

Hearing: February 13, 2026

Item 2

Proposed Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: California Department of Food and Agriculture (CDFA),
First Floor Auditorium, 1220 N Street, Sacramento, California, 95814 and via Zoom
December 5, 2025

Present: Member Michele Perrault, Chairperson
Representative of the Director of the Department of Finance
Member David Oppenheim, Vice Chairperson
State Controller
Member Lee Adams
County Supervisor
Member Karen Greene Ross
Public Member
Member William Pahland
Representative of the State Treasurer
Member Alexander Powell
Representative of the Director of the Office of Land Use and Climate
Innovation

Absent: Member Renee Nash
School District Board Member

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 Perrault called the meeting to order at 10:02 a.m. Executive Director Gmur stated that Member Nash notified Commission staff that she would not be able to attend this meeting and called the roll. Members Adams, Greene Ross, Oppenheim, Pahland, Perrault, and Powell, all indicated that they were present with Member Nash absent.

APPROVAL OF MINUTES

Chairperson Perrault asked if there were any objections to or additional corrections of the September 26, 2025 minutes. There was no response. Chairperson Perrault asked if there was any public comment on this item. There was no response. Chairperson Perrault stated that there were no public comments in the room. Member Greene Ross made the motion to adopt the minutes. Assistant Executive Director Supachana stated that there were no online public comments. Chairperson Perrault asked if there were any questions from the Members. There was no response. Chairperson Perrault asked if there was a second to the motion. Member Oppenheim seconded the motion to adopt the minutes. Executive Director Gmur called the roll. The Commission voted to adopt the September 26, 2025 minutes by a vote of 6-0 with Member Nash absent.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

Chairperson Perrault asked if there was any public comment. There was no response. Chairperson Perrault stated that there were no public comments in the room. Assistant Executive Director Supachana stated that there were no online public comments.

CONSENT CALENDAR

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

ADOPTION OF RULEMAKING CALENDAR

Item 6* Proposed Rulemaking Calendar, 2026

STATEWIDE COST ESTIMATES

Item7* Public School Restrooms: Menstrual Products, 22-TC-04

Executive Director Gmur stated that Items 6 and 7 were proposed for consent. Chairperson Perrault asked if there were any objections to the proposed consent calendar from the Members. There was no response. Chairperson Perrault asked if there were any objections to the proposed consent calendar from the public. There was no response. Assistant Executive Director Supachana stated that there were no online public comments. Chairperson Perrault asked for a motion to adopt the consent calendar. Member Powell made the motion to adopt the consent calendar. Member Adams seconded the motion. Executive Director Gmur called the roll. The Commission voted to adopt the consent calendar by a vote of 6-0 with Member Nash absent.

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

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

TEST CLAIMS

Item 2 *California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2012-0175, 13-TC-01 and 13-TC-02*
California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2012-0175, Parts III.A.1., III.A.2., and III.A.4.a.-d. (Non-stormwater Discharges); Part VI.E.1.c., Part VI.E.2.a., and Attachments K through Q, and the Monitoring Provisions in Part VI.B. and Attachment E - Parts II.E.1. through 3., and Part V.; and Parts VI.A.1.b.iii.-iv., VI.B.2., VI.C.1.a., VI.D.1.a., VIII.B.1.b.ii., IX.A.5., IX.C.1.a., IX.E.1.a. and b., IX.G.1.b., IX.G.2. (TMDLs); Parts VI.D.4.d.v.2., VI.D.4.d.v.3., VI.D.4.d.v.4., VI.D.4.d.vi.1.a., VI.D.4.d.vi.1.c., VI.D.4.d.vi.1.d., VI.D.10.d.iii., VI.D.10.d.iv., VI.D.10.d.v., VI.D.10.e.i.1., VI.D.10.e.i.3., and VI.D.10.e.i.4. (Illicit Connections and Discharge Elimination Program); Part VI.D.5.a.-d. (Public Information and Participation

Program); Part VI.D.6.b., d., and e. (Industrial and Commercial Facilities Program); Part VI.D.7.d.iv.1.a., b., and c., and Attachment E, Part X (Planning and Land Development Program); Parts VI.D.8.g.i. and ii., VI.D.8.h., VI.D.8.i.i., ii., iv., and v., VI.D.8.j., and VI.D.8.l.i. and ii. (Development Construction Program); Parts VI.D.4.c.iii., VI.D.4.c.vi., VI.D.4.c.x.2., and Parts VI.D.9.c., VI.D.9.d.i., ii., iv., and v., VI.D.9.g.ii., VI.D.9.h.vii., VI.D.9.k.ii. (Public Agency Activities Program), Adopted on November 8, 2012, and effective on December 28, 2012

County of Los Angeles; Los Angeles County Flood Control District; and the Cities of Agoura Hills, Bellflower, Beverly Hills, Carson, Cerritos, Commerce, Downey, Huntington Park, Lakewood, Manhattan Beach, Norwalk, Pico Rivera, Rancho Palos Verdes, Redondo Beach, Santa Fe Springs, Signal Hill, South El Monte, Vernon, Westlake Village, and Whittier, Claimants

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the Proposed Decision to partially approve the Test Claim.

Howard Gest appeared on behalf of the County of Los Angeles, Los Angeles County Flood Control District; and the Cities of Agoura Hills, Bellflower, Beverly Hills, Carson, Cerritos, Commerce, Downey, Huntington Park, Lakewood, Manhattan Beach, Norwalk, Pico Rivera, Rancho Palos Verdes, Redondo Beach, Santa Fe Springs, Signal Hill, South El Monte, Vernon, Westlake Village, and Whittier. Marilyn Munoz appeared on behalf of the Department of Finance. Jennifer Fordyce, Jenny Newman, and Adriana Nunez appeared on behalf of the State Water Resources Control Board and the Los Angeles Regional Water Quality Control Board.

Following statements by Mr. Gest, Ms. Munoz, Ms. Nunez, and Ms. Newman, Chairperson Perrault asked if there were any public comments on this item. There was no response. Assistant Executive Director Supachana stated that there were no online public comments. Chairperson Perrault stated that there were no public comments in the room and asked if there were any questions from the Members. Members Pahland and Oppenheim stated that they had questions but preferred to hear staff's response to the statements made. Following discussion between Chief Legal Counsel Shelton, Member Pahland, Member Powell, Mr. Gest, Chairperson Perrault, and Ms. Nunez, Chairperson Perrault asked if there was a motion on this item. Member Oppenheim made the motion to adopt the staff recommendation. Member Powell seconded the motion. Executive Director Gmur called the roll. The Commission voted to adopt the Proposed Decision by a vote of 6-0 with Member Nash absent.

Chairperson Perrault requested a break in the proceedings on behalf of the court reporter at 11:20 a.m. At 11:35 a.m., the Commission reconvened in open session.

Item 3 *Internet Websites and Email Addresses*, 24-TC-04

Statutes 2023, Chapter 586 (AB 1637); Government Code Section 50034(a)(1)-(2) and (b)

County of Santa Clara, Claimant

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

Joshua Walden appeared on behalf of the County of Santa Clara. Kaily Yap appeared on behalf of the Department of Finance.

Following statements by Mr. Walden and Ms. Yap, Chairperson Perrault asked if there were any public comments on this item. There was no response. Chairperson Perrault stated that there were no public comments in the room and asked if there were any online. Assistant Executive Director Supachana stated that there were no online public comments. Chairperson Perrault asked if there were any questions from the Members. There was no response. Chairperson Perrault stated that there were no questions from the Members and asked if there was a motion. Member Adams made the motion to adopt the staff recommendation. Member Oppenheim seconded the motion. Executive Director Gmur called the roll. The Commission voted to adopt the Proposed Decision by a vote of 6-0 with Member Nash absent.

PARAMETERS AND GUIDELINES WITH A REASONABLE REIMBURSEMENT METHODOLOGY (RRM)

Item 4 Proposed Decision on the Parameters and Guidelines and Claimants' Proposed Reasonable Reimbursement Methodology (RRM) and Parameters and Guidelines

San Diego Regional Water Quality Control Board Order No. R9-2007-0001, Permit CAS0108758, Parts D.3.a.(3)(b)(iii), D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii-vi), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3), E.2.f., E.2.g., F.1., F.2., F.3., I.1., I.2., I.5., J.3.a.(3)(c)(iv)-(viii), (x)-(xv), the first sentence of L.1. as it applies to the newly mandated activities, and L.1.a.(3)-(6), 07-TC-09-R

County of San Diego, Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, and Vista, Claimants

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the Proposed Decision and Parameters and Guidelines.

Anya Kwan and John Quenzer appeared on behalf of the County of San Diego, and the Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, and Vista. Marilyn Munoz and Viet-Long Nguyen appeared on behalf of the Department of Finance. Jennifer Fordyce, Ben Neill, and Erica Ryan appeared on behalf of the State Water Resources Control Board and the San Diego Regional Water Quality Control Board.

Following statements by Ms. Kwan, Mr. Quenzer, Ms. Munoz, and Ms. Fordyce, Chairperson Perrault asked if there were any public comments on this item. There was no response. Chairperson Perrault stated that there were no public comments in the room and asked if there were any online. Assistant Executive Director Supachana stated that there were no online public comments. Following statements by Chief Legal Counsel Shelton, Chairperson Perrault asked if there were any questions from the Members. Following statements by Member Adams and additional discussion between Member Pahland and Ms. Kwan, Chairperson Perrault asked if there were any questions from the Members. There was no response. Chairperson Perrault asked if there was a motion. Member Greene Ross made the motion to adopt the staff recommendation. Member Oppenheim seconded the motion. Executive Director Gmur called the roll. The Commission voted to adopt the Proposed Decision and Parameters and Guidelines by a vote of 6-0 with Member Nash absent.

PARAMETERS AND GUIDELINES

Item 5 *Elections: Ballot Label, 24-TC-01*

Statutes 2022, Chapter 751, Section 5 (AB 1416); Elections Code Section 9051

County of Los Angeles, Claimant

Senior Commission Counsel Laura Dougherty presented this item and recommended that the Commission adopt the Proposed Decision and Parameters and Guidelines.

Chairperson Perrault stated that the Commission did not receive notification from any parties or witnesses for this item and asked if there were any parties or witnesses that would like to appear who have arrived after the swearing in. There was no response. Chairperson Perrault stated that there were no parties or witnesses for this item in the room. Assistant Executive Director Supachana stated that there were no parties or witnesses for this item online. Chairperson Perrault asked if there was any public comment. There was no response. Chairperson Perrault stated that there was no public comment in the room. Assistant Executive Director Supachana stated that there were no online public comments. Chairperson Perrault asked if there were any questions from the Members. There was no response. Chairperson Perrault stated that there were no questions from the Members and asked if there was a motion. Member Oppenheim made the motion to adopt the staff recommendation. Member Greene Ross seconded the motion. Executive Director Gmur called the roll. The Commission voted to adopt the Proposed Decision and Parameters and Guidelines by a vote of 6-0 with Member Nash absent.

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

REPORTS

Item 8 Legislative Update (info)

Program Analyst Jill Magee presented this item.

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

Chief Legal Counsel Shelton presented this item.

Item 10 Executive Director: Workload Update and Tentative Agenda Items for the February 2026, April 2026, and June 2026 Meetings (info)

Executive Director Gmur presented 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 12:33 p.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 are no cases currently 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 12:55 p.m., the Commission reconvened in open session.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Perrault 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 Perrault asked for a motion to adjourn. Member Oppenheim made the motion to adjourn the meeting. Member Greene Ross seconded the motion. Executive Director Gmur called the roll. The December 5, 2025, meeting was adjourned at 12:56 p.m., by a vote of 6-0 with Member Nash absent.

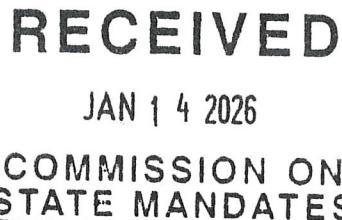
Juliana F. Gmur
Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

PUBLIC MEETING

FRIDAY, DECEMBER 5, 2025

10:00 A.M.



CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)

FIRST FLOOR AUDITORIUM

1220 N STREET

SACRAMENTO, CALIFORNIA

AND
VIA ZOOM

VIDEO COMMUNICATIONS PLATFORM

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

STENOGRAPHICALLY REPORTED BY:
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Certified Shorthand Reporter No. 13061
Registered Professional Reporter

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

2 COMMISSIONERS PRESENT

3 MICHELE PERRAULT

4 Representative for Joe Stephenshaw
Department of Finance
(Chairperson of the Commission)

5 WILLIAM PAHLAND

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

7 LEE ADAMS III

8 Sierra County Supervisor
9 Local Agency Member

10 ALEXANDER POWELL

11 Representative for SAMUEL ASSEFA, Director
Office of Land Use and Climate Innovation

12 DAVID OPPENHEIM

13 Representative for MALIA COHEN
State Controller

14 KAREN GREENE ROSS

15 Public Member

16 ---o0o---

18 COMMISSION STAFF

19 JULIANA GMUR

20 Executive Director

21 DENNIS SUPACHANA

22 Assistant Executive Director

23 CAMILLE N. SHELTON

24 Chief Legal Counsel

25 JILL MAGEE

Program Analyst

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

2 COMMISSION STAFF
(Continued)

3 ANNA BARICH
Commission Counsel

5 LAURA DOUGHERTY
Senior Commission Counsel

6 ---o0o---

7 PUBLIC PARTICIPANTS

8 HOWARD GEST
9 County of Los Angeles, et al., Claimant
(Item 2)

10 MARILYN MUÑOZ
11 Department of Finance
(Items 2 and 4)

12 JENNIFER FORDYCE
13 State Water Resources Control Board
and
14 Los Angeles Regional Water Quality Control Board
(Item 2)
15 State Water Resources Control Board
and
16 San Diego Regional Water Quality Control Board
(Item 3)

17 JENNY NEWMAN
18 State Water Resources Control Board
and
19 Los Angeles Regional Water Quality Control Board
(Item 2)

20 ADRIANA NUNEZ
21 State Water Resources Control Board
and
22 Los Angeles Regional Water Quality Control Board
(Item 2)

23 JOSHUA WALDEN
24 County of Santa Clara, Claimant
(Item 3)

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

**PUBLIC PARTICIPANTS
(Continued)**

KAILY YAP
Department of Finance
(Item 3)

ANYA KWAN
County of San Diego, et al., Claimants
(Item 4)

JOHN QUENZER
County of San Diego, et al., Claimants
(Item 4)

VIET-LONG NGUYEN
Department of Finance
(Item 4)

BEN NEILL
State Water Resources Control Board
and
San Diego Regional Water Quality Control Board
(Item 4)

ERICA RYAN
State Water Resources Control Board
and
San Diego Regional Water Quality Control Board
(Item 4)

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2	13	<u>(Vice Chairperson of the Commission)</u>
72	16	<u>Mr. Madam Chair</u>
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13 County of San Diego, Cities of 14 Carlsbad, Chula Vista, Coronado, 15 Del Mar, El Cajon, Encinitas, 16 Escondido, Imperial Beach, La 17 Mesa, Lemon Grove, National City, 18 Oceanside, Poway, San Diego, San 19 Marcos, Santee, Solana Beach, and 20 Vista, Claimants	
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25 ---oo---	

1 FRIDAY, DECEMBER 5, 2025, 10:02 A.M.

2 ---00---

3 CHAIRPERSON PERRAULT: Good morning. I would like
4 to call the December 5th, 2025, Commission on State
5 Mandates meeting to order.

6 Please bear with me. I have a little bit of
7 housekeeping before we get started with our business for
8 the morning. The meeting -- this is our hybrid meeting,
9 so we have both folks in person and online.

10 For those participating in person, I do have some,
11 like I said, housekeeping information regarding the
12 building.

13 On the table at the back of the room are paper
14 copies of the meeting notice and agenda, new filings,
15 proposed consent calendar, and witness list. The
16 electronic public hearing binder is also located there
17 on the laptop.

18 Please note that the room is microphoned, so
19 speakers and microphones on all devices must stay muted
20 for the duration of meeting to eliminate feedback noise.

21 When called up for an item, the parties and
22 witnesses will please come to the table and sit at a
23 designated laptop.

24 The restrooms are located out the entrance door and
25 through the door on the left. The men's restroom is

1 located on the right; and the women's restroom is at the
2 end of hallway to the right.

3 Finally, please take note of the emergency exits in
4 the room. In the event of an emergency, please exit to
5 the door to my left, turn left, and go down the stairs.

6 For those participating remotely, the materials for
7 today's meeting, including the notice, agenda, proposed
8 consent calendar, and witness list are available on the
9 Commission's website at www.csm.ca.gov under the
10 "Hearings" tab.

11 When being sworn in at the beginning of the hearing
12 and when called for an item, the parties and witnesses
13 will please turn on their video and unmute their
14 microphone. At the conclusion of the item, please turn
15 off the video and mute the microphone.

16 In the event we experience technical difficulties
17 or the meeting is bumped offline, we will restart and
18 allow time for people to rejoin before recommencing the
19 meeting. If we are unable to restart, a notice will be
20 posted on the Commission's website listing the items to
21 be heard at the next meeting.

22 Please remember to speak slowly and accurately for
23 the benefit of the court reporter and an accurate
24 transcript of the hearing.

25 With that, Juliana, will you please call roll.

1 MS. GMUR: Yes, ma'am.

2 Member Nash notified Commission staff that she will

3 not be able to attend this meeting.

4 Mr. Adams.

5 MEMBER ADAMS: Here.

6 MS. GMUR: Ms. Greene Ross.

7 MEMBER GREENE ROSS: Here.

8 MS. GMUR: Mr. Oppenheim.

9 MEMBER OPPENHEIM: Here.

10 MS. GMUR: Mr. Pahland.

11 MEMBER PAHLAND: Here.

12 MS. GMUR: Ms. Perrault.

13 CHAIRPERSON PERRAULT: Here.

14 MS. GMUR: Mr. Powell.

15 MEMBER POWELL: Here.

16 MS. GMUR: Madam, we have a quorum.

17 CHAIRPERSON PERRAULT: Great. Thank you so much.

18 Next is Item 1.

19 Are there any objections to or additional

20 corrections of the September 26, 2025, minutes?

21 (No response.)

22 CHAIRPERSON PERRAULT: Seeing none, are there any

23 public comments on this item, either in the room or

24 online?

25 (No response.)

1 CHAIRPERSON PERRAULT: Seeing none in the room.

2 MEMBER GREENE ROSS: Move to approve.

3 MR. SUPACHANA: Madam Chair, there's no public
4 comments online.

5 CHAIRPERSON PERRAULT: Thank you so much.

6 And no -- is there any questions from the members?

7 (No response.)

8 CHAIRPERSON PERRAULT: Okay. We have a motion from
9 Ms. Greene Ross.

10 Is there a second?

11 MEMBER OPPENHEIM: I will second.

12 CHAIRPERSON PERRAULT: Second by Mr. Oppenheim.

13 If we could please have a roll call.

14 MS. GMUR: Mr. Adams.

15 MEMBER ADAMS: Aye.

16 MS. GMUR: Ms. Greene Ross.

17 MEMBER GREENE ROSS: Aye.

18 MS. GMUR: Mr. Oppenheim.

19 MEMBER OPPENHEIM: Aye.

20 MS. GMUR: Mr. Pahland.

21 MEMBER PAHLAND: Abstain.

22 MS. GMUR: Ms. Perrault.

23 CHAIRPERSON PERRAULT: Aye.

24 MS. GMUR: Mr. Powell.

25 MEMBER POWELL: Aye.

1 CHAIRPERSON PERRAULT: Great. That motion carries.

2 Now we'll go ahead and move on to our next item,
3 which is public comment.

4 MS. GMUR: Public comment for matters not on the
5 agenda -- please note that the Commission may not take
6 action on items not on the agenda. However, it may
7 schedule issues raised by the public for consideration
8 at future meetings. We invite the public to comment on
9 matters that are on the agenda as they are taken up.

10 CHAIRPERSON PERRAULT: Thank you so much.

11 With that, is there any public comment either here
12 in the room or online?

13 (No response.)

14 CHAIRPERSON PERRAULT: Seeing none --

15 MR. SUPACHANA: Madam Chair, there are no -- oh,
16 sorry.

17 CHAIRPERSON PERRAULT: Go ahead.

18 MR. SUPACHANA: Apologies.

19 There are no public comments online.

20 CHAIRPERSON PERRAULT: Thank you so much.

21 With that, hearing no public comment, we will go
22 ahead and move on to our next item, which is the consent
23 calendar.

24 Ms. Gmur.

25 MS. GMUR: Next is the proposed consent calendar.

1 Items 6 and 7 are proposed for consent.

2 CHAIRPERSON PERRAULT: Thank you so much.

3 Are there any objections to the proposed consent

4 calendar from members of the board? Of the Commission?

5 (No response.)

6 CHAIRPERSON PERRAULT: No?

7 Are there any objections from those from the

8 public?

9 (No response.)

10 MR. SUPACHANA: Madam Chair, there are no public

11 comments online.

12 CHAIRPERSON PERRAULT: Okay. Is there a motion to

13 adopt the proposed consent calendar?

14 MEMBER POWELL: Madam Chair, I move to adopt the

15 proposed consent calendar.

16 CHAIRPERSON PERRAULT: Thank you. It's been moved.

17 Do I have a second?

18 MEMBER ADAMS: I would second.

19 CHAIRPERSON PERRAULT: And a second.

20 If we could please have a roll call.

21 MS. GMUR: Yes, ma'am.

22 Mr. Adams.

23 MEMBER ADAMS: Aye.

24 MS. GMUR: Ms. Greene Ross.

25 MEMBER GREENE ROSS: Aye.

1 MS. GMUR: Mr. Oppenheim.
2 MEMBER OPPENHEIM: Aye.
3 MS. GMUR: Mr. Pahland.
4 MEMBER PAHLAND: Aye.
5 MS. GMUR: Ms. Perrault.
6 CHAIRPERSON PERRAULT: Aye.
7 MS. GMUR: Mr. Powell.
8 MEMBER POWELL: Aye.
9 CHAIRPERSON PERRAULT: All right. Thank you. That
10 motion carries.
11 Now we will go ahead and I will turn it to Ms. Gmur
12 to do -- to dispense with our swearing-in.
13 MS. GMUR: Will the parties and witnesses for Items
14 2, 3, and 4, participating remotely, please be sure that
15 both your first and last names are listed on your Zoom
16 window for the benefit of the court reporter; turn on
17 your video, and unmute your microphones.
18 And will the parties and witnesses participating in
19 person for Items 2, 3, and 4 please approach the witness
20 table.
21 And all parties and witnesses please rise.
22 Beginning with Item 2, on behalf of the claimants
23 participating remotely, please state your names for the
24 record.
25 MR. GEST: Howard -- excuse me. Howard Gest.

1 MS. GMUR: And now for the Department of Finance,
2 participating remotely, please state your names for the
3 record.

4 MS. MUÑOZ: Marilyn Muñoz.

5 MS. GMUR: And now for the State Water Resource
6 Control Board and the Los Angeles Regional Water Quality
7 Control Board, participating in person, please state
8 your names for the record.

9 MS. NUNEZ: Adriana Nunez.

10 MS. FORDYCE: Jennifer Fordyce.

11 MS. NEWMAN: Jenny Newman.

12 MS. GMUR: Item 3. On behalf of the claimant, the
13 County of Santa Clara, participating in person, please
14 state your names for the record.

15 MR. WALDEN: Josh Walden.

16 MS. GMUR: And for the Department of Finance,
17 participating remotely, please state your name for the
18 record.

19 MS. YAP: Kaily Yap.

20 MS. GMUR: Item 4. On behalf of the claimants
21 participating in person, please state your names for the
22 record.

23 MS. KWAN: Anya Kwan.

24 MR. QUENZER: John Quenzer.

25 MS. GMUR: And for the claimants participating

1 | remotely, please state your names for the record.

2 (No response.)

3 MS. GMUR: And for the Department of Finance,
4 participating remotely, please state your name for the
5 record.

6 MS. MUÑOZ: Marilyn Muñoz.

7 MS. GMUR: And now the State --

8 MR. NGUYEN: Viet-Long Nguyen.

9 MS. GMUR: Oh, apologize. Thank you.

10 And now for the State Water Resources Control Board
11 and San Diego Regional Water Quality Control Board,
12 participating in person, please state your names for the
13 record.

