEY: Thank you.

8 Ms. Gonzalez?

9 MS. GONZALEZ: Hello. Lucia Gonzalez with the  
10 Office of County Counsel on behalf of claimant, Los  
11 Angeles County.

12 MS. HALSEY: Thank you. Did I miss any witnesses  
13 for items three or four who did not introduce  
14 themselves? Nope. Okay.

15 Will all the witness please raise their hand and --  
16 for the swearing in.

17 CHAIRPERSON MILLER: Ms. Halsey, I'd like to stop  
18 you a moment. I see that Mr. Osaki is here in the  
19 public link. So I can --

20 MS. HALSEY: He can be made a panelist.

21 (Pause in the proceedings.)

22 CHAIRPERSON MILLER: Mr. Osaki, if you can hear us,  
23 I've switched you to a panelist, and now you are on.  
24 So if you would please turn on your microphone and turn  
25 on your camera and state your name for the record, and



1 Ms. Halsey will swear everybody in.

2 MR. OSAKI: Okay. Can you hear me? My name is  
3 Craig Osaki.

4 CHAIRPERSON MILLER: Yes, sir. We can hear you.  
5 Do you have a camera for video?

6 MR. OSAKI: I'm trying to turn that on right now.

7 MS. HALSEY: There you go.

8 MR. OSAKI: Okay.

9 MS. HALSEY: Thank you. Mr. Osaki, you're  
10 testifying on behalf of?

11 MR. OSAKI: The LA County Public Defender's Office.

12 MS. HALSEY: Great. Thank you.

13 For all witnesses now, please raise your hand. Do  
14 you solemnly swear or --

15 CHAIRPERSON MILLER: Ms. Halsey, I'm sorry. I need  
16 to stop you again. I see that Ms. Olga Tikhomirova is  
17 also in the public section. Ms. Olga Tikhomirova --  
18 Ms. Chinn, is Ms. Olga Tikhomirova going to be a  
19 witness on today's meeting? We have her on the witness  
20 list.

21 MS. CHINN: Yes, correct.

22 CHAIRPERSON MILLER: Okay. Ms. Tikhomirova, I am  
23 going to switch you over to panelist, and you will  
24 appear on the screen. Now we would ask you to turn on  
25 your microphone and camera for the swearing.

1 MS. TIKHOMIROVA: Morning.

2 CHAIRPERSON MILLER: And if you would please state  
3 your name for the record.

4 MS. TIKHOMIROVA: Olga Tikhomirova, seat of South  
5 Lake Tahoe, Director of Finance.

6 CHAIRPERSON MILLER: Okay.

7 MS. HALSEY: Third time is a charm.

8 Please raise your hands for the swearing in.

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

12 THE WITNESSES: (In unison) Yes.

13 MS. HALSEY: Thank you. Please be seated. And  
14 parties and witnesses for item four, please turn off  
15 your video and mute your microphones. Item two is  
16 reserved for appeals of executive director decisions,  
17 and there are no appeals to consider for this hearing.

18 Next is item three, Commission Counsel Mariko  
19 Kotani will please turn on her video and unmute her  
20 microphone and present her proposed decision on test  
21 claim on juveniles custodial interrogation.

22 Department of Finance -- sorry -- contacted the  
23 commission and let us know that they will not have the  
24 opportunity to attend this hearing today.

25 MS. KOTANI: Good morning.

1 CHAIRPERSON MILLER: Good morning, Ms. Kotani.  
2 Thanks for being here.

3 MS. KOTANI: Thank you very much. Good morning.

4 This test claim was filed by the County of Los  
5 Angeles on Welfare and Institutions Code Section 625.6  
6 as amended by the test claim statute.

7 Prior to that statute, existing law required law  
8 enforcement to provide a minor with legal counsel upon  
9 the minor's affirmative request. Existing law also  
10 required counties and cities to ensure that youth ages  
11 15 and younger consult with legal counsel prior to  
12 custodial interrogation and before the waiver of any  
13 rights.

14 The test claim statute extended that requirement to  
15 youth ages 16 and 17. Staff finds that the test claim  
16 statute imposes a reimbursable state negative program  
17 on counties and cities to ensure that youth ages 16 and  
18 17 who did not affirmative request an attorney consult  
19 with legal counsel prior to custodial interrogation and  
20 before the waiver of any Miranda Rights --

21 (Reporter interruption necessary.)

22 (Record read.)

23 MS. KOTANI: Got that. Thank you very much.

24 And before the waiver of any Miranda Rights. In  
25 instances where the youth does not have a private

1 attorney, this includes providing legal counsel to  
2 consult with the youth in person, by telephone, or by  
3 videoconference.

4 Accordingly, staff recommends that the commission  
5 adopt the proposed decision to approve this test claim  
6 and authorize staff to make any technical  
7 nonsubstantive changes following the hearing.

8 Thank you. And apologies to the court reporter.

9 CHAIRPERSON MILLER: Thank you very much,  
10 Ms. Kotani.

11 Mr. -- is it Briscoe? Are you the court reporter?  
12 Are you okay to proceed?

13 (Whereupon a discussion was held off the record  
14 between the reporter and hearing participants regarding  
15 rate of speech.)

16 CHAIRPERSON MILLER: Now, if the parties and  
17 witnesses could please state their names for the  
18 record. So we have Mr. Lemus, Ms. Gonzalez,  
19 Ms. Mercurio [sic] and Mr. Osaki -- I'm so sorry -- is  
20 it Osaki? Please correct me -- for the County of Los  
21 Angeles, would you like to begin? We want to go in  
22 that order.

23 MR. LEMUS: Okay. Yeah, this is -- my name is  
24 Fernando Lemus. I am with the County of Los Angeles  
25 Department of the Auditor-Controller. I am the

1 claimant rep for the county. And I'm here to state  
2 that we -- the county agrees with the proposed  
3 decision. I believe we have one minor point of just  
4 clarification, but I'll turn that over to the folks  
5 that accompany me.

6 So I'll turn it over right now to Ms. Gonzalez so  
7 she can introduce herself.

8 Lucia?

9 MS. GONZALEZ: Yes, Lucia Gonzalez again with the  
10 Office of County Counsel and advice counsel to the  
11 auditor-controller. I will not have any statements  
12 today. I'm available for any questions that the  
13 commission may have, but at this time, I will turn it  
14 over to our colleagues at the public defender's office.

15 CHAIRPERSON MILLER: Thank you. Is that  
16 Mr. Mercurio and Mr. Osaki?

17 MR. MERCURIO: Yes, good morning. My name is Chris  
18 Mercurio. I'm a head deputy with the LA County Public  
19 Defender's Office, and I've supervised the juvenile  
20 Miranda program where we provide consultations to  
21 youth.

22 CHAIRPERSON MILLER: All right. Thank you. Any  
23 comments you'd like to --

24 MR. MERCURIO: Well, I -- we agree with the  
25 decision. There is a minor point of clarification,

1 which Mr. Osaki, my colleague, will address.

2 CHAIRPERSON MILLER: Great. Thank you,  
3 Mr. Mercurio.

4 Mr. Osaki, please.

5 MR. OSAKI: Yes. My name is Craig Osaki. I'm also  
6 with the LA County Public Defender's Office. And we  
7 also -- also we agree with the proposed decision in  
8 that the test claim statute creates a new state  
9 mandated program.

10 But we do wish to clarify one point. The public  
11 defender's office is appointed on the case at the  
12 arraignment when the minor is officially charged with  
13 the crime, and that is when our obligation to defend  
14 begins. During the period of time when a minor is  
15 being interrogated, that is all being done prior to the  
16 arraignment.

17 So this test claim statute requires law enforcement  
18 agencies to contact PD's office, our office, if they  
19 decide to conduct an interrogation. So the county is  
20 now required to act prior to the appointment at the  
21 arraignment, and this far exceeds what is required by  
22 the constitution and the law.

23 So the previous law just simply required just the  
24 notification by the case officer of their right to  
25 counsel. And now the law requires consultation prior

1 to the interrogation. So we are obligated to provide  
2 this consultation whether or not the minor  
3 affirmatively asks for an attorney or not.

4 So that's the only little clarification that we  
5 wish to make, because in the commission-proposed  
6 decision, the test claim statute, there's a -- various  
7 passages where the decision states that the statutes  
8 are only new with respect to 16- and 17-year-olds who  
9 do not affirmatively request counsel.

10 And it's just important to note that this law is  
11 not contingent on whether or not they affirmatively  
12 request counsel. Once the police officer decides that  
13 they want to conduct an interrogation, that decision  
14 triggers a new obligation to contact us, and we now  
15 have to respond at that point in time.

16 Whether or not the minor affirmatively requests  
17 counsel or not, once the police wants to interrogate  
18 the minor, that is when they are required to contact  
19 us. So that's the minor point that we wish to make.  
20 And thank you for your time. If you have any  
21 questions, please do not hesitate to ask.

22 CHAIRPERSON MILLER: Thank you very much,  
23 Mr. Osaki.

24 Ms. Kotani, would you like to respond to  
25 Mr. Osaki's point?

1 MS. KOTANI: Yes, thank you very much. So I  
2 completely agree that SB 203 doesn't condition its  
3 requirement on the minor's affirmative request or lack  
4 thereof. That language is there just because law  
5 enforcement is already required, as you know, under the  
6 Fifth Amendment and Miranda to -- if someone, a  
7 defendant -- not a defendant, but if a minor or any  
8 other person undergoing police interrogation invokes  
9 their right to an attorney, my understanding is that  
10 the government has to provide that attorney for them.

11 So that's what the carve out is for, for existing  
12 law, not for any language in the statute itself.

13 MR. OSAKI: And actually I wish to clarify that  
14 point as well. So basically what it is is that if  
15 the -- the Miranda requirements requires the peace  
16 officer to notify -- right? -- to advise the individual  
17 of their rights. If that individual invokes their  
18 right to counsel, then obviously, one will be provided,  
19 but one will be provided at the arraignment.

20 And so what happens is that the interrogation  
21 ceases. It is not the obligation of the peace officer  
22 to go seeking counsel for the individual at that point  
23 in time, because the law enforcement agency does not  
24 have the power to appoint counsel. The appointment of  
25 counsel occurs at the arraignment later on if there are



1 charges brought forth. I wished to clarify that point.

2 MS. KOTANI: No, that makes sense. I think the  
3 only thing I would say in response to that is for SB  
4 203, it also doesn't specify -- I mean, for SB 203, I  
5 suppose that a law enforcement officer could comply  
6 with it by simply, as you said, ceasing the  
7 interrogation until -- it just prohibits them from  
8 having that custodial interrogation or proceeding  
9 onwards without that minor also receiving legal  
10 consultation.

11 So I'm not seeing, I guess, how that would be not  
12 overlapping with that existing Fifth Amendment right to  
13 provided counsel.

14 CHAIRPERSON MILLER: You want to respond to that,  
15 Mr. Osaki?

16 MR. OSAKI: Well, you know, sorry. I -- basically  
17 what it is is that the law enforcement agency, you  
18 know, under the prior law was not required to locate  
19 counsel or find counsel for a minor who requests one.  
20 Basically, what had happened was is that -- because,  
21 you know, if the peace officer wanted to interrogate,  
22 they just simply had to notify minor of their rights.

23 If a minor invoked, then the interrogation stops,  
24 law enforcement ceases the interrogation, and then, you  
25 know, all attempts at interrogation ceases at that

1 point in time. So that's just generally what happens.  
2 So there is no prior requirement of law enforcement to  
3 do anything.

4 And what this law does is now require law  
5 enforcement to actively contact our office for  
6 consultation purposes prior to that interrogation. So  
7 that's what this law did. So there was no overlap  
8 before, because there was no obligation of law  
9 enforcement to have to do anything more.

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

11 MS. SHELTON: Just to clarify the positions as I  
12 hear Mr. Osaki explain how the program works. So the  
13 way the proposed decision is written, it's that there  
14 is no new activity when the juvenile offender  
15 affirmatively requests their right to counsel at that  
16 point.

17 And the way Mr. Osaki is saying is that under the  
18 statute, the test claim statute, there is still,  
19 regardless of whether the juvenile requests an  
20 attorney, there is still a new duty to contact the  
21 public defender's office or to contact an attorney, I  
22 guess, right?

23 MR. OSAKI: That's correct.

24 MS. SHELTON: To provide that consultation. If the  
25 commission wants to go and interprets the statute

1 similarly to Mr. Osaki, we would need to take it back  
2 and clarify that issue. I don't want to do that on the  
3 fly right here. But he's suggesting that that carve  
4 out be eliminated.

5 MR. OSAKI: That's correct. Thank you very much.

6 CHAIRPERSON MILLER: So maybe to summarize, I  
7 think, let's go to questions from the board, but it  
8 sounds like this is something that after this meeting,  
9 Ms. Shelton and Ms. Kotani, you can talk to Mr. Osaki,  
10 because it sounds like a minor technical fix that you  
11 can do between you.

12 Am I understanding that correctly? I don't want to  
13 oversimplify it, but it sounds like -- if there's a  
14 motion to adopt the staff recommendation, that actually  
15 works, and then after this meeting, you'll continue to  
16 talk to Mr. Osaki about this point? No?

17 MS. SHELTON: No, it would be something that needs  
18 to be decided at the test claim phase, because here,  
19 we're defining what is new and what's the --

20 (Simultaneous speaking.)

21 CHAIRPERSON MILLER: So it's not something to be  
22 decided now.

23 MS. SHELTON: It's not something that we can  
24 correct later. It has to be done before the decision  
25 is adopted.

1 MS. HALSEY: It would require further legal  
2 analysis and us taking it back, actually, to analyze.  
3 This is the first time this argument has been  
4 specifically raised in this matter, so we have not done  
5 that analysis.

6 MS. SHELTON: I should also clarify as Heather is  
7 indicating that there were no comments filed on the  
8 draft decision at all, so there were no changes between  
9 the draft and what you have here today.

10 CHAIRPERSON MILLER: Got it. Okay.

11 MS. HALSEY: So normally, that would be raised in  
12 the draft, and then we would have the opportunity to  
13 address it before it came to the commission.

14 CHAIRPERSON MILLER: So there's been no opportunity  
15 to address this. We won't make any assumptions about  
16 whether or not it can be addressed, because it requires  
17 further legal analysis, correct? Got it. Thank you.

18 Mr. Adams?

19 MEMBER ADAMS: Thank you, Madam Chair.

20 First, I was going to ask the claimant if they had  
21 any language they wanted added to the decision before  
22 we adopted it, but I appreciate that Camille has said  
23 that they do not want to do this on the fly. If I'm  
24 understanding this right, previous law, the public  
25 defender's office clicked in when the court assigned

1 them, that now law enforcement can get them in prior to  
2 that.

3 So it seems to me that if the city is wanting -- or  
4 the county is wanting language changed, I'm certainly  
5 supportive of postponing this and bringing it back.

6 Thank you.

7 CHAIRPERSON MILLER: Well, I think there's -- oh,  
8 yes, please, Ms. Olsen.

9 MEMBER OLSEN: I would like the county to let us  
10 know why they didn't have comments about this prior to  
11 this hearing. My sense is that they're given time to  
12 do that. I don't -- I'm not saying that we should  
13 necessarily move forward with adopting the decision,  
14 but I'm just concerned about the process here.

15 CHAIRPERSON MILLER: I actually appreciate that  
16 question. As am I. Does the county want to respond to  
17 that? Why wasn't this -- I mean, this has been  
18 obviously ongoing. If you could respond to Ms. Olsen's  
19 question, please, Mr. Osaki.