14 MS. FORDYCE: Jennifer Fordyce.

15 MR. NEILL: Ben Neill.

16 MS. RYAN: Erica Ryan.

17 MS. GMUR: We have not been award -- made aware of
18 any parties or witnesses appearing on Item 5.

19 Would anyone like to make an appearance on Item 5,
20 either in person or remotely?

21 (No response.)

22 MS. GMUR: Thank you.

23 And now, if you will all please rise.

24 (Parties/witnesses stood to be sworn or
25 affirmed.)

1 MS. GMUR: Do you solemnly swear or affirm that the
2 testimony which you are about to give is true and
3 correct, based on your personal knowledge, information,
4 and belief?

5 (Affirmative responses.)

6 MS. GMUR: Is that everyone? Lovely.

7 Please be seated.

8 And now we ask the presenters presenting remotely
9 for Items 2 -- Items 3 and 4 to please turn off their
10 video and mute their microphones; and those presenting
11 in person, please return to your seats.

12 Next is Item 2.

13 Chief Legal Counsel Camille Shelton will please
14 present the proposed decision on California Regional
15 Water Quality Control Board, Los Angeles Region, Order
16 Number R4-2012-0176, 13-TC-01 and 13-TC-02.

17 MS. SHELTON: Good morning.

18 These consolidated test claims allege reimbursable
19 State-mandated activities arising from a 2012 stormwater
20 permit adopted by the Los Angeles Regional Water Control
21 Board.

22 This test claim presents the following disputed
23 issues:

24 Number 1. Requirements to comply with 33 total
25 maximum daily loads, or TMDLs, previously adopted by the

1 Regional Board and the United States Environmental
2 Protection Agency.

3 A TMDL calculates the maximum amount of each
4 pollutant that a water body can assimilate and still
5 meet water quality standards and assigns wasteload
6 allocations to the permittees, which, in most cases,
7 requires a reduction of the discharge of a particular
8 pollutant by the permittee.

9 The test claim permit requires the permittees to
10 reduce and control the discharge of the pollutants in
11 accordance with the TMDLs and authorizes the claimants
12 to adopt a customized watershed management plan to
13 comply.

14 Staff finds that the requirement to develop and
15 submit a watershed management plan to achieve the
16 wasteload allocations contained in some of the
17 EPA-adopted TMDLs is a reimbursable State-mandated
18 activity from December 26, 2012, through
19 December 17th -- excuse me. December 31st, 2017.

20 For these TMDLs, if the claimants fail to develop a
21 watershed plan, immediate compliance with the numeric
22 effluent limitation identified in the TMDLs is required.
23 And the failure to comply is subject to civil penalties.

24 Permittees have fee authority sufficient as a
25 matter of law to cover any costs beginning January 1st,

1 2018.

2 The remaining TMDL requirements, including
3 compliance with the Regional Board TMDLs and
4 implementation of all the TMDLs are not new and do not
5 mandate a new program or a higher level of service.

6 Number 2. Requirements involving the prohibition
7 of nonstormwater discharges and conditionally exempt
8 nonstormwater discharges.

9 Staff finds that most of these sections do not
10 impose new requirements when compared to prior law. And
11 the claimants have the option of customizing their
12 program for conditionally exempt nonstormwater
13 discharges; that's the sections addressing nonstormwater
14 discharges do not mandate a new program or a higher
15 level of service.

16 Number 3. Requirements relating to the Illicit
17 Connection and Discharge Elimination Program, the Public
18 Information and Participation Program, the Industrial
19 and Commercial Facilities Program, the Development
20 Construction Program, and the Public Agency Activities
21 Program, all of which are designated as minimum control
22 measure categories required by federal law.

23 Staff finds that these sections do not mandate a
24 new program or a higher level of service. The claimants
25 have the option to comply with the requirements stated

1 in the permit, many of which are not new, or develop a
2 customized watershed management program that complies
3 with federal law.

4 In addition, any new or increased costs to comply
5 with the Industrial and Commercial Facilities Program
6 and the Development Construction Program can legally be
7 recovered through the claimants' regulatory fee
8 authority; and, thus, there are no costs mandated by the
9 State for these programs.

10 And Number 4. Requirements contained in the
11 Planning and Development Program, including requirements
12 to track, enforce, and inspect new development and
13 redevelopment post-construction best management
14 practices.

15 Staff finds that this section does impose new
16 requirements that are mandated by the State. However,
17 the costs to comply with the new requirements can
18 legally be recovered through the claimants' regulatory
19 fee authority; and, thus, there are no costs mandated by
20 the State for these programs.

21 I will also note that the claimants'
22 representative, Mr. Gest, did submit late comments this
23 morning by email to me and the Water Board staff. He
24 did submit them through the Dropbox about a half an hour
25 ago, maybe 45 minutes ago, so we haven't been able to

1 serve the mail list. But they are working on it right
2 now.

3 And we did -- all members did get the email
4 forwarded. And we did send a copy to Ms. Munoz from the
5 Department of Finance.

6 Accordingly, staff does recommend that the
7 Commission adopt the proposed decision to partially
8 approve this test claim for only the activity of
9 developing the watershed management plan for the
10 EPA-adopted TMDLs that are stated in the conclusion; and
11 authorize staff to make any technical, nonsubstantive
12 changes to the proposed decision following the hearing.

13 Thank you.

14 CHAIRPERSON PERRAULT: Thank you.

15 If the parties and witnesses for Item 2, if you are
16 here in the room, if you would please come to the -- to
17 the table.

18 And I believe if you are online, if you will
19 unmute.

20 While they are getting settled, Mr. Gest, for the
21 claimants, would you like to begin?

22 MR. GEST: Yes. Thank you. Excuse me.

23 Good morning, Chair and Members of the Committee.

24 Howard Gest on behalf of the claimants: The County
25 of Los Angeles, the Los Angeles County Flood Control

1 District, and 20 Los Angeles County cities.

2 As has been described, this is a test claim seeking
3 reimbursement for obligations and mandates imposed by a
4 2012 Los Angeles County municipal stormwater permit.

5 Claimants seek reimbursement for eight different
6 sets of activities imposed by that permit. And
7 claimants do not waive any of their claims or arguments
8 raised in this test claim or filings regarding the
9 claim.

10 But I am going to limit my argument this morning to
11 the sections relating to the total maximum daily loads,
12 as well as the monitoring for that, and, if I have time,
13 for the nonstormwater discharge prohibitions.

14 In particular, the claimants submit that it is --
15 the proposed decision errors as a matter of law, with
16 respect to reimbursement for the total maximum daily
17 obligations -- load obligations.

18 And it is also an error of fact to find that the
19 obligations imposed by the 2012 permit were not new.
20 The -- the proposed decision provides that these
21 requirements were, in essence, required by a prior
22 permit, the 2001 municipal stormwater permit; and this
23 is an error of both law and fact.

24 Before I begin, I just want to take a minute and --
25 and talk about a little bit of terms so we can all

1 follow the arguments.

2 This is an area that is rife with acronyms and
3 technical terms.

4 You have already heard "TMDLs" being splayed about.

5 So let me just take a minute.

6 First of all, you may hear the parties refer to an
7 "MS4," or a municipal stormwater permit. This is a
8 permit that is issued under the clean -- federal Clean
9 Water Act. It's issued to cities and counties for the
10 discharge of stormwater.

11 It is not related to a sanitary sewer. Instead,
12 what we are talking about is water that comes off the
13 streets, collected so that there's not flooding, and
14 then conveyed to the water bodies in Los Angeles here;
15 that would be the ocean or the rivers.

16 You will hear me refer to "receiving waters."
17 "Receiving waters" is just a fancy name for a water
18 body. For example, in Los Angeles, the Los Angeles
19 River is a receiving water; the San Gabriel River is a
20 receiving water; the ocean is a receiving water.

21 You may hear us refer to "water quality standards."
22 Again, this is just a fancy name for referring to the
23 amount of pollutants that might be in a water body and
24 still be able to support whatever use of that water
25 might be.

1 In other words, we don't live in a pristine
2 environment. There are pollutants that are generated by
3 the urban environment. But just because there's
4 something in the water doesn't mean that you still can't
5 swim in that water or fish in that water. And what
6 water quality standards are is this -- the amount of
7 pollutants that can be in that water and you can still
8 pursue those uses. And the California Water Code
9 recognizes that there are uses in the water and you can
10 have levels of pollutants up to certain levels.

11 You have heard the "TMDLs," which a shorthand for
12 total maximum daily loads. This is also, really, when
13 you come right down to it, just a number. The total
14 maximum daily loads come from all sources, be it natural
15 sources or human-made sources or other aerial deposition
16 sources.

17 And the total maximum daily load is the amount of
18 pollutants that can be added to the water body or the
19 receiving water body, and you still meet the water
20 quality standard.

21 A -- what's very important is that a TMDL is a
22 planning device. It is not in and of itself
23 enforceable. It only becomes relevant when it's
24 incorporated into a municipal stormwater permit, or MS4
25 permit. It's the permit that is enforceable, not the

1 TMDL. But the TMDL, as was mentioned, has wasteload
2 allocations, or load allocations. And those wasteload
3 allocations are -- when they are put into a permit, are
4 enforceable.

5 So I want to talk about the TMDLs that were put
6 into the 2012 municipal stormwater permit. This permit
7 incorporated 33 TMDLs. One of them is not an issue. As
8 was referenced, some were developed by the Los Angeles
9 Regional Water Control Board, and I will refer to them
10 as the State TMDLs. And some were developed by the
11 United States Environmental Protection Agency, and those
12 have been referred to as the U.S. EPA TMDLs.

13 The proposed decision agrees that the -- that 30 of
14 these TMDLs were new in the sense of not -- I'm saying
15 that they were placed in the permit for the first time.

16 The prior permit to which the proposed decision
17 compares the 2012 permit was adopted in 2001.

18 And as you will hear me address, one of the big
19 issues is, were the 2012 TMDL permits new? Because the
20 proposed decision basically finds that the claimants are
21 not entitled to reimbursement for the State-issued TMDLs
22 because there were provisions in the prior permit, which
23 was ten years prior, 2001, that contained provisions
24 that required similar activities. And we submit that
25 that's wrong, and I will get to that in a minute.

1 But we're dealing with -- there's really no dispute
2 that for 30 of these TMDLs, they were placed in the 2012
3 permit, and they were not in the prior permit.

4 So what -- what the proposed decision provides is
5 that in the 2001 permit, there were two different
6 provisions that rendered the -- these TMDLs, that were
7 included in the 2012 permit, as not new. One, which was
8 Part III.C. of the 2001 permit; and the other is a
9 section which is known as receiving water limitations.

10 And as I mentioned, "receiving waters," that is
11 just a fancy name for the Los Angeles River and the San
12 Gabriel River, the ocean. And the receiving water
13 limitations, in the 2001 permit, provided that the
14 permittees should not issue a discharge or a discharge
15 of the permittees should not cause or contribute to a
16 violation of or exceedance of the water quality
17 standards in a receiving water.

18 And that's all it said. And then it had some
19 provisions of what takes place if that occurs. But
20 that's basically the only standard that's provided.

21 So I want to address why the Part III.C. and why
22 the receiving waters did not require what was required
23 by the TMDLs and that is why the TMDLs that are in the
24 2012 permit are -- are new.

25 And you will find these -- this discussion, with

1 respect to part III.C., at pages 133 to 139 of the
2 proposed decision; and the receiving water discussion
3 follows thereafter, 139 through about 153.

4 And let me say, to the members of the Commission,
5 that this particular test claim raises an issue that I
6 think is -- is novel for the Commission; something that
7 the Commission has not decided.

8 Because as you will hear, in fact, III.C. is not
9 enforceable. And as you will hear, the receiving water
10 limitations are not lawful under the Clean Water Act.
11 And there's really no dispute about that.

12 But the proposed decision nevertheless says that
13 the Commission can look at these unenforceable
14 provisions from the 2001 permit to compare to what's in
15 the 2012 permit to determine whether it's new. And we
16 submit that that -- by doing something like that would
17 be an abuse of discretion as well as, in fact, those
18 provisions did not require this.

19 So let me just start to address this.

20 Part III.C. of the 2001 permit required that the
21 permittees have what was called a stormwater quality
22 management plan, and it anticipated the adoption of
23 TMDLs in the future. And it said that when TMDLs are
24 adopted or other changes occur, the permittees should
25 amend their stormwater quality management plan to

1 reflect that.

2 And the proposed decision says, well, this meant
3 that these were required under the 2001 permit and,
4 therefore, in 2012, they were not new.

5 First of all, that's an error of fact. The
6 TMDLs -- there's no evidence that the stormwater quality
7 management plan was ever amended to include these TMDLs.
8 And there's no evidence in the record, absolutely none,
9 that the TMDLs were part of the stormwater quality
10 management plan and that were -- they were enforced
11 against the -- the permittees.

12 So even though the provision referenced the
13 possibility, the stormwater quality management plan was
14 never amended. So as -- just as a matter of fact, it
15 was never included into the stormwater quality
16 management plan.

17 But this is also an error of law, if you should
18 find that, because Part III.C. is unenforceable. The
19 way it is worded and what the proposed decision is
20 providing that, all of a sudden, the TMDLs become
21 automatically included under the permit is wrong. And
22 it is wrong for -- for the following reason:

23 A permit -- first of all, remember, a TMDL is not
24 enforceable by itself. It has to be included within the
25 permit in order to be enforceable.

1 And the provision Part III.C. said that these
2 become part of the plan and become enforceable without
3 any notice or hearing.

4 But under the federal regulations and under the
5 California Water Code, you cannot amend a NPDES permit
6 such as this without notice and hearing.

7 So the provision in III.C. that becomes
8 automatically included is ineffective. And, in fact,
9 the regional board has recognized and has agreed that
10 this provision is ineffective to include any revisions
11 in the stormwater quality management plan within a
12 hearing before the regional board.

13 And I forwarded to the Commission this morning a
14 judgment in a case in the litigation over that 2001
15 permit. And this litigation is referenced in the
16 prop -- in the proposed decision, and the stormwater
17 quality management plan is referenced on page 136 of the
18 proposed decision. And so that there's -- it's
19 already -- so the litigation, and, in fact, the proposed
20 decision, rests on that litigation as part of their
21 argument.

22 I apologize for not having submitted this earlier.
23 I would request that the Commission does accept what I
24 forwarded this morning, which is a notice of entry of
25 judgment in the litigation that's referenced in page --

1 page 136 of the proposed decision.

2 And in the judgment, which is attached as Exhibit B
3 to this notice of entry of judgment, are several
4 judgments and several related cases, including the case
5 brought by the County of Los Angeles against the
6 Regional Board and the State Board.

7 And on page 5 of that proposed -- of that judgment,
8 it specifically states that, "As to the County's first
9 cause of action presented as Issue 8 during Phase 2 of
10 trial, the parties stipulated that Part III.C. of the
11 permit is interpreted to mean that revisions to the
12 stormwater quality management plan, directed by the
13 executive officer, pursuant to Part III.C., are not
14 elements of the permit, unless and until the permit is
15 modified to incorporate them pursuant to appropriate
16 notice and hearing."

17 So the Regional Board -- and this was in 2005 --
18 stipulated and agreed with the position that we're
19 asserting now, which is Part III.C. cannot be used to
20 automatically incorporate the TMDLs into the 2001
21 permit.

22 And the proposed decision's reliance on that
23 section and citing of that section for that purpose is
24 error. It's both an error of fact and an error of law.

25 The proposed decision goes on to say that even if

1 you can't rely on Part III.C., the 2001 permit included
2 a provision relating to receiving water limitations.
3 And as I mentioned, that said discharges shall not cause
4 or contribute to an exceedance of a water quality
5 standard.

6 As both a matter of fact and as a matter of law,
7 the Commission cannot rely on that provision either for
8 a finding that these TMDL provisions were imposed prior
9 to the 2012 permit.

10 First of all, it's an error of fact. Again,
11 there's no evidence that the TMDLs or their wasteload
12 allocations or any other elements were ever required of
13 the claimants or permittees.

14 The proposed decision doesn't assert that other
15 receiving water limitations that the TMDL wasteload
16 allocations were actually included.

17 Instead, it asserts that, well, the receiving water
18 limitations were similar; that we're dealing with water
19 quality standards, and, therefore, that was enough to
20 impose the same obligations.

21 However, that's an error of fact. The receiving
22 water limitations deal with what they talk about:
23 Receiving waters. The quality of -- of the water in the
24 LA River or in the San Gabriel River or in the ocean.

25 TMDLs do not impose obligations regarding the

1 receiving water limitations. TMDLs talk about what's
2 the amount of pollutant that claimant, City of X, can
3 have in the water, in its pipe, that then eventually
4 gets to the receiving water.

5 So it is a completely different obligation that's
6 being imposed by the TMDL, as a matter of fact.

7 And let me say that it's not sufficient to just
8 say, well, we are both trying to address the same
9 dis- -- prohibition against violations of water quality
10 standards.

11 In fact, that type of argument was rejected by the
12 court of appeal in the case "Department of Finance
13 versus Commission on State Mandates," which was a case
14 dealing with a stormwater permit in San Diego. And the
15 water boards there argued that, well, if you have got a
16 general standard, like compliance with MEP or compliance
17 with water quality standards, anything that you adopt
18 after that is not new because you already had to comply
19 with that standard.

20 And the Court specifically rejected that argument.
21 It said that "the application of section 6, however,
22 does not turn on whether underlying obligations to abate
23 pollution remains the same."

24 And then it went on to say, "To determine whether a
25 program imposed by the permit is new, we compare the

1 legal requirements imposed by the new permit with those
2 in effect before the new permit became effective."

3 This is so, even though the conditions were
4 designed to satisfy the same standard of performance.
5 So by just arguing that, well, you had an obligation to
6 meet water -- receiving water limits -- limits -- and
7 that's that very similar or might even be the same
8 standard as what's being required by the imposition of
9 the TMDLs, it's not new. But, in fact, the Court, in
10 the Third Circuit, rejected that very argument.

11 And, in fact, you can see why that's true in this
12 particular case; because receiving water limitations can
13 have exceedances of their water quality standards for
14 any reasons. It could be naturally occurring. It could
15 be algae growing. It could be bacteria or things coming
16 from a fire that's running off. It could be -- there
17 are a lot of different ways to control and a lot of
18 different ways to address what's going on in the
19 receiving water.

20 But with the TMDLs, the Los Angeles Regional Water
21 Quality Control Board came in and said, "You, Permittee,
22 in your discharge, in this particular pipe, before it
23 gets to the receiving waters, cannot have more than X
24 amount of pollutant in it. And you have to take action
25 to address that."

1 Now, that is different than what's in the receiving
2 waters. So as the Court said in the -- for the Third
3 Circuit Court of Appeals, it might have been the same
4 goal, but it's -- here, you are dealing with a specific
5 order by the water board, and so you cannot rely on
6 the -- just the general receiving water limitations as a
7 matter of fact.

8 But even more significantly, as a matter of law,
9 this Commission cannot rely on the receiving waters in
10 the 2001 permit. It cannot do so because the United
11 States Supreme Court, in the past year, has ruled that
12 the receiving water limitation provisions, like this
13 one, are unenforceable and unlawful under the Clean
14 Water Act. And that is in the "City and County of San
15 Francisco versus EPA." It involved receiving water
16 limitation language just like this one.

17 Now, nevertheless, the proposed decision is asking
18 this Commission to say even though this provision is
19 unlawful or unenforceable now under the 2001 permit, you
20 should still compare the 2012 TMDLs against that
21 unlawful, unenforceable provision. And we submit that
22 to do so would be an abuse of discretion.

23 The proposed decision says, well, it can't be
24 retroactive. The 2001 permit is already finished and
25 you, therefore, should not be able to say, well, that's

1 unlawful.

2 We're not asking this Commission to apply the U.S.
3 Supreme Court's decision to address the merits of the
4 2001 receiving water limitations.

5 We're asking it to apply in this case, and to say
6 that you cannot look at some unlawful provision just to
7 justify a finding that a new provision in a later permit
8 is not new.

9 And we would submit that if you don't recognize the
10 fact that the Supreme Court has ruled this unenforceable
11 and, therefore, you can't use it to compare it, is an
12 abuse of discretion, an error -- and an error of law.

13 And I will just say that even though I think that
14 this is a issue that this Commission does not normally
15 face, and probably -- it could well very be the first
16 time how -- can you compare it against an unlawful
17 provision to determine if something is new.

18 There isn't an analogous situation, and it is
19 governed by Government Code section 17565, which
20 specifically provides that if a local agency has been
21 incurring costs which are subsequently mandated by the
22 State, the State shall reimburse the local agency for
23 those costs incurred after the operative date of the
24 mandate.

25 And that's analogous to what you have here.

1 You have a situation where if you were going to
2 find that the receiving water limitations imposed a
3 similar requirement or -- which we have already said we
4 think is wrong. But if you were going to go that far,
5 you would still find that this is something that was
6 incurred, in essence, voluntarily because there was --
7 it's now been determined there was no legal obligation
8 to do that.

9 And so that would bring it within the intent and
10 purview of Government Code section 17565, which says
11 that you should provide a reimbursement for those costs
12 after the operative date of the mandate. And in that
13 case, that would be the -- the 2012 permit.

14 So as I will say at the end, what we suggest that
15 the Commission do is not necessarily adopt this decision
16 with respect to these TMDLs, but, instead, to remand it
17 back to the Commission staff for further analysis in
18 light of the fact that it cannot -- the Commission
19 cannot rely on part III.C. and cannot rely on the
20 receiving water limitations in the 2001 permit. And it
21 should remand it for further analysis in that regard
22 unless, of course, the Commission wants to go forward,
23 ahead, and just find, based upon these arguments, that
24 the claimants are entitled to reimbursement for the
25 TMDLs in the 2012 permit.

1 I'm not going to address the U.S. EPA TMDL portion
2 of the decision other than to -- we agree that preparing
3 the plan is a reimbursable mandate. But, of course, if
4 all the TMDLs are reimbursable mandates, meaning the
5 actions taken to implement them, that would be true for
6 the U.S. EPA TMDL as true. Again, the proposed decision
7 says, well, the implementation is not recoverable, but
8 because of the 2001 permit's receiving water limitations
9 or part III.C., or -- and as I have indicated, that's
10 not a correct position. That would be an abuse of
11 discretion if you found that.

12 The proposed decision finds that TMDL monitoring is
13 not new. The Commission should recognize that under the
14 2001 permit, there were only five monitoring stations,
15 and they were only operated by the LA County Flood
16 Control District.

17 The new -- the 2012 permit provides that monitoring
18 has to be conducted by all 82 cities that are permittees
19 under the permit. And all the claimants now have to
20 monitor.

21 So this is a new requirement that is imposed upon
22 the claimants.

23 In addition, the monitoring is for the TMDLs, which
24 is, again, the amount of pollutants in the particular
25 claimants' pipes or channels, not in the receiving

1 waters.

2 So, again, that is new. Yet, the proposed decision
3 does not recognize that.

4 And, certainly, even if it wasn't new, it is a
5 higher level of service. There's a higher level of
6 service when the mandate increases the actual level or
7 quality of governmental services provided. That's what
8 the Court found in the San Diego Unified School
9 District, 33 Cal.4th at 877.

10 Here, there's no question that there's much more
11 additional monitoring and -- of different analytes,
12 different pollutants, and of different quantity. And so
13 you are getting an increase in the actual level of
14 quality of governmental services.

15 So even if this was a prior mandate on the prior
16 permit, the additional TMDL monitoring is a new increase
17 in the actual level or quality of governmental services.

18 And then I would just say, in closing, with respect
19 to the nonstormwater prohibitions, the permit added
20 requirements that the claimants, in essence, police or
21 monitor different entities that were discharging what
22 they called conditionally-exempt nonstormwater
23 discharge.

24 And the proposed decision, even though it
25 recognized and it added these, says that this is not a

1 new program or a higher level of service, but it was an
2 additional obligation imposed upon the claimants.

3 And so, again, it certainly was, if not new -- and
4 we think it was new -- but if not new, a higher level of
5 service. And this portion of the decision should be
6 modified for that reason also.

7 As I say, we're not waiving our arguments with
8 respect to the other arg- -- other issues that we
9 raised. But I wanted to specifically address the TMDLs
10 and the TMDL monitoring in this nonstormwater
11 prohibition, because it is very clear that if the Court
12 adopts -- if the Court -- excuse me. If the Commission
13 adopts the proposed decision, it would be an abuse of
14 discretion; you would be using unenforceable provisions
15 to -- to find that this is not new.