20 MR. OSAKI: From -- from my perspective, I just  
21 thought that we -- we had addressed it already in test  
22 claim, you know, this particular point. So I -- I did  
23 not know we had to address it again, so -- but again,  
24 I'm coming at this from the criminal defense point of  
25 view.

1 I'm not -- so I -- you know, from my point of view,  
2 I thought we -- it was -- it had already been addressed  
3 at the -- when we initiated the test claim.

4 CHAIRPERSON MILLER: But I mean -- oh, sorry,  
5 Ms. Olsen. Please.

6 MEMBER OLSEN: So then if that's the case, then I  
7 have a question for staff.

8 MS. HALSEY: I would like to clarify something.  
9 Mr. Osaki is not the claimant. He is a witness for the  
10 claimant. So he would not be the person that files the  
11 comments. So it would be the person, right? I mean,  
12 maybe he would be working with the person that files  
13 the comments, because he's obviously the program  
14 expert.

15 But it's the claimant that would normally file the  
16 comments, and the person that filed the claim would be  
17 in charge of organizing those comments. And the  
18 process goes that we receive a claim, we analyze it, we  
19 issue it for comment. This is all set in statute. And  
20 there's a period for all the parties to comment and  
21 raise any issues that they thought were not addressed  
22 correctly or completely or any new issues.

23 And at that time, then we take it back and review  
24 those comments and analyze them and prepare a proposed  
25 decision for the commission hearing. But in this case,

1 nobody, not from finance and not from the claimant,  
2 filed comments on this matter. And so this is the  
3 first time we're getting comments.

4 MS. SHELTON: And I will clarify that the test  
5 claim was seeking reimbursement for all -- for  
6 juveniles even under the age of 15. It was not  
7 entirely -- you know, even though -- they never pleaded  
8 and they never filed a test claim on the 2017 statute.  
9 The statute that they pled was only the 2020 statute.

10 So there was -- you can't just accept the test  
11 claim as stated, because they're trying to get  
12 reimbursed for everything, and our job is to determine  
13 what prior law requires versus what the test claim  
14 statute now requires.

15 So yes, if that point needed clarification, it was  
16 certainly a time to provide that clarification after  
17 the draft was issued, which it was issued in September,  
18 September 13. So we've had over a month and a half of  
19 time.

20 They have three weeks to file comments on a draft  
21 and have opportunities to ask for extensions of time if  
22 necessary and stated for good cause.

23 CHAIRPERSON MILLER: Okay. So Ms. Olsen, do you  
24 want to follow up with that?

25 MEMBER OLSEN: I do. I do.

1 CHAIRPERSON MILLER: Thank you.

2 MEMBER OLSEN: Ms. Shelton, so does that mean that  
3 if we were to take a decision -- make a decision to  
4 adopt the recommendation today -- I'm not saying that  
5 that's what I want to do. I'm just trying to get some  
6 clarification here -- that that would in essence have  
7 standing because the claimants did not file comments on  
8 it, or is it the case that we really shouldn't do that  
9 because this issue is raised anew and needs to be  
10 evaluated?

11 MS. SHELTON: If this case -- your decision is a  
12 question -- this decision is a question of law. If  
13 there were litigation filed on this decision, a court  
14 would be reviewing that under the de novo standard. So  
15 you'd need to get -- we obviously want to get the issue  
16 correct as a matter of law. It really shouldn't, you  
17 know, depend on when comments are filed. What we're  
18 saying is we were not made aware of this.

19 MS. HALSEY: Right. When comments are not made  
20 until now, it requires us to take it back and reanalyze  
21 it and bring it back to a future hearing, because we  
22 have not had the opportunity to do that yet.

23 MEMBER OLSEN: So do we need a motion for that  
24 or --

25 (Simultaneous speaking.)



1           MEMBER OLSEN: Have the staff take it back and look  
2 at it again, given the complications.

3           CHAIRPERSON MILLER: All right. So we have a  
4 motion. I'm going -- Mr. Adams has another -- we have  
5 a second. Any other public comment before I comment?  
6 I don't -- so I -- no? No other public comment?

7           So I'm a little bit -- you know, I understand that  
8 the County of Los Angeles, I don't think has been  
9 specific as to why this wasn't -- wasn't brought  
10 sooner. I do think that the way that this board works,  
11 it is really important that we follow this process.

12           And I understand, Mr. Osaki, you're not the  
13 claimant, but I'd like to just ask then the claimant,  
14 you know, to the extent that this was an issue  
15 previously, I'd like to understand why it wasn't  
16 brought sooner in terms of the comment that we could  
17 have addressed before today.

18           So I don't know if Mr. Lemus or Mr. Gonzalez or  
19 someone else wants to address that. I'm a little bit  
20 confused about how are we -- just about the process on  
21 this and why it's so important to have a really strong  
22 process.

23           MS. GONZALEZ: Yes. Thank you, Ms. Miller. Yes.  
24 At the onset of this roll call, both Mr. Lemus and I  
25 indicated that we were in agreement with the

1 commission's statement. We accepted the commission's  
2 decision. Prior to this meeting, I did receive a  
3 communication from Mr. Osaki where he wanted to  
4 highlight what he thought was an -- he wanted to make a  
5 clarification with regards to a statement that was on  
6 page 15 of the proposed decision and was going to  
7 indicate on the record the clarification that he  
8 believed needed to be made.

9 And so that was my understanding prior to having  
10 this hearing today. In the course of his testimony, it  
11 has become apparent that there are some issues that  
12 were raised that, you are correct, were not previously  
13 raised during the comment period. And we completely  
14 understand the importance of procedure. There's a  
15 reason why the regulations exist and why filing periods  
16 exist, and we as a claimant completely understand that.

17 But it does appear that based on Mr. Osaki's  
18 statements that there are some issues that were raised  
19 today that were not raised previously.

20 MS. SHELTON: Can I get clarification on something?  
21 When you say page 15, do you mean .pdf page 15 or hard  
22 page 15? The concern?

23 MR. OSAKI: No, it's -- the point I made, it kind  
24 of was raised a couple times, but I just saw it really  
25 quick here on page 15 of the decision itself.

1 MS. SHELTON: So the clarification I have, the  
2 question, just to be -- so that I'm really  
3 understanding your point, is that if I go to hard page  
4 15, the first bullet of the mandated activity says to  
5 ensure that youth ages 16 and 17 who do not  
6 affirmatively request an attorney consult with legal  
7 counsel prior to custodial interrogation and before the  
8 waiver of any Miranda rights.

9 And your position is to take -- to remove the  
10 language that says you do not affirmatively request an  
11 attorney?

12 MR. OSAKI: That's correct. That's correct.

13 MS. SHELTON: Thank you.

14 CHAIRPERSON MILLER: Okay. Well, we have a motion  
15 and second. I will say I'm little bit torn on this  
16 one, because the county supports. I think, obviously,  
17 you know, there is another opportunity, so I'm debating  
18 whether or not to have a substitute motion just where  
19 we would support staff recommendation and then continue  
20 the discussion as it moves along.

21 Mr. Adams, I just -- I'm concerned about the  
22 process here just because it will complicate if we set  
23 a precedent like this. But I'd love your thoughts on  
24 that, Mr. Adams.

25 MEMBER ADAMS: I understand that. And I guess at

1 this point in time, I'm going to ask if the staff has a  
2 recommendation of what they would like to do.

3 CHAIRPERSON MILLER: Yes. Thank you. I appreciate  
4 that.

5 Ms. Shelton? Ms. Halsey?

6 MS. HALSEY: Well, I think this really comes down  
7 to what the commission thinks is right to do. Part of  
8 the process is the hearing and the testimony at the  
9 hearing. And so you -- there could have been new  
10 things that came up at the hearing, even if comments  
11 were filed, possibly, that you would want addressed. I  
12 can argue it both ways, honestly.