16 So in closing, I would ask the Commission to not
17 adopt this decision; and either find that the TMDLs are
18 reimbursable in full or, alternatively, to remand it
19 back to the staff and have them further analyze the
20 TMDLs in light of the fact that they cannot rely on Part
21 III.C. of the 2001 permit or the receiving water
22 limitations in the 2001 permitted.

23 Thank you very much.

24 CHAIRPERSON PERRAULT: Thank you, Mr. Gest.

25 We'll go ahead now and turn to Ms. Munoz from the

1 Department of Finance.

2 Do you have any comments?

3 MS. MUÑOZ: No comments, other than the Department
4 of Finance supports staff recommendation.

5 CHAIRPERSON PERRAULT: Thank you, Ms. Muñoz.

6 All right. I will go ahead now and turn to
7 Ms. Fordyce, Ms. Newman, and Ms. Nunez, for the State
8 Water Resources Control Board and the Los Angeles
9 Regional Water Quality Control Board, here in the room.

10 Do you have any comments?

11 MS. NUNEZ: Did I get it right?

12 My name is Adriana Nunez. I'm an attorney with the
13 Water Resources Control Board. And here with me today
14 is the assistant chief counsel, Jennifer Fordyce; and
15 Jenny Newman with the -- the LA Water Board.

16 Our comments are -- I will keep them brief. The
17 water boards continue to recognize that -- the work of
18 the Commission staff in developing the proposed decision
19 you are considering today.

20 We agree with the conclusions in the proposed
21 decision to deny reimbursement, and appreciate the
22 Commission staff's revision to the proposed decision in
23 response to our comments on the draft decision as well
24 as staff's analysis of the objections raised by the
25 claimants.

1 While we continue to disagree with the proposed
2 conclusions that allow reimbursement, we have already
3 stated our objections in our written comments and will
4 not repeat those today.

5 To the extent that -- the late comments submitted
6 by claimants, if the Commission is inclined to hear
7 them, we do not think that they warrant any changes to
8 the decision, given that there's analysis in the
9 briefing that says even without III.C., the conclusions
10 would stay the same.

11 Thank you.

12 CHAIRPERSON PERRAULT: Thank you.

13 Any other comments from other --

14 MS. NUNEZ: No. But we're available to answer any
15 questions --

16 CHAIRPERSON PERRAULT: Okay.

17 MS. NEWMAN: -- as needed.

18 CHAIRPERSON PERRAULT: Thank you. Very much
19 appreciate it.

20 Are there any -- I'm going to bring it back to the
21 Commission and staff.

22 But are there any other public comments on this
23 item? I don't see any --

24 MR. SUPACHANA: Madam Chair, there are no other
25 online public comments. Apologies.

1 CHAIRPERSON PERRAULT: That's all right. Thank
2 you.

3 And I don't see any in the room.

4 So let me go ahead now and bring it back here to
5 the Commission. I don't know if staff would like to
6 also comment. Let me bring it to the Commission first,
7 if there's additional questions, and then I will have
8 staff respond. Are there questions from the Commission
9 on the proposed decision?

10 Mr. Pahland.

11 MEMBER PAHLAND: Well, yeah. I would like to
12 hear --

13 CHAIRPERSON PERRAULT: Staff first?

14 MEMBER PAHLAND: -- staff's response to the
15 contentions made by the petitioner.

16 CHAIRPERSON PERRAULT: All right.

17 MS. SHELTON: Okay.

18 (Court reporter clarification.)

19 CHAIRPERSON PERRAULT: Mr. Pahland will become --
20 will go closer to the mic from now on.

21 MEMBER PAHLAND: All right.

22 MEMBER OPPENHEIM: Madam Chair?

23 CHAIRPERSON PERRAULT: Yes.

24 MEMBER OPPENHEIM: I would second that request just
25 for --

1 CHAIRPERSON PERRAULT: Let me do that. Let's go
2 ahead and take this back to staff for -- for their
3 response. And then we can bring it back to the
4 Commission members for further conversation and
5 questions.

6 MS. SHELTON: Okay. Thank you. There is a lot to
7 unpack there.

8 First, let me just indicate that the prior permit
9 is a quasi-judicial decision. It is final and binding
10 on the Commission. The Courts have held, with respect
11 to our decisions and other quasi-judicial decisions,
12 that once they are final, then they -- they're binding;
13 and we don't have the authority to overturn them.

14 So your job is to interpret the language of the
15 prior permit. You cannot find that any of the
16 provisions are not enforceable. That's true for both
17 Part III.C. and for the receiving water limitations.

18 On the receiving water limitations -- just let me
19 jump to that.

20 Mr. Gest did refer to the City and County of San
21 Francisco case. That's a 2025 Supreme Court case. And
22 it did analyze the receiving water limitation language
23 in that permit.

24 The Courts have found, though, that a Supreme Court
25 decision only goes to -- to decisions that are still

1 open for review. And this 2001 decision is final. We
2 have no way to go back and to overturn that -- that
3 language.

4 So while the City and County of San Francisco
5 decision may impact other interpretations of permits
6 that are within -- that are still open on review, I
7 don't see -- it is not an abuse of discretion. We don't
8 have the authority to go back and -- and rule that
9 something is not valid from 2001.

10 The 2001 permit was litigated so much and upheld by
11 different levels of court. It is a decision that we
12 have to follow.

13 With respect to Part III.C., so the language there
14 in the permit directed the permittees to modify their
15 stormwater quality management plans when the TMDLs
16 became effective. Or the regional board TMDLs became
17 effective.

18 When you look back at the record, it is talking
19 about the regional board TMDLs. And the record,
20 including workshop agendas and fact sheets, indicated
21 that they wouldn't have to reopen the permit to do that
22 because there was enough notice and hearing during the
23 TMDL process.

24 The TMDLs are orders. They are resolutions. They
25 come with implementation plans that were adopted as part

1 of the resolutions. And, in fact, if you go to page --
2 let's see. If you go to PDF page 139, hard page 136,
3 there's a list of nine regional board TMDLs where the
4 final compliance deadline had passed before the test
5 claim permit was adopted.

6 So they -- I'm not understanding. If Mr. Gest is
7 suggesting that they didn't have to comply with those
8 TMDLs, they were required, by law, to comply with those
9 TMDLs before the test claim permit was even adopted.
10 So, you know, that -- they had to comply some way to do
11 that.

12 It is interesting about the late information that
13 he has provided. It does say that the regional board
14 and the claimants in that particular case interpreted
15 the provision of III.C. a little differently than we
16 have interpreted it here.

17 I don't think that really matters for your
18 purposes, because there are alternative grounds. The
19 alternative grounds, which are consistent with every
20 other stormwater permit test claim the Commission has
21 adopted, is that the compliance with the TMDLs -- the
22 activities to comply are just simply not new.

23 Under prior law, the prior permit and under -- and
24 under federal law required that a claimant propose -- or
25 a permittee propose their own management program. And

1 under the prior permit, they had to comply with the
2 water quality standards of the receiving water
3 limitations and discharge prohibitions.

4 That said, your -- your discharges may not cause or
5 contribute to a violation of water quality standards.
6 The water quality standards are in the basin plan. And
7 in this case, it's a 1994 basin plan. It has -- the
8 basin has narrative effluent limits and numeric effluent
9 limits.

10 It also governs the California Toxics Rule, which
11 has numeric limits for certain priority toxics like
12 bacteria. They were required to comply with those under
13 the prior permit.

14 And under the prior permit, they could design their
15 own program and meet those water quality standards.
16 That same thing is true here.

17 The TMDL -- the only difference between having a
18 TMDL and not having a TMDL is that the TMDL sets the
19 wasteload allocations so that each discharger knows what
20 they need to do to -- how much they need to reduce to
21 meet those same water quality standards. The water
22 quality standards have not changed.

23 And so it -- and the activities -- if they decide
24 to change, then that's up to them. They are proposing
25 those -- those activities. They are proposing those

1 plans to comply with the same existing water quality
2 standards.

3 So compliance with the TMDLs is just not new, and
4 it does not mandate a new program or a higher level of
5 service in this case.

6 The same is true for the monitoring.

7 I will say, with respect to monitoring, that
8 federal law requires monitoring sufficient to determine
9 whether or not you are meeting water quality standards.
10 And under the prior permit, they had to increase their
11 monitoring and increase their best management practices
12 and control measures if their discharges were not
13 meeting water quality standards and there were
14 exceedances determined in monitoring. So they -- they
15 weren't set at any particular level.

16 Also, each permittee, even though the -- the flood
17 control district was responsible for the countywide
18 monitoring program, each permittee under the prior
19 permit was responsible for their own discharges.

20 In addition, the TMDLs, when you look at those
21 resolutions, they did identify responsible agencies, and
22 they are not limited to the flood control district. In
23 fact, many of those resolutions require that monitoring
24 plans be approved. And they had to be approved by the
25 responsible agencies for that particular TMDL.

1 Again, as I mentioned earlier, page 139 PDF lists
2 nine TMDLs where the final compliance deadline occurred
3 before the adoption of the test claim permit. The test
4 claim permit says that, well, if you haven't complied,
5 you are required to comply with those immediately
6 because you are late. So none -- this is not new.

7 And those findings are consistent with what the
8 Commission found in 09-TC-03, 10-TC-11, 11-TC-03.
9 There's no difference in analysis. In fact, I copied
10 it. So the language is the same.

11 CHAIRPERSON PERRAULT: Thank you.

12 Mr. Pahland.

13 MEMBER PAHLAND: Yeah. Just a follow-up question.

14 As I understand the claimant's argument, the 2001
15 permit related to maximum, you know, contaminant loads
16 in a large body of water.

17 And the subsequent permit governed maximum
18 contaminant loads in a smaller body of water that flowed
19 into a large body of water and, therefore, each are
20 different.

21 So that's how I understand his argument. Am I
22 misunderstanding his argument? Or --

23 MS. SHELTON: Well, you can ask Mr. Gest how
24 he's -- what he's arguing. But that's not correct.

25 So even -- you know, before the prior permit, in

1 1996 and 1998, there were numerous water bodies,
2 receiving water bodies, in the LA area that were
3 impaired.

4 Under federal law, the regional board had a --
5 regional board has to designate those as impaired water
6 bodies.

7 Under the law, when you have an impaired water
8 body, you have to establish TMDLs. There was litigation
9 brought on by nonprofit suits against EPA and the
10 regional board because they were taking a long time to
11 adopt the TMDL. So they came to a consent decree saying
12 you have until this date to adopt these 33 TMDLs.

13 So the -- all -- the 2001 permit was most certainly
14 aware and required them to comply with water quality
15 standards at the same receiving waters. The receiving
16 waters don't change.

17 What he's suggesting is, when you take a
18 measurement to determine if you are exceeding water
19 quality standards, you are taking that measurement at
20 the point of the outfall, which might be right before
21 the stage of the water body, the receiving water. But
22 the whole point of the Clean Water Act is to protect the
23 receiving water.

24 So, you know, you have pollutants flowing through
25 and then out to the receiving water. So they are trying

1 to prevent it at an earlier stage. But that's no
2 different than what is going on now; that's always been
3 the case.

4 The same receiving waters have always been there.
5 And the point of both permits, and all permits, have
6 been to protect those same receiving waters. So we're
7 not talking about different waters.

8 CHAIRPERSON PERRAULT: Mr. Powell.

9 MEMBER POWELL: Does the claimant -- excuse me.
10 Does the claimant contend that the Clean Water Act does
11 not create an enforceable obligation with respect to
12 receiving waters?

13 MS. SHELTON: Are you asking Mr. --

14 MEMBER POWELL: I'm asking the claimant.

15 CHAIRPERSON PERRAULT: Mr. Gest, are you available
16 to respond? Mr. Gest?

17 MS. SHELTON: I think you have to unmute.

18 CHAIRPERSON PERRAULT: You have to unmute, sir.

19 MR. GEST: Okay. So the question is whether
20 there's an obligation under the Clean Water Act with
21 respect to the receiving waters for large bodies of
22 waters. And you will laugh because I'm going to give
23 you a lawyerly response.

24 But, first of all, let's start out by saying the
25 goal of the federal Clean Water Act is to make all

1 our -- the waters in the United States fishable
2 swimmable, cleanable, clean. So in that sense, it is
3 directed to it.

4 The way it operates, though, in -- in this context
5 is that what happens is permits are issued with respect
6 to the discharge of pollutants by individual entities.
7 And those permits define what the permittee's legal
8 obligations are, and those are called NPDES permits.