13 But it is something that we really do need. It is  
14 important that people review the drafts and submit  
15 comments timely. But it's also important that we have  
16 a thorough hearing of the issues, so --

17 CHAIRPERSON MILLER: Ms. Shelton, do you have  
18 anything you want to add to Mr. Adams' and my question  
19 about --

20 MS. SHELTON: Only that the issue that is being  
21 raised is a legal issue. So, you know, I can't -- it's  
22 not something that if -- you know, without us taking it  
23 back and looking at it, I can't say one way or the  
24 other right now whether the county's position is  
25 legally correct or not. And then if you adopt

1 something today, I can't go -- I can't change it. So  
2 if you adopt it --

3 CHAIRPERSON MILLER: Okay. That's really helpful.  
4 So I think I'm then willing to support the motion that  
5 the direction is to staff to take it back and review  
6 the points with Mr. Osaki. But I'd like to do it with  
7 sort of an admonition to folks that the reason this  
8 process works is because of how complicated these  
9 issues are and having -- really adhering to the comment  
10 process, I think is really important, just because we  
11 never want to do legal analysis on the fly.

12 And I think it is really important, and obviously,  
13 the county knows that, and I do appreciate,  
14 Ms. Gonzalez, your comments here as well. Those were  
15 really helpful and clarifying.

16 So anyone else? Any other further public comment?  
17 It was moved by Ms. Olsen, seconded by Mr. Adams that  
18 we send this back to staff for review to consider at a  
19 later date. Did I -- anything else?

20 With that, just making sure, Ms. Palchik,  
21 nothing -- you don't see anyone, correct?

22 MS. PALCHIK: I see nothing, Madam Chair.

23 CHAIRPERSON MILLER: Great. And with that,  
24 Ms. Halsey, will you call the roll, please, on the  
25 motion to send back to staff.

1 MS. HALSEY: Mr. Adams.  
2 MEMBER ADAMS: Aye.  
3 MS. HALSEY: Ms. Miller.  
4 CHAIRPERSON MILLER: Aye.  
5 MS. HALSEY: Mr. Morgan.  
6 MEMBER MORGAN: Aye.  
7 MS. HALSEY: Ms. Nash.  
8 MEMBER NASH: Aye.  
9 MS. HALSEY: Ms. Olsen.  
10 MEMBER OLSEN: Aye.  
11 MS. HALSEY: Mr. Silva.  
12 MEMBER SILVA: Aye.  
13 MS. HALSEY: Mr. Walker.  
14 MEMBER WALKER: Aye.  
15 CHAIRPERSON MILLER: Great. So the motion is  
16 carried to send this issue back to staff for  
17 consideration.  
18 We will now move on to item four, please,  
19 Ms. Halsey.  
20 MS. HALSEY: Sure. Will the presenters for item  
21 three please turn off their videos and mute their  
22 microphones? Up next is item four, senior commission  
23 counsel Elizabeth McGinnis will please turn on her  
24 video and unmute her microphone and present a proposed  
25 decision on an incorrect reduction claim on interagency

1 child abuse and neglect investigation reports for ICAN.

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

5 MS. MCGINNIS: Hi. Good morning. This incorrect  
6 reduction claim challenges the controller's reduction  
7 of cost --

8 CHAIRPERSON MILLER: So Ms. McGinnis, I'm just  
9 going to ask that you just slow down just a little bit  
10 just for our court reporter. Thank you, Ms. McGinnis,  
11 and welcome.

12 MS. MCGINNIS: Sure. This incorrect reduction  
13 claim challenges the controller's reduction of costs  
14 claimed by the City of South Lake Tahoe for the  
15 interagency child abuse and neglect investigation  
16 reports program for fiscal years 1999 through 2000  
17 through 2011 to 2012.

18 This IRC and decision are limited to findings two  
19 and three in the controller's audit report. At issue  
20 are the controller's reduction to the number of  
21 suspected child abuse reports investigated by the  
22 claimant for purposes of reporting cases that are not  
23 unfounded to the state department of justice and  
24 reductions made to indirect labor costs.

25 Specifically, the claimant challenges the

1 following: The controller's exclusion of child abuse  
2 reports generated by mandated reporters within the  
3 claimant's police department, the reduction of child  
4 abuse reports generated by other agencies where the  
5 police department performed a full initial  
6 investigation, and third, the exclusion of the public  
7 safety dispatcher and evidence technician positions  
8 from the indirect cost pool.

9 Staff finds that the controller's reductions are  
10 correct as a matter of law and are not arbitrary,  
11 capricious, or entirely lacking in evidentiary support  
12 and therefore recommends that the commission deny this  
13 IRC.

14 Thank you.

15 CHAIRPERSON MILLER: Thank you very much,  
16 Ms. McGinnis.

17 Parties and witnesses for this item, if you'll  
18 please state your names for the record.

19 Ms. Chinn, Lieutenant Roberson, and Ms. Tikhomirova  
20 -- I really hope I pronounce that right. Please  
21 forgive me -- for the City of South Lake Tahoe. Who  
22 would you like to begin?

23 MS. CHINN: Good morning. Annette Chinn from cost  
24 recovery systems, consultant for the City of South Lake  
25 Tahoe. I'd like to thank you all for your time in



1 considering our incorrect reduction claim.

2 We realize that the commission has reviewed other  
3 incorrect reduction claims on the same program in the  
4 recent past, so I will limit my comments and request  
5 for consideration to the two topics that are unique to  
6 this filing and have not yet been touched upon in prior  
7 reviews.

8 These two areas are the reduction of our indirect  
9 cost rates, which by the 100 percent exclusion of  
10 dispatch and evidence staff lowered our allowable cost  
11 by approximately 20 percent. And secondly, the request  
12 for reimbursement of costs we believe were reasonably  
13 necessary to comply with the mandate's primary  
14 requirement, which was to conduct child abuse  
15 investigations.

16 First, on the topic of indirect costs, the bottom  
17 line here is that the state auditor mistakenly found  
18 that none, zero percent, of the police department's  
19 dispatchers and evidence technicians were eligible for  
20 inclusion in the overhead or indirect cost rate. There  
21 was nothing wrong with our computational methodology.  
22 Our rates were departmental.

23 I provided copies of the ICRPs from all the other  
24 claims we filed so that you can see that the rates were  
25 the same for all the state mandate programs we claimed

1 for and were all computed exactly the same way. There  
2 was no different methodology from one claim to the  
3 next. The rates were all departmental and all  
4 applicable to all police department claims.

5 The dispatchers and evidence technicians are a  
6 necessary and allowable police department support cost,  
7 whether the cost objective was the department as a  
8 whole or for the specific child abuse claim. Under  
9 either scenario, the positions were necessary for the  
10 police department to function, for officers to perform  
11 their law enforcement duties.

12 Without them, police officers cannot fulfill the  
13 mandate nor do their jobs. These positions met all the  
14 definitions of an indirect cost. The claiming manual  
15 instructions address the indirect costs in Section 8(b)  
16 and states, I quote, "The indirect cost pool may only  
17 include costs that can be shown to provide benefit to  
18 the program. A proposal must follow the provisions of  
19 OMB circular 2, CFR, Chapter 1 and 2, part 200,  
20 formerly circular A87. It requires that indirect cost  
21 pools include only those costs which are incurred for a  
22 common or joint purpose that benefit more than one cost  
23 objective. The indirect cost pool may include only  
24 costs that can be shown to provide a benefit to the  
25 program.

1 "In addition, total eligible indirect costs may  
2 include only costs that cannot be directly charged to  
3 an identifiable cost center, i.e., program."

4 We check the boxes on all of those points. Yes,  
5 yes, yes, yes, yes. We provided a vast amount of  
6 evidence showing that dispatchers and evidence staff  
7 did indeed meet the definition of all allowable  
8 indirect costs. Our documents included organizational  
9 charts that list records, dispatch, and evidence under  
10 the support services division of the department.