9 And in this case a municipal stormwater permit is a
10 type of NPDES permit. An NPDES permit might be issued
11 to an industrial facility that discharges into the
12 water. It might be issued to something else.

13 In this case, it was issued to municipalities that
14 are collecting stormwater. They are actually not
15 generating their own -- this pollution. But they are
16 collecting them, the water and the pollution, that's
17 in -- you know, coming off our streets, and funneling it
18 to the water bodies.

19 So if you ask, does the Clean Water Act have --
20 want to encourage the remediation of pollution in the
21 large water bodies? Yes. How does it do it? It
22 imposes certain obligations under specific permits.

23 And what we are doing here today is trying to
24 determine whether the obligations that were imposed
25 under the 2012 permit are new or whether these were the

1 same obligations that were imposed under the 2001
2 permit.

3 Now, let me say, though, going to the general
4 question of, well, if -- if you are focusing on the
5 requirement to clean up, for lack of a water, the water
6 in the large water body, the court of appeal in the --
7 of the Third Circuit in California answered the question
8 of, well, just because you are trying to reach the same
9 goal, or it's the same prohibition, doesn't mean that a
10 new or a different directed activity is not a State
11 mandate.

12 In fact, the Third Circuit found that even though
13 you're going towards the same obliga- -- standard or
14 same goal, when the regional water comes in and does --
15 gives you a specific direction, like here, on your
16 discharges in your pipe, that are -- eventually got to
17 go to the LA River, you can only have so many -- so much
18 of a pollutant, that's a -- that's a mandate. That's a
19 mandate.

20 And the proposed decision doesn't deny that in the
21 sense. But what they are trying to just say is, well,
22 there was something else in the 2011 permit that -- that
23 makes this not new. And as for the reasons we
24 articulated, it is new.

25 While I -- I'm here, I want to just answer the

1 other commissioner's questions as to whether we are
2 saying that there's a difference between the large
3 receiving water body and the smaller discharges that are
4 coming out of the municipal stormwater system, and,
5 yes, they are making that distinction. And that's
6 because the TMDLs make that -- make that distinction.

7 Ms. Chair, I have got some other points that I want
8 to say in response to Commission staff's arguments when
9 it is appropriate.

10 CHAIRPERSON PERRAULT: Thank you.

11 Let me -- let come back to the Commission members
12 first, and then we'll come back to you, Mr. Gest, in a
13 moment.

14 Are there other comments or questions from
15 commissioners?

16 Yes, Mr. Powell.

17 MEMBER POWELL: Does staff counsel have a response
18 to that? Is that correct?

19 MS. SHELTON: I -- on one point I wanted to
20 clarify: That the Court of Appeal decision he's
21 referring to -- "Department of Finance versus the
22 Commission on State Mandates" -- the arg- -- it is a
23 little misleading, his argument. Because the argument
24 that the Court was addressing was the water board's
25 general argument that no NPDES permit could ever be

1 reimbursable, because the permits are establishing
2 this -- or working under the same standard as federal
3 law. So they were trying to make the argument that
4 everything was federally-mandated.

5 In that case, there was no dispute about the
6 activities and whether they were new. So that analysis
7 of the Court does not apply here.

8 In fact, the Court did correctly say that when you
9 were determining whether an activity is new, you compare
10 the activity to the law in effect immediately before the
11 requirement of that activity. So you do look at the
12 prior permit. You do look at federal law.

13 And this is no different than what we have done in
14 the last several test claim decisions. So I don't agree
15 with him on -- on that point.

16 So and on the receiving waters, if you look at the
17 prior permit, there's a large discussion in the findings
18 of the prior permit and in the -- in the fact -- or the
19 provisions that everything is addressing receiving
20 waters.

21 Each body of water was impaired. Each body of
22 water has now a TMDL, for whatever the pollutant was,
23 whether it is trash, bacteria, PCB, whatever the issue
24 was.

25 So each body has the TMDL, and each body of water

1 is protected under the Clean Water Act. And that is the
2 whole point of the NPDES permit system is to protect
3 those same water bodies.

4 CHAIRPERSON PERRAULT: Thank you.

5 Further questions or comments from the Commission?

6 Mr. Pahland?

7 MEMBER PAHLAND: Yeah. I guess I'm having an
8 arithmetic problem, and I may not be following anybody's
9 argument correctly and that's why.

10 But let's assume there's a receiving body and a
11 contributing body here. It wouldn't be a body. A
12 contributing conveyance.

13 Say the TMDL established in 2001 for the receiving
14 body is 10; you know, 10 units of whatever.

15 Then let's assume the contributing body conveys 5
16 units to the receiving body on a regular basis.
17 However, the contributing body does not cause the
18 receiving body to exceed that 10. So the 5 -- the 5
19 conveyed by the contributing body does not cause the
20 receiving body to exceed its TMDL.

21 Did the 2012 -- let me strike that. Let me start
22 the "hypo" over.

23 The receiving body also conveys 10 units, but
24 because it contributes proportionally smaller volume to
25 the receiving body, the receiving body never exceeds 10.

1 Did the 2012 permit say you must look at the
2 contributing conveyance and determine whether or not it
3 exceeds 10? Or is the focus always been on the -- or in
4 2001, was the focus also on the contributing body too?

5 MS. SHELTON: I'm not sure I'm following you
6 because the TMDL wasteload allocations were set in other
7 orders.

8 MEMBER PAHLAND: Okay.

9 MS. SHELTON: Not in this test claim permit. The
10 test claim permit just says, "Comply with the TMDLs."

11 MEMBER PAHLAND: Okay.

12 MS. SHELTON: Adopt the same wasteload allocations.
13 Didn't make any changes whatsoever.

14 So both the prior permit and the test claim permit
15 are dealing with the same water bodies. They are
16 dealing with the same stormwater and nonstormwater
17 discharges from these permittees. The only difference,
18 as we have indicated with the TMDL, is now, the
19 permittees know how much they have been determined to be
20 a discharger, a point source that is discharging and
21 contributing to the exceedance of whatever the pollutant
22 is in the water body.

23 And now they know exactly how much they have to
24 reduce and in line with other dischargers. I mean --
25 and some of these have, you know, Caltrans or industrial

1 dischargers that are also point sources and also have to
2 reduce their loads to meet the water quality standards
3 of the -- of the water.

4 So under the prior permit, they had a duty to
5 continually monitor their receiving waters and their
6 waters and their outfalls to determine if their
7 discharge was contributing to an exceedance of water
8 quality standards. The same is true now.

9 So the activities have not changed.

10 They, under the prior permit, can design their
11 program to determine how they best could reduce that
12 discharge. And that is still true today under this test
13 claim permit.

14 MEMBER PAHLAND: All right. Thank you.

15 CHAIRPERSON PERRAULT: Does that answer your
16 question? "Ish"?

17 MEMBER PAHLAND: "Ish."

18 CHAIRPERSON PERRAULT: "Ish." Okay.

19 Other -- other questions?

20 (No response.)

21 CHAIRPERSON PERRAULT: Okay. So -- so if I can
22 just piggyback a little bit and clarify.

23 The -- the question at hand has nothing to do with
24 the load amounts changing. It -- there's no change in
25 the activity that any of the individuals who are

1 discharging into the receiving waters had to -- had to
2 make under this new permit that is different than the
3 2001 permit as it relates to the levels in which they
4 were discharging or -- or how they addressed that or --
5 I mean, I think part of the question is, to -- to
6 Mr. Pahland's comment is that -- you know, and to your
7 point -- is that the receiving waters, which is the
8 ultimate goal of keeping those -- that's -- that's what
9 we want clean. That's under the federal piece. That
10 there are multiple entities that are contributing to the
11 ultimate load that ends up in the receiving waters,
12 right?

13 And that -- that process has not changed between --

14 MS. SHELTON: Well --

15 CHAIRPERSON PERRAULT: -- the 2001 and 2012?

16 MS. SHELTON: Well, I think the water board should
17 probably participate in this discussion. They are the
18 experts on this better than I.

19 But I will say that, you know, when you -- when
20 they are going through the adoption of the TMDL and the
21 scientific process, certainly, you know, it takes a
22 while to determine exactly who the point source
23 dischargers are. It takes a while to, you know,
24 mathematically determine whose loads -- how much loads
25 are causing, you know, the exceedances.

1 But, again, those were adopted in prior orders.
2 They do know that, you know, in all of those cases,
3 the -- the NPDES stormwater permittees were source
4 dischargers contributing to the pollutant discharge.
5 And -- and they knew that before.

6 So the -- the only thing that change -- is changing
7 is that they now know how much they have to reduce.
8 They have an exact wasteload number. But the activities
9 are not different. The activities are still what they
10 had to do before. You still have to reduce the
11 discharge to the maximum extent practical and meet water
12 quality standards. They can propose their program under
13 the primary permit, and they can propose their program
14 now.

15 CHAIRPERSON PERRAULT: Okay. Thank you.

16 Does Water Resources have any comments or
17 additional input?

18 MS. NUNEZ: We're happy to provide more information
19 on how the TMDLs themselves work, if that's helpful.

20 CHAIRPERSON PERRAULT: Does -- would Commissioners
21 like that information?

22 (No response.)

23 CHAIRPERSON PERRAULT: Okay. I think -- I think
24 we're okay.

25 I just have one last -- I just want to go back to

1 the statement around the San Francisco case. And I just
2 want to make sure I'm understanding staff's
3 interpretation of that, is that because of the date in
4 which that decision came down, which I think you said
5 was 2025; is that correct?

6 MS. SHELTON: Correct.

7 CHAIRPERSON PERRAULT: That that -- the argument
8 can't be made that it then has an implication on a
9 decision for the 2012 permit. Is that -- we can't go
10 back.

11 MS. SHELTON: The 2001.

12 CHAIRPERSON PERRAULT: I'm sorry. 2001 permit.

13 MS. SHELTON: Yes.

14 CHAIRPERSON PERRAULT: We can't go back.

15 MS. SHELTON: There's Supreme Court decisions that
16 talk about an impact of the Supreme Court decision, and
17 it only goes back to those decisions that are still
18 open --

19 CHAIRPERSON PERRAULT: Open. Okay.

20 MS. SHELTON: -- and the 2001 case has been upheld
21 by the Courts a long time ago.

22 CHAIRPERSON PERRAULT: Okay.

23 MS. SHELTON: So we -- it's a final quasi-judicial
24 decision. There's no way we can go back and determine
25 it to be unlawful.

1 CHAIRPERSON PERRAULT: Okay. Thank you.

2 Other comments or questions?

3 Yes. Mr. Powell.

4 MEMBER POWELL: I have one question, and it's
5 something we haven't discussed yet.

6 It's about fee authority. And so even if we were
7 to accept that this was a mandate, claimants could
8 potentially -- and there is the case made by staff --
9 that they still would have fee authority to cover any
10 costs; and so it's not a mandate.

11 MS. SHELTON: No. Not for -- so that only -- you
12 know, if you -- if the Commission or a Court were to
13 approve the compliance with the TMDLs in any fashion,
14 you know, they were required to start comply -- you
15 know, under this permit, at the effective date of the
16 permit, which was December 26th -- 28th, 2012, they
17 would have the authority under the law to assess
18 property related to fees.

19 But under Proposition 218, back then, they would
20 have had to get the voters' approval first.

21 The Courts upheld when the -- under Prop 218, that
22 the voters have to approve a fee authority first, then
23 for purposes of mandates law, the local government does
24 not have the legal authority, because you have to have
25 preapproval first.

1 Back in 2017 and effective January 1, 2018, Senate
2 Bill 231 was adopted, and the parties are disputing the
3 meaning of 231, but we are required, by law, to presume
4 it's constitutional.

5 But it did define "stormwater" to fall now within
6 the exclusion to not have to get voter approval; they
7 just have to have a vote -- allow for a voter protest.

8 And the Courts in Paradise Irrigation District --
9 that was the name of the case -- found that when voter
10 protest was required, then the cities and counties still
11 have the legal authority to impose the fee, despite the
12 possibility of a protest.

13 And so to under that case, 17556(d) is valid and
14 says that there are no costs mandated by the State.

15 So circling back to this, if the TMDLs, in any
16 fashion were approved, as a State-mandated new program
17 or higher level of service, there would be, based on the
18 evidence in the record, costs mandated by the State up
19 until December 31st, 2017.

20 Beginning January 1, 2018, they have the legal
21 authority to impose a fee.

22 MEMBER POWELL: And that's why there is that period
23 of time with the Howard Jarvis, I think it was --

24 MS. SHELTON: Yes.

25 MEMBER POWELL: -- in 2012, where a section of this

1 does carve out a State-mandated fee --

2 MS. SHELTON: Right. For a --

3 MEMBER POWELL: -- for a small section of this.

4 MS. SHELTON: Right. But this decision is finding
5 that those requirements are not imposing a
6 State-mandated new program or higher level of service,
7 so I don't even get there on the regional board TMDLs.

8 The EPA TMDLs, the ones that are listed under --
9 I -- this decision finds that they have practical
10 compulsion to comply with developing a watershed
11 management plan for those.

12 So to the extent -- I don't know how long it took
13 them to develop a watershed management plan and have it
14 adopted, but this decision finds that that is a
15 State-mandated new program or higher level of service.
16 They do have -- their record does support that they do
17 have costs exceeding a thousand dollars to develop that
18 watershed management program.

19 If it took them longer than December 31st, 2017,
20 and they incurred any costs after that date, they would
21 not -- those costs would not be eligible because they
22 have fee authority.

23 MEMBER POWELL: But going forward, 2018 until --

24 MS. SHELTON: It --

25 MEMBER POWELL: -- another source says otherwise --

1 MS. SHELTON: Right.

2 MEMBER POWELL: -- they would have fee authority.

3 MS. SHELTON: Yeah.

4 MEMBER POWELL: And do claimants dispute, in the
5 sense that they dispute constitutionality --

6 MS. SHELTON: Oh, all parties --

7 MEMBER POWELL: -- but we do not.

8 MS. SHELTON: But all parties are disputing the
9 effect of SB (unintelligible), yes.

10 MEMBER POWELL: Thankfully.

11 MS. SHELTON: Yeah.

12 CHAIRPERSON PERRAULT: But just to clarify, though,
13 on the planning and land development program piece,
14 we -- while we found that was a new requirement, there
15 is deemed --

16 MS. SHELTON: That's regulatory fee authority.

17 CHAIRPERSON PERRAULT: Regulatory fee authority.

18 MS. SHELTON: So that is --

19 CHAIRPERSON PERRAULT: Okay.

20 MS. SHELTON: -- a different type of fee
21 authority --

22 CHAIRPERSON PERRAULT: Right.

23 MS. SHELTON: -- where they can impose it on
24 developers. I mean, it is a different part of the
25 Constitution. They have that authority and under the

1 police power.

2 So regulatory fee authority, you don't have voters
3 approval required at all, and you have fee authority.
4 And the Courts have upheld that, both with development
5 and with inspection of commercial and industrial
6 facilities; there's fee authority.

7 CHAIRPERSON PERRAULT: Okay. Thank you.

8 Any other comments or questions from the
9 Commission?

10 (No response.)

11 CHAIRPERSON PERRAULT: Okay. This is an action
12 item. We do have a staff recommendation on the item.
13 Of course, as well, the Commission does have the ability
14 to put forward another motion.

15 I do believe Mr. Gest did want to -- had -- had a
16 couple of final comments.

17 Mr. Gest, I will go ahead and allow you to -- to
18 provide some final comments before we bring it back to
19 the Commission for action. I would just ask if you
20 could keep those brief, please.

21 MR. GEST: Thank you very much. I will keep them
22 brief.

23 And I just want to address three points.

24 First of all, with respect to the application of
25 the U.S. Supreme Court case, we're asking for that to be

1 applied in this case. We're not asking you -- this
2 Commission -- to address the 2001 permit and find, as a
3 finding and relating to that permit that it's -- that
4 for some reason that should be now changed.

5 We're saying that in this case, the Court --
6 Commission should -- should recognize that this
7 provision was unenforceable and unlawful; and,
8 therefore, you should not go forward and say an
9 unenforceable, unlawful provision should be used to --
10 to -- to find that a requirement is not new.

11 The first time that there was a en- -- enforceable
12 provision was when the TMDLs were adopted into the
13 permit in 2012, because the receiving water
14 limitations -- this -- this Commission can say, "Look,
15 we're not going to use something that the Supreme Court
16 has said is unlawful to say that it is not new."

17 I think this is an issue that the -- the Commission
18 has never decided before. And as a matter of not only
19 equity and fairness, but as a matter of law, it is an
20 abuse of discretion to find an unlawful provision to be
21 a basis for finding that a obligation is not new.

22 So that's the first thing: We're saying apply it
23 in this -- in this proceeding, not prior proceedings.

24 Secondly, I believe that the effective TMDL was not
25 accurately described. Counsel indicated that the TMDLs

1 were enforceable orders when they were adopted.

2 The proposed decision recognizes that that's not
3 the case. The proposed decision itself recognizes that
4 it's not an enforceable obligation until it is put into
5 the permit. And that's why they had -- the arguments
6 relating to Part III.C. is relevant.

7 And in the -- in the -- in the proposed decision,
8 on page 110, and I -- your PDF numbers may be a little
9 different. But on page 110 of the proposed decision,
10 they talk about what a TMDL is. And they say that it is
11 a planning document.

12 And they say that -- and they quote from a -- a
13 case. And they say, "TMDLs established under section
14 303(d)(1) of the Clean Water Act function primarily as
15 planning devices and are not self-executed."

16 That's what the proposed decision itself
17 recognizes, and that is, in fact, the law. The TMDL
18 imposes no obligation on any party, for any reason,
19 until it's put into an NPDES permit. Okay? That's the
20 law.

21 And so to -- to base your decision on some other
22 understanding would be an error of law.

23 And, finally, let me just say with respect to fee
24 authority, I think our position actually was correctly
25 stated. We disagree with the interpretations that are

1 provided on prop -- SB 231 and the data that we cannot
2 recover, or that we would have fee authority from
3 January 1st going forward. But we recognize that the
4 Commission cannot make that decision. And -- and we
5 recognize, you know, why the Commission has said what it
6 said.

7 But we don't agree that that provision is
8 constitutional. That's for another day.

9 CHAIRPERSON PERRAULT: Thank you, Mr. Gest.

10 Okay. I'm going to bring it back to the
11 Commission.

12 This is an action item. As I mentioned, we have
13 staff recommendation and the will and pleasure --
14 pleasure -- will and pleasure of the body to -- to make
15 an alternative motion if that would be where they would
16 like to be.

17 So let me open it up. Is there a motion?

18 MEMBER OPPENHEIM: I will move to approve the staff
19 recommendation.

20 CHAIRPERSON PERRAULT: It's been moved --

21 MEMBER OPPENHEIM: And I thank counsel for the
22 clarification.

23 CHAIRPERSON PERRAULT: Moved by Mr. Oppenheim.

24 Is there a second on the staff recommendation
25 motion?

1 MEMBER POWELL: I will second it.

2 CHAIRPERSON PERRAULT: Okay. Seconded by
3 Mr. Powell.

4 May we please have a roll call.

5 MS. GMUR: Mr. Adams.

6 MEMBER ADAMS: Aye.

7 MS. GMUR: Ms. Greene Ross.

8 MEMBER GREENE ROSS: Aye.

9 MS. GMUR: Mr. Oppenheim.

10 MEMBER OPPENHEIM: Aye.

11 MS. GMUR: Mr. Pahland.

12 MEMBER PAHLAND: Aye.

13 MS. GMUR: Ms. Perrault.

14 CHAIRPERSON PERRAULT: Aye.

15 MS. GMUR: Mr. Powell.

16 MEMBER POWELL: Aye.

17 CHAIRPERSON PERRAULT: Thank you. That motion
18 carries.

19 Thank you so much to everybody for -- for being
20 here spending the time to move through this item.

21 MS. GMUR: We now --

22 CHAIRPERSON PERRAULT: Oh, go ahead.

23 MS. GMUR: We now ask the presenters participating
24 remotely for Item 2 to please turn off their video and
25 mute their microphones; and those presenting in person

1 to please return to your seats.

2 Before we proceed to Item 3, Madam Chair, the court
3 reporter would require a break at this time.

4 CHAIRPERSON PERRAULT: That's fine. It is 11:20.

5 I'm looking at the court reporter. Five minutes okay?

6 You need ten? What --

7 THE COURT REPORTER: Ten.

8 CHAIRPERSON PERRAULT: Ten minutes? Okay. We'll
9 go ahead and reconvene at 11:30. Thank you.

10 (Break taken in proceedings:

11 11:20 a.m. to 11:35 a.m.)

12 CHAIRPERSON PERRAULT: Okay. We're going to go
13 ahead and bring the Commission meeting back to order.
14 And our next item is Item 3.

15 Ms. Gmur.

16 MS. GMUR: Thank you, Mr. Madam Chair.

17 We now ask the presenters participating remotely
18 for Item 3 to please turn on their video and unmute
19 their microphones; and for those presenting in person to
20 please come to the table.

21 Commission Counsel Anna Barich will please present
22 a proposed decision on internet websites and email
23 addresses, 24-TC-04.

24 MS. BARICH: Good morning.

25 This test claim is regarding Government Code

1 section 50034 as added by the 2023 test claim statute.

2 The test claim statute requires cities and counties
3 to ensure their internet websites for use by the public
4 and public email addresses for their employees utilize
5 either a .gov first-level domain name; or .ca.gov
6 second-level domain name by January 1st, 2029; and to
7 ensure that any internet websites with noncompliant
8 domain names they continue to maintain after the
9 deadline redirect users to a website with a compliant
10 domain name.

11 Standard definitions of the word "website," as well
12 as the rules of statutory construction, supports that
13 the Legislature intended its requirements for internet
14 websites for use by the public to extend to component
15 files that make up a website, including web pages, web
16 applications, or other related resources.

17 Staff finds that the test claim statute imposes a
18 reimbursable State-mandated program pursuant to Article
19 XIII B, section 6, of the California Constitution,
20 beginning January 1st, 2024, for the one-time activities
21 to:

22 1. Ensure that the internet website used by the
23 public, including any web pages, web applications, or
24 other related resources within the website, utilizes
25 either a .gov top-level domain name or a .ca.gov

1 second-level domain name by January 1st, 2029;
2 2. Ensure any websites, including any web pages,
3 web applications, or other related resources within the
4 website with a noncompliant domain name the city or
5 county continues to maintain after January 1st, 2029,
6 redirects users to a website with a complaint domain
7 name.

8 And 3. Ensure that each public email address
9 provided for the cities or counties' employees utilizes
10 a .gov or .ca.gov domain name by January 1st, 2029.

11 Staff recommends that the Commission adopt the
12 proposed decision to approve the test claim; and
13 authorize staff to make any technical, nonsubstantive
14 changes to the proposed decision following the hearing.

15 Thank you.

16 CHAIRPERSON PERRAULT: Thank you so much.

17 Okay. Parties and witnesses, as I call you, if you
18 could please state your name for the record.

19 Mr. Walden for the claimant, would you like to
20 begin?

21 MR. WALDEN: Now is this on? Okay.

22 Good morning. Thank you. Joshua Walden on behalf
23 of the claimant, Santa Clara County.

24 The County agrees with the Commission staff's
25 conclusions and would respectfully ask the Commission to

1 adopt the proposed decision.

2 I have no further comments prepared, but I would be
3 happy to answer any questions.

4 CHAIRPERSON PERRAULT: Thank you so much,
5 Mr. Walden.

6 Ms. Yap, from the Department of Finance, do you
7 have any additional comments?

8 MS. YAP: Department of Finance has no comments on
9 this matter.

10 Thank you.

11 CHAIRPERSON PERRAULT: Thank you so much.

12 Okay. Are there any public comments this item?

13 (No response.)

14 CHAIRPERSON PERRAULT: Seeing none in the room, are
15 there any online?

16 MR. SUPACHANA: Madam Chair, there are no public
17 comments online.

18 CHAIRPERSON PERRAULT: Okay. I will go ahead and
19 bring it back to the Commission at this time.

20 Are there any comments or questions on the item
21 from commissioners?

22 (No response.)