11 We have provided job descriptions, police command  
12 staff declarations that explain that dispatch and  
13 evidence staff provide necessary support to all sworn  
14 staff. We provided job descriptions from other  
15 agencies so it can be compared that all these positions  
16 are performing similar tasks from agency to agency.

17 We have shown excerpts from federal CFR guidelines  
18 that advise that pooled clerical administrative and  
19 support staff be considered eligible overhead costs. I  
20 highly doubt that anyone would believe that dispatchers  
21 and evidence staff are not necessary police department  
22 support and overhead costs.

23 I would ask the State Controller's Office to  
24 explain how the definition of a cost objective or  
25 methodology would have changed the eligibility of

1 dispatchers and the overhead rate. In fact, their  
2 argument that the rate is departmental further  
3 justifies inclusion of these two positions in the ICRP,  
4 because no police officer could function without the  
5 support of these two job classifications.

6 The last paragraph, the last sentence of the state  
7 controller audit report is clearly the issue here. I  
8 quote, from the state controller-auditor, "We believe  
9 that the classification of public safety dispatcher and  
10 evidence technician performed duties that are direct in  
11 nature and specifically identified with a particular  
12 unit or function. Therefore, we believe that we  
13 properly classified these positions as direct in our  
14 computations of the ICRPs for the audit period."

15 This is the problem, not the cost objectives or the  
16 methodology. The bottom line is the auditor made a  
17 mistake. They got confused by the definitions and  
18 didn't look at the function or purpose of the  
19 positions. They just saw that they were identified  
20 with the specific unit or function, thus they thought  
21 that they were not an indirect or support cost.

22 But this is not how you determine what an indirect  
23 cost is. Being specifically identified with a  
24 particular unit or function doesn't relegate it to  
25 being a direct cost, as the auditor mistakenly

1 believes.

2       It is the purpose or the function of that position.  
3 In fact, claiming instructions note in Section 5(e)  
4 under indirect cost rates part 2, page 16 of the  
5 claiming instructions, the allocation of allowable  
6 indirect costs can be accomplished by, one, separating  
7 a department into groups such as divisions or sections  
8 and then classifying the division or section's total  
9 cost for the base period as either direct or indirect,  
10 end of quote.

11       CFR guidelines provides additional detail and  
12 examples on how you can take an entire division, such  
13 as administration or facility maintenance, and put  
14 those entire divisions into the overhead rate  
15 computations.

16       I have been a consultant in the area of state  
17 mandate reimbursement claims for over 25 years. I have  
18 personally been involved in almost a dozen law  
19 enforcement audits, including audits on this exact same  
20 child abuse program. And in all these other audits,  
21 the majority of costs for dispatcher and evidence staff  
22 were allowed in their overhead rates.

23       The purpose of having uniform standards,  
24 guidelines, and instructions is so that the claimants  
25 are treated consistently and fairly in the recovery of

1 costs and in the conduct of audits. Federal CFR  
2 guidelines begin by stating in Section 225.2, policy,  
3 quote, "This part establishes principles and standards  
4 to provide a uniform approach for determining costs,"  
5 end of quote.

6 This did not occur in the City of Lake Tahoe's  
7 case. Under any computational methodology or metric,  
8 dispatch and evidence personnel costs should have been  
9 considered an eligible support cost to the police  
10 department, as was claimed by the city.

11 All law enforcement agencies operate similarly.  
12 All have dispatch personnel that serve as the  
13 department's central communications unit. All have  
14 evidence staff that maintains evidence for all  
15 department cases.

16 Commission staff argue that the state controller's  
17 decision to deny the city's cost of dispatchers and  
18 evidence staff was not arbitrary and not capricious.  
19 But isn't it arbitrary to not treat similar costs  
20 consistently from agency to agency? Isn't it arbitrary  
21 if the same standards and guidelines are not applied  
22 uniformly?

23 We believe we have shown that there was  
24 inconsistent treatment of like costs in this  
25 circumstance, which did not comply with the written

1 state and federal guidelines.

2 South Lake Tahoe by having 100 percent of these  
3 positions omitted was treated differently and unfairly.  
4 This resulted in an approximately 20 percent  
5 disallowance of eligible costs. The city should not be  
6 penalized for an erroneous decision on the part of the  
7 auditor.

8 The purpose of having uniform standards,  
9 guidelines, and instructions is that so like costs are  
10 treated consistently, agency to agency, and that  
11 arbitrary decisions are not made regarding application  
12 for funding. The claimant should be treated fairly and  
13 consistently in the recovery of costs and in the  
14 conduct of audits.

15 We request that the commission remand this specific  
16 issue back to the State Controller's Office for  
17 correction so the city may be reimbursed for their full  
18 allowable indirect costs, as guaranteed by state  
19 mandate law.

20 Should I continue on with our second issue, or  
21 would you like to stop at this point and discuss this  
22 topic?

23 CHAIRPERSON MILLER: Why don't we do both issues,  
24 and then we'll discuss both topics.

25 MS. CHINN: Okay. So the second issue we'd like to

1 present to the commission for review is the  
2 disallowance of investigative costs incurred by the  
3 city that took place prior to the actual in-person  
4 interviews with parties required in the child abuse  
5 investigation.

6       Roughly 90 percent of the city's child abuse cases  
7 did not require staff to conduct in-person interviews.  
8 For those 90 percent of the city's cases, only time for  
9 the detective to review the suspected child abuse  
10 report, the SCAR, was allowed to have the sergeant  
11 approve and close the case, and three, provide records  
12 staff time to document and close the case.

13       However, none of the actual investigative  
14 activities to arrive to their conclusion that the case  
15 should be closed without further interviews were  
16 allowed for reimbursement. These activities we  
17 requested were time to -- let's see.

18       A detective would ask records staff to check to see  
19 if a report was already written so that they would  
20 avoid a duplication of effort. Then the second issue  
21 was the detective would check prior history and  
22 determine if the case was actually in the agency's  
23 jurisdiction and confirm that the investigation had not  
24 already been investigated by the department.

25       This would often require phone calls to other



1 agencies, and they would also work with records and  
2 dispatch to determine the history of the case. And  
3 then finally, then the detective or the sergeant would  
4 contact the Department of Social Services, the  
5 reporting agency, or involved individuals, at least one  
6 adult who has information regarding the allegations to  
7 obtain more details of the case to determine if  
8 in-person interviews were necessary.

9 So the detective and the lieutenant must decide how  
10 to proceed on each case. So these steps were not  
11 allowed in our claim for reimbursement. The process  
12 took approximately an hour of time per case. And we  
13 disagree with this determination and believe that it  
14 should have been allowed, as it was reasonably  
15 necessary to perform the mandate.

16 The city contends that these preliminary  
17 investigative activities listed above were reasonably  
18 necessary for investigators to make the determination  
19 whether to close the case or to continue the  
20 investigation by proceeding with in-person interviews.

21 We believe this request is also supported by the  
22 commission's own statement of decision where they  
23 conclude on page 37 -- and I quote -- "Therefore,  
24 because in-person interviews providing a report of  
25 findings are the last step taken by law enforcement

1 before determining whether to proceed with a criminal  
2 investigation or, quote, the investigation and the last  
3 step that county welfare departments take before  
4 determining whether to forward the report to the DOJ  
5 and possibly refer the matter to law enforcement, that  
6 degree of investigative effort must be the last step  
7 that is necessary to comply with the mandate."

8 This is exactly what we requested for  
9 reimbursement. The California Department of Social  
10 Services explained their procedure and note in the  
11 statement of decision -- and again, I quote -- "Prior  
12 to actual interviews, the social worker must make a  
13 multitude of considerations to first decide whether an  
14 in-person investigation is necessary."

15 Social services also explained that they must,  
16 quote, contact at least one adult who has information  
17 regarding the allegations. If after that stage the  
18 social worker does not find the referral to be  
19 unfounded, the social worker must conduct an in-person  
20 investigation, end of quote.

21 This is the same process with the city describes.  
22 These are all part of the investigative process that  
23 must take place in order to close the case. These  
24 steps all occurred before the determination to close  
25 the case occurred, and therefore, those steps should be

1 allowable for reimbursement at the approximate one hour  
2 of time requested.

3 We believe that a request to be reimbursed for  
4 these activities were reasonably necessary and request  
5 the commission allow them in our costs.

6 CHAIRPERSON MILLER: Thank you. Great. Thank you  
7 very much for all of that, Ms. Chinn. We appreciate  
8 it.

9 Next, before we go to comments, Ms. Kearney for the  
10 State Controller's Office, if you could respond to some  
11 of the claims, please.

12 MS. KEARNEY: Sure. Lisa Kearney from the State  
13 Controller's Office. I first want to state that we do  
14 agree with the commission's proposed decision for this  
15 IRC. Regarding the indirect costs, I want to state  
16 that for the dispatcher and the evidence technicians,  
17 we determined based off of extensive interviews and  
18 based off of the duty statements that the  
19 classifications performed duties that are direct in  
20 nature and can be specifically identified with the  
21 particular unit or function within the police  
22 department.

23 And also, the classifications do not perform  
24 general business functions that benefit the entire  
25 police department. So we found that the claimant is

1 interchangeably identifying the cost objective as the  
2 child abuse program and the child abuse investigations.  
3 And they're arguing that the dispatch and evidence  
4 technician classifications benefit more than one cost  
5 objective, despite the fact that the claimant's claimed  
6 rates and the SCO's audited rates were based on the  
7 police department's expenditures as a whole, meaning  
8 the cost objective is the entire police department, not  
9 the ICAN program.

10 And under this rubric, direct labor includes the  
11 overall functions of the police department, assignable  
12 to the specific units and functions, and indirect cost  
13 rates are department-wide rates. And additionally, no  
14 additional documentation has been provided. Therefore,  
15 we think that indirect costs should remain unchanged,  
16 that they should be at zero percent for both of these  
17 classifications.

18 In regards to the additional preliminary activities  
19 that they are seeking reimbursement for, we determine  
20 that those preliminary investigative activities are not  
21 identified as reimbursable activities in the test  
22 claim. And therefore, they're out of scope of the  
23 mandate, so they are not reimbursable.

24 CHAIRPERSON MILLER: Great. Thank you very much,  
25 Ms. Kearney. Anything else?

1 MS. KEARNEY: Not at this time.

2 CHAIRPERSON MILLER: Thank you. Thank you for  
3 being here today.

4 Mr. Nichols, as an interested person, did you have  
5 anything you'd like to add at this time or any  
6 comments?

7 MS. PALCHIK: Madam Chair, I do not see Mr. Nichols  
8 on as a panelist or do I see him as an attendee, and I  
9 don't see any hands raised anywhere to speak.

10 CHAIRPERSON MILLER: Thank you, Ms. Palchik. I  
11 appreciate it. You've got to my next question around  
12 if there was anything.

13 So I think are there any questions from the board,  
14 any clarifying points from Ms. Chinn, Ms. Kearney, or  
15 Ms. McGinnis?

16 Please, Ms. McGinnis.

17 MS. MCGINNIS: Hi. Just because there's a lot  
18 going on in this claim, I just want to refresh the  
19 board's recollection as to what the proper standard is  
20 that's being employed here and also just to point out  
21 that none of the comments raised today by either of the  
22 parties are new.

23 All of these -- and we appreciate how much work was  
24 put into these, because I know there's a lot going on.  
25 All of these comments and the evidence that's

1 referenced was provided in both the IRC and then in  
2 late comments that were filed by the claimant. So  
3 staff has reviewed all of these legal arguments and all  
4 of the supporting evidence.

5 And I haven't heard anything today that would  
6 change the analysis and recommendation that staff has  
7 made in this matter. And in regards to the standard  
8 that applies for both of these issues, both the two  
9 positions that are being challenged as whether or not  
10 they are indirect and should be factored into the  
11 indirect cost rate proposal and for the alleged  
12 additional activities investigative activities that  
13 should be reimbursed, the standard that applies here is  
14 both a legal standard and a factual determination.

15 So it is the commission's duty to look at whether  
16 or not the controller correctly applied the law,  
17 whether they correctly interpreted the parameters and  
18 guidelines, and whether in reaching -- making these  
19 determinations whether the controller acted arbitrary,  
20 capriciously, or did not have sufficient evidentiary  
21 support.

22 Again, I have not heard anything today that would  
23 change my recommendation, but if you have questions or  
24 would like additional clarification, I'm happy to do  
25 so.

1           CHAIRPERSON MILLER: Great. Thank you. Any  
2 questions from the board? Seeing none.

3           Ms. Chinn, do you want to respond to anything?

4           MS. CHINN: I guess I'm confused by the  
5 inconsistencies of the State Controller's Office. I'm  
6 confused by how in all of the other audits that I've  
7 been a part of and in all the other audits I've  
8 reviewed online from other agencies how those cities  
9 can be allowed costs for these positions for  
10 dispatchers and for evidence technicians and how any  
11 reasonable person who is -- is familiar in any small  
12 way about the operations of a police department, how  
13 anyone could reasonably believe that a police  
14 department can function, that the officers can do their  
15 jobs without the efforts of dispatch and evidence.

16           Every time an officer goes out for a call for  
17 service, they are tracked by -- they are in constant  
18 communication with those dispatch staff. The  
19 dispatchers are logging in every communication from  
20 that incident, and they're documenting everything that  
21 happens. They're keeping track of those officers.  
22 They're the critical link between an officer being out  
23 in the field and the department.

24           If there's a need for backup, that position is  
25 there to assist them in those things. An officer could

1 not do their job without those positions. In theory,  
2 you could go through your records and find out exactly  
3 how much time every dispatcher is touching each and  
4 every case, and you can compute that and come up with  
5 some kind of method to request reimbursement for those  
6 costs.

7       However, to do that would take an exorbitant amount  
8 of labor. You would have to probably hire a person to  
9 do that in order to compute the cost for reimbursement.  
10 So in order for local agencies to not have to do some  
11 onerous calculation of costs, the state and the federal  
12 government created something called the indirect cost  
13 rate proposal, where you could distribute those costs  
14 that are used by and benefiting all the department's  
15 officers for those costs.

16       It's the same for paper and utilities and facility  
17 use and equipment. All of those things are necessary  
18 for a police department to operate. And the officers  
19 could not do their jobs without those positions. So it  
20 just seems completely illogical, unfair, and  
21 inconsistent.

22       And if the commission can't see that, then I don't  
23 think there's anything as the commission --  
24 Ms. McGinnis stated, that if there's -- if you don't  
25 see that there is overhead in these positions and you



1 don't see in the job descriptions -- in the  
2 departmental unit, it shows that records, dispatch,  
3 evidence are a support unit of the police department.

4       And if now those costs are considered ineligible in  
5 one case but eligible in 99 percent of all the other  
6 cases, then that is an inconsistency. And that is what  
7 we seek the commission to consider and to remedy.  
8 We're not asking you to disallow all these other parts  
9 of our claim, but we're asking for a reasonable review  
10 of this and a reasonable decision.

11       And again, if commission staff can't see the basic  
12 reason, then there's --

13       CHAIRPERSON MILLER: Yeah, I think oftentimes --  
14 you know, I think that's somewhat inappropriate,  
15 Ms. Chinn, just because this isn't about what we see.  
16 This is a matter of law.

17       But why don't, Ms. McGinnis, if you want to go  
18 ahead and comment on that, please, and then --

19       MS. MCGINNIS: Yeah. So I would just say -- and  
20 Ms. Kearney with the controller can correct me if I'm  
21 getting this wrong. But I would just say that my  
22 understanding here is that the fundamental disagreement  
23 between the parties, which originated with the original  
24 audit report, is a disagreement as to whether these two  
25 positions provide necessary support to sworn staff in

1 the commission in law enforcement duties such that that  
2 constitutes an indirect or a direct cost.

3 So there's a fundamental disagreement with how the  
4 direct cost definition and the indirect cost definition  
5 in the parameters and guidelines, which originates in  
6 the federal regs that Ms. Chinn referenced, whether or  
7 not those definitions are being correctly applied to  
8 the facts here.

9 And my understanding of the controller's position,  
10 which staff has tried to clarify repeatedly in this  
11 decision of ours, is that these positions provided  
12 direct support to sworn officers of the police  
13 department in carrying out hauls or requests for  
14 service.

15 So that is not the same as a general receptionist,  
16 as somebody who is answering phones for any call that  
17 comes into the police department. And I'm specifically  
18 here referring to the public safety dispatcher, because  
19 that is the only position that the -- that the claimant  
20 provided further evidence on to try to show why this  
21 was an indirect rather than a direct cost.

22 So again, I think the fundamental disagreement here  
23 is whether or not carrying out a support role to a  
24 position that performs direct duties that respond to  
25 calls for service for domestic violence, for an

1 assault, for suspected child abuse and so on, whether  
2 or not that satisfies the standard of direct and  
3 providing services that benefit a particular function  
4 or particular programs within the department or whether  
5 it provides a indirect or general support role.

6 MS. CHINN: I think you've just answered the  
7 question. Yes, those positions definitely provide  
8 support for the whole department. It's not for one  
9 specific unit or function that the dispatcher is  
10 functioning. The dispatcher is there for the entire  
11 law enforcement staff.

12 All law enforcement officers require those  
13 positions to provide them support, and those are the  
14 same positions that have been found allowable in 99  
15 percent of all the other audits that -- if you look at  
16 the state website with all the other audits, and maybe  
17 Ms. Kearney can tell us -- give us an example of  
18 another jurisdiction that had their dispatch and  
19 evidence staff removed from their claims, because in  
20 all of the audits that I examined, it did not occur.

21 It only occurred for the City of South Lake Tahoe,  
22 and I just believe that it was a mistake, that there  
23 was maybe an auditor who didn't understand what it was  
24 they were reading, that they read the section on direct  
25 costs and they just misapplied a definition. And it

1 was a simple error.

2 And, you know, if it's impossible for a local  
3 agency to come to this body to have like a fair  
4 resolution of disputes between the State Controller's  
5 Office and local agencies, then it's really a grave  
6 disservice, because this is the only body available for  
7 local agencies to come with these types of disputes.

8 So --

9 MS. MCGINNIS: Well, I would just -- Ms. Chinn, I  
10 would respond to that that it is not within the purview  
11 of this commission to disturb a factual determination  
12 made by the controller unless additional evidence is  
13 presented to the commission that would cause the  
14 commission to find that, in reaching that  
15 determination, the controller acted arbitrary,  
16 capriciously, or entirely lacking in evidentiary  
17 support.

18 So in other words, this commission does not have  
19 the authority to step in to the shoes of the controller  
20 and second guess a decision that they've made. We  
21 are -- this commission is not permitted under our  
22 authority to do that. So our review is more limited.

23 We have to have specific evidence that would show  
24 that there is arbitrary, capricious, or entirely  
25 lacking evidentiary support. And staff -- sorry. If I

1 may finish. Staff has not found in this instance that  
2 there was sufficient evidence presented to make that  
3 determination.

4 MS. SHELTON: Just to clarify really quickly.

5 CHAIRPERSON MILLER: Yes, please, Ms. Shelton.

6 MS. SHELTON: Under the arbitrary and capricious  
7 standard, we are not looking at this brand new like a  
8 legal question or a question of law. We are forced to  
9 defer to the controller's audit findings. What that  
10 means is all that we have to look at in these audit  
11 decisions is if they considered everything that you're  
12 just raising and discussing in all of your  
13 documentation, and they didn't miss anything, and they  
14 established a reasonable connection between their  
15 conclusion and what they're finding. And that's it.

16 We can't -- even if the commission were to disagree  
17 with their conclusion, we don't have the authority to  
18 overturn an audit decision. So your standard is very  
19 limited on these audit findings.

20 MS. CHINN: So Camille, you said whether there's a  
21 a reasonable connection between their decision. What  
22 if --

23 MS. SHELTON: A rational connection between the  
24 factors that they -- between all the evidence and their  
25 decision. And they have a reason -- let me say -- they

1 have a reason for what they did, and we don't have any  
2 evidence to show why that is wrong.

3 We can't -- we can't disagree with them. They have  
4 a reason. As long as they have a reason that is  
5 reasonable, then that's the limit of the commission's  
6 authority.

7 MS. CHINN: So what if that is not reasonable and  
8 what if that reason was not consistent? What if we  
9 showed through all these other audits that it was not a  
10 consistent decision, that these are police departments,  
11 same police departments, different departments, all the  
12 same function, yet they're treated inconsistently?

13 Is that not unreasonable and is that not an  
14 inconsistent decision?

15 MS. SHELTON: So you're certainly allowed to raise  
16 that issue. However, we don't have those audit reports  
17 in this record. We don't -- never had to look at them.  
18 I have no reason to understand why the controller may  
19 or may not have done something different in a different  
20 audit, so --

21 MS. MCGINNIS: Yeah, and this point -- again, just  
22 for commission members. This point was raised in the  
23 comments that were filed by the claimant, and staff did  
24 address this in the proposed decision. So we have  
25 looked at several hundred pages of additional

1 documentation.

2       The controller's decision as to a different local  
3 agency in claiming costs for this program is not  
4 something that the commission can consider in reaching  
5 its decision today. Those cases involve their own  
6 legal and factual issues that are not before the  
7 commission.

8       So that is not an appropriate point of reference or  
9 relevant evidence for the commission in reaching its  
10 decision today.

11       CHAIRPERSON MILLER: Okay. Thank you very much for  
12 that robust discussion. Any other questions from the  
13 board?

14       Mr. Nichols, did you -- were you able to make it  
15 on?

16       Are you still not seeing him, Ms. Palchik?

17       MS. PALCHIK: Madam Chair, I do not see Mr. Nichols  
18 anywhere. I do see just a call-in number.

19       Mr. Nichols, if you are indicating yourself as a  
20 call-in number, if you would raise your hand. If not,  
21 we do not know that you're here in the meeting as an  
22 attendee, but I do see --

23       CHAIRPERSON MILLER: And you should be able to do  
24 star nine, Mr. Nichols, on the phone, in order to  
25 indicate a raised hand on the interface.

1 Ms. Olsen, please.

2 MEMBER OLSEN: So I am sympathetic to what has been  
3 expressed by South Lake Tahoe and Ms. Chinn, and I --  
4 but I do think that the commission is kind of stuck in  
5 terms of what we can and can't do. And so I  
6 regrettably am going to move the staff recommendation.

7 CHAIRPERSON MILLER: Thank you for that.

8 Do we have a second?

9 Thank you, Mr. Walker.

10 Any public comment?

11 The staff recommendation has been moved by  
12 Ms. Olsen, seconded by Mr. Walker.

13 Ms. Halsey, would you call the roll, please.

14 MS. HALSEY: Mr. Adams.

15 MEMBER ADAMS: Aye.

16 MS. HALSEY: Ms. Miller.

17 CHAIRPERSON MILLER: Aye.

18 MS. HALSEY: Mr. Morgan.

19 MEMBER MORGAN: Aye.

20 MS. HALSEY: Ms. Nash.

21 MEMBER NASH: Aye.

22 MS. HALSEY: Ms. Olsen.

23 MEMBER OLSEN: Aye.

24 MS. HALSEY: Mr. Silva.

25 MEMBER SILVA: Aye.



1 MS. HALSEY: Mr. Walker.

2 MEMBER WALKER: Aye.

3 CHAIRPERSON MILLER: Great. That motion is carried  
4 to adopt the staff recommendation.

5 We'll now move to item five, please.

6 MS. HALSEY: We now ask presenters for item four to  
7 please turn off their video and mute their microphones.  
8 Item five is reserved for county applications for a  
9 finding of financial distress or SB 1033 applications.

10 No SB 1033 applications have been filed.

11 Next, chief legal counsel, Camille Shelton, will  
12 please turn on her video and microphone and present  
13 item six, the chief legal counsel report.

14 CHAIRPERSON MILLER: Great. Thank you.  
15 Ms. Shelton, good morning.

16 MS. SHELTON: There have not been any new filings  
17 since the last commission meeting. We do have a new  
18 decision that was issued by the Third District Court of  
19 Appeal in the Department of Finance versus Commission  
20 on State Mandates case dealing with discharge of  
21 stormwater runoff.

22 There the court affirmed the commission's decision  
23 except for the activity of street sweeping, which is  
24 reversed, consistent with the court's earlier decision  
25 in Paradise Irrigation District on the ground that the

1 claimants have sufficient fee authority pursuant to  
2 17556(d).

3 On November 21, following a request by interested  
4 parties, the court did certify this decision for  
5 publication.

6 At this time, we don't have any cases pending on  
7 our hearing calendar, and that's all I have today.

8 CHAIRPERSON MILLER: Great. Thank you very much.

9 Any questions for Ms. Shelton? No?

10 Seeing none, any public comment?

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

12 CHAIRPERSON MILLER: Thank you. Next we'll move to  
13 the executive director report, please.

14 MS. HALSEY: Hello. Today was the first commission  
15 meeting for our new information technology specialist  
16 one, Chris Steinworth, who did a great job of running  
17 the meeting today in Jason's absence. Welcome and  
18 thank you, Chris.

19 Also today is Mariko Kotani's last day with the  
20 commission. She's taking a promotional position with  
21 legislative counsel. Additionally, since we last met,  
22 our long-serving office technician, Lorenzo Duran, took  
23 a promotional position with the business services  
24 office of the Office of the State Public Defender. And  
25 our accounting analyst, Hernande Sansina [ph], also

1 took a new position with the Caltrans contracting unit.

2 The commission is now in various stages of the  
3 recruitment process for five positions, two program  
4 analysts -- that's our procurement and accounting  
5 analysts -- an associate budget analyst, an attorney,  
6 and office technician. And that's about a third of our  
7 staffing. Also after this hearing, we have no more  
8 IRCs pending.

9 CHAIRPERSON MILLER: Great. That is a huge  
10 accomplishment. We're so impressed.

11 MS. HALSEY: Yeah. So that ICAN was our last  
12 pending IRC. For those commission members who have  
13 been around for a long time, it used to be that we had  
14 hundreds of IRCs pending. So this is the first time  
15 since I've worked with the commission that we've had  
16 none, so it's kind of a big deal.

17 Also, there are 39 pending test claims, and 38 of  
18 those are regarding stormwater NPDES permits. There's  
19 also one amendment to parameters and guidelines and one  
20 statewide cost estimate active and pending. And then  
21 there is one additional parameters and guidelines  
22 regarding stormwater NPDES, which is on inactive status  
23 pending the outcome of litigation that is currently  
24 pending.

25 Commission staff currently expects to complete all

1 pending test claims by approximately the December 2025  
2 commission meeting, depending on staffing and other  
3 workload. However, some of the test claims may be  
4 heard and decided earlier than currently indicated if  
5 they're consolidated for hearing, which will be  
6 determined at a later time.

7 For tentative agenda items, please check the  
8 executive director's report and see if an item you're  
9 interested in is coming up in the next couple of  
10 hearings. Please also note that the amendment to  
11 parameters and guidelines for racial and identity  
12 profiling is tentatively set for the January hearing  
13 but was inadvertently left off the executive director  
14 report.

15 You can access the pending case load documents for  
16 the -- for all matters on the commission's website, and  
17 those are updated at least bimonthly, and you can see  
18 when all matters that are pending are tentatively set  
19 for hearing. Please expect to receive draft proposed  
20 decisions on all test claim and IRC matters for your  
21 review and comment at least eight weeks prior to the  
22 hearing date and a proposed decision approximately two  
23 weeks before the hearing. And that is all I have.

24 CHAIRPERSON MILLER: Great. Thank you.

25 Any questions for Ms. Halsey?

1           Seeing none, we are now going to adjourn into  
2 closed session pursuant to Government Code Section  
3 11126(e), to confer with and receive advice from legal  
4 counsel for consideration and action as necessary and  
5 appropriate upon the pending litigation listed on the  
6 published notice and agenda and to confer with and  
7 receive advice from legal counsel regarding potential  
8 litigation.

9           We'll also confer on personnel matters pursuant to  
10 Government Code Section 11126(a)(1), and we will  
11 reconvene in open session in approximately 15 minutes.  
12 And we will be back to report out from closed session.  
13 I don't see on my calendar invite the closed session  
14 link. Oh, I do actually. It's at noon, and it was  
15 sent by Ms. Palchik. Just so everyone knows that you  
16 do have the closed session link within your calendar.

17           So for board members, if you can leave this Zoom  
18 link and join the one --

19           MS. HALSEY: And just let me clarify. If you don't  
20 have it on your calendar, you should have it in your  
21 email to accept, and it came this morning.

22           CHAIRPERSON MILLER: Great. Thank you very much.  
23 We'll see you in a moment in closed session. Thank  
24 you, everybody.

25           (Closed session was held from 11:28 a.m. to

1 11:59 a.m.)

2 CHAIRPERSON MILLER: Thank you everyone and welcome  
3 back. The commission met in closed executive session  
4 pursuant to Government Code Section 1126(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.

10 The commission also conferred on personnel matters  
11 pursuant to Government Code Section 11126(a)(1).

12 With no further business to discuss, I will  
13 entertain a motion to adjourn, please. I'll move to  
14 adjourn. Is there a second?

15 MEMBER OLSEN: Second.

16 CHAIRPERSON MILLER: Thank you, Ms. Olsen.

17 It has been moved and seconded that we adjourn the  
18 meeting. And Heather, do you want to call a quick roll  
19 call, please?

20 MS. HALSEY: Sure.

21 Mr. Adams.

22 MEMBER ADAMS: Aye.

23 MS. HALSEY: Ms. Miller.

24 CHAIRPERSON MILLER: Aye.

25 MS. HALSEY: Mr. Morgan.

1 MEMBER MORGAN: Aye.

2 MS. HALSEY: Ms. Nash.

3 MEMBER NASH: Aye.

4 MS. HALSEY: Ms. Olsen.

5 MEMBER OLSEN: Aye.

6 MS. HALSEY: Mr. Silva.

7 MEMBER SILVA: Aye.

8 MS. HALSEY: Mr. Walker.

9 MEMBER WALKER: Aye.

10 MS. HALSEY: Thank you.

11 CHAIRPERSON MILLER: Great. We are adjourned.

12 Really appreciate everyone today. Congratulations to

13 Mariko. We really appreciate your service to the

14 commission. You will be missed. Thank you, thank you,

15 thank you. And take care, everyone.

16 MS. HALSEY: Happy holidays, everyone.

17 CHAIRPERSON MILLER: Oh, yes. Happy holidays. See

18 you next year.

19 (Proceedings concluded at 12:01 p.m.)

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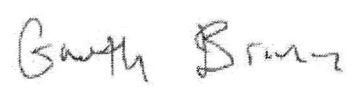
CERTIFICATE OF REPORTER

I, GARETH J. BRISCOE, 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, Gareth J. Briscoe, 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, 2022.



\_\_\_\_\_  
GARETH J. BRISCOE, CSR  
Certified Shorthand Reporter  
License No. 13950