23 CHAIRPERSON PERRAULT: Seeing none, is there a
24 motion to adopt staff recommendation or otherwise?

25 MEMBER ADAMS: Madam Chair, I would so move.

1 CHAIRPERSON PERRAULT: Okay. Moved by Mr. Adams.
2 Excuse me.
3 Is there is a second?
4 MEMBER OPPENHEIM: I will second the motion.
5 CHAIRPERSON PERRAULT: Seconded by Mr. Oppenheim.
6 If we could please have a roll call.
7 MS. GMUR: Mr. Adams.
8 MEMBER ADAMS: Aye.
9 MS. GMUR: Ms. Greene Ross.
10 MEMBER GREENE ROSS: Aye.
11 MS. GMUR: Mr. Oppenheim.
12 MEMBER OPPENHEIM: Aye.
13 MS. GMUR: Mr. Pahland.
14 MEMBER PAHLAND: Aye.
15 MS. GMUR: Ms. Perrault.
16 CHAIRPERSON PERRAULT: Aye.
17 MS. GMUR: Mr. Powell.
18 MEMBER POWELL: Aye.
19 CHAIRPERSON PERRAULT: Thank you so much.
20 That motion carries.
21 So we will now move on to Item 4.
22 MS. GMUR: We now ask the presenters participating
23 remotely for Item 3 to please turn off their video, mute
24 their microphones; and those presenting in person to
25 please return to your seats.

1 Next is Item 4.

2 We now ask the presenters participating remotely
3 for Item 4 to please turn on their videos and unmute
4 their microphones; and those presenting in person to
5 please come to the table.

6 Chief Legal Counsel Camille Shelton will please
7 present a proposed decision and parameters and
8 guidelines on San Diego Regional Water Quality Control
9 Board Order R9-2007-0001, 07-TC-09-R.

10 MS. SHELTON: Good morning.

11 These proposed parameters and guidelines address a
12 2007 stormwater permit issued by the San Diego -- San
13 Diego Regional Water Quality Control Board.

14 The Commission partially approved the test claim in
15 2010. And the decision was litigated until 2022,
16 resulting in a -- in a Third District Court of Appeal
17 decision approving the Commission's decision except for
18 the Court's denial of one activity based on the fee
19 authority exception.

20 The test claim approved reimbursement for the
21 following activities:

22 Reporting on street sweeping and conveyance system
23 cleaning; conveyance system cleaning; certain
24 requirements under the educational program; watershed
25 activities and collaboration on the watershed urban

1 runoff management program; specified requirements under
2 the regional urban water -- urban runoff management
3 program; program effectiveness assessment; the one-time
4 long-term effectiveness assessment; and all permittee
5 collaboration to promote consistency with the
6 Jurisdictional Urban Runoff Management and the Watershed
7 Urban Runoff Management Programs; and the one-time
8 requirement to amend a permittee agreement to include a
9 few additional requirements.

10 The proposed parameters and guidelines raise
11 several disputed issues, which are identified in the
12 chart in the Executive Summary.

13 These issues include the following:

14 Number 1. Staff finds that the San Diego Regional
15 Airport Authority and the San Diego Unified Port
16 District are not eligible to claim reimbursement under
17 Article XIII B, section 6, because the revenues are not
18 proceeds of taxes subject to the appropriations limit.

19 Number 2. The period of reimbursement is from
20 January 24, 2007, until December 31, 2017. Beginning
21 January 1, 2018, the claimants have authority to impose
22 properly related stormwater fees for all the activities.

23 Number 3. The scope of the reimbursable activities
24 is consistent with the Commission's test claim decision.
25 A few reasonably necessary activities are recommended

1 for approval based on evidence in the record as one-time
2 and ongoing activities.

3 Number 4. The Commission has no authority to
4 approve reimbursement for interest and legal and expert
5 costs incurred during the mandates process as requested
6 by the claimants.

7 Number 5. The claimants have proposed reasonable
8 reimbursement methodologies in the form of unit costs
9 and formulas, based on estimated or average costs for
10 each group of reimbursable activities in lieu of filing
11 detailed documentation of actual costs subject to the
12 audit of the State Controller's Office.

13 The claimants' original proposal would result in
14 reimbursement over \$252 million. The claimants have
15 since revised and reduced some of their unit cost
16 proposals.

17 The RRM findings cannot be viewed like a settlement
18 agreement. Instead, the adoption of an RRM must be
19 based on substantial evidence in the record to support
20 the conclusion that the proposed RRMs consider the
21 variation costs among local government claimants,
22 balance accuracy with simplicity, and ensure that the
23 unit cost proposals reasonably repre- -- reasonably
24 reimburse all eligible claimants for the actual costs
25 mandated by the State.

1 Staff finds that while a few of the revised
2 proposed formulas are reasonable, some proposals are not
3 limited to the mandated activities, and there is not
4 substantial evidence in the record that the proposed
5 unit costs -- either total shared costs or costs per
6 activity -- reasonably represents the actual costs
7 mandated by the State for all eligible claimants for the
8 higher levels of service activities the Commission
9 approved for reimbursement.

10 Staff recommends that the Commission deny the RRM
11 proposals.

12 Number 6. Offsetting revenues, including
13 stormwater fees recovered and used on the program, are
14 identified in the parameters and guidelines, consistent
15 with the Commission's test claim decision.

16 Accordingly, staff recommends that the Commission
17 adopt the proposed decision and parameters and
18 guidelines and authorize staff to make any technical,
19 nonsubstantive changes to the proposed decision and
20 parameters and guidelines following the hearing.

21 Thank you.

22 CHAIRPERSON PERRAULT: Thank you.

23 Okay. So if the parties -- again, just a reminder,
24 parties and witnesses, if you will please state your
25 name for the record.

1 Mr. Deak, Ms. Kwan, and Mr. Quenzer -- I might have
2 said that wrong; I'm so sorry -- for the claimants,
3 would you like to begin?

4 MS. KWAN: So -- okay. Perfect. Thank you. Just
5 I wanted to let everybody know that --

6 THE COURT REPORTER: State your name, please.

7 MS. KWAN: Sorry. Anya Kwan. Thank you.

8 -- that Mr. Deak will no longer be joining us
9 today. So it will just be me and John Quenzer.

10 Commissioners, thank you for giving us the
11 opportunity today to orally comment on the test claim
12 related to 07-TC-09-R, which relates to the San Diego
13 Regional NPDES Permit Order R9-2007-001 [sic].

14 I'm here today to comment on behalf of the Port of
15 San Diego, the San Diego International Airport, and the
16 19 cities and counties that are covered under this
17 order.

18 I'm going to start my comments for the port and the
19 airport. And then after that, John Quenzer and I will
20 then provide additional comments that relate to the
21 municipal claimants.

22 Just a quick question: Would you like to stop and
23 allow comments after that? Or do you just want me to
24 keep going.

25 CHAIRPERSON PERRAULT: Go ahead and present

1 completely, and then we'll come back for full comments.

2 Thank you.

3 MS. KWAN: Perfect.

4 The crux of the issue for the Port of San Diego and
5 the San Diego international Airport is that a local
6 government is not the same as a local agency.

7 Article XIII B, section 6, specifically refers to a
8 local government and mandates that the State reimburse a
9 local government when the State Legislature or state
10 agency mandates that local government to implement a new
11 program or increased level of service.

12 "Local government" is defined in the California
13 Constitution under Article XIII B 8(d) as "any city,
14 county, city and county, school district, special
15 district, authority, or political subdivision within the
16 State."

17 As you can hear from that definition, the
18 definition is very broad and include -- would include
19 the port and airport in that definition. And,
20 therefore, they should be eligible for reimbursement
21 under Article XIII B, section 6, as they fall under the
22 definition of "local government" under Article XIII B
23 section 8(d).

24 Instead of using the definition of "local
25 government," the parameters and guidelines rejects the

1 port and airport's claim for reimbursement on the
2 definition -- based on the definition of "local agency."

3 Because Article XIII B, section 6, refers to local
4 government, and not local agency, the definition for
5 "local government" is the one that should be used. And
6 the associated case law and statutes and implementing
7 statutes for the definition of "local agency" should not
8 be considered when determining whether or not Article
9 XIII B, section 6, apply to the port and the airport.

10 If the Commission is -- decided that they should
11 use the definition for "local agency," we have an
12 additional issue with relying on section -- Government
13 Code section 9701(e) as the definition for "local
14 agency."

15 Article XIII B, section 6, is specifically
16 implemented by Government Code section 17500 through
17 17630. Within these Government Code sections,
18 Government Code section 17518 has a definition of "local
19 agency."

20 Article XIII B in general, the entire article, is
21 implemented by Government Code section 7900 through
22 7914. Within those Government Code sections, there is a
23 definition of "local agency" in Government Code section
24 9701(e).

25 Because section 17518 specifically implements only

1 Article XIII B, section 6, this is considered to be the
2 specific definition of "local agency," while the
3 definition of "local agency" in 7901(e) is the general
4 definition because it applies to the entire Article XIII
5 B.

6 I'm just going to make it a little clearer that --
7 so article -- sorry.

8 Government Code section 17518 is a broader
9 definition than the Government Code section 7901(e), so
10 the specific definition in 17518 is more broad and
11 general than the definition in 7901(e) which is the
12 specific -- the general definition. So it is a little
13 bit confusing, but I just wanted to make that clear.

14 Because section 17518 is the specific definition
15 that only implements government -- or Article XIII B,
16 section 6, that is the definition that should be used,
17 and not the definition that governs the entire Article
18 XIII B.

19 By using the definition that is only by -- by using
20 the definition that only implements -- that implements
21 Article XIII B and not specifically Article XIII B,
22 section 6, the interpretation renders Government Code
23 section 17518 useless.

24 As stated previously, Government Code section
25 7901(e) is more specific than Government Code section

1 17518. So if the definition of 17901 -- sorry --
2 7901(e) is applied to Government -- to Article XIII B,
3 section 6, then, therefore, there's no place and no use
4 for the definition given in Government Code 17518 that
5 implements only Article XIII B, section 6.

6 Because there is a conflict that then prevents
7 Government Code section 17518 from having a use, this is
8 an impermissible way to interpret the provisions that
9 then interpret our Constitution.

10 Finding otherwise would make the Port of San Diego
11 and San Diego International Airport an exception to
12 Article XIII B, section 6's general purpose of
13 reimbursing State Mandates; an exception that the
14 Legislature did not intend.

15 Therefore, the Port of San Diego and San Diego
16 International Airport should be entitled to
17 reimbursement for their activities performed under the
18 applicable MS4 permit.

19 I'm going to switch gears, and now I'm going to
20 talk about the municipal claimants and their requests.

21 So John and I, on behalf of the 19 cities and
22 counties within San Diego, are going to focus our
23 comments on a few discrete issues. The municipal
24 claimants want to make it clear we are not withdrawing
25 or waiving any of the arguments provided in our previous

1 comment letters that are not specifically mentioned
2 today.

3 As was talked about in the other unfunded mandates
4 matter relating to the regional stormwater issue, we are
5 not waiving the comments related to SB 231, but we're
6 not going to discuss them here.

7 So first, I'm going to provide a brief summary of
8 the case history of the case and provide background on
9 the re- -- reasonable reimbursement methodologies, or
10 RRM_s.

11 John is then going to explain the RRM_s but will
12 focus on a few RRM_s that we believe additional detail is
13 needed based on the last round of comments that are
14 received.

15 I will then finish up the discussion to discuss
16 some of the fairness considerations that were raised in
17 the last round of comments for the parameter -- or in
18 the last draft of the parameters and guidelines.

19 The permittees were subject to Order R9-2007-001,
20 issued by the Regional Board in 2007. The permittees
21 filed their test claim to the State Mandates in 2008.
22 The Commission adopted its initial test claim in
23 March 26, 2010. This decision was challenged via writ
24 petition that was then ultimately resolved through Court
25 of Appeals decisions: One in 2017 and another one in

1 2022.

2 This -- this decision in 2022 was then brought to
3 the California Supreme Court, but the Supreme Court
4 denied the petition and did not hear it.

5 The two Court of Appeals decisions did not
6 substantially confirm the initial test claim decision in
7 March 2020 -- 2010. So there was not a large change
8 from that initial draft.

9 As you can hear from that timeline, this process
10 took years. And so now we're talking about
11 reimbursement for -- for work that was done 18 or 19
12 years ago.

13 So we -- and just as a side note, I wanted to say
14 that we do really appreciate the time that staff has
15 taken to provide comments on our RRM, and that, you
16 know, at the last round where you explained some of
17 the -- like, accepting some of the formulas and
18 questioning the unit costs was really helpful in our
19 analysis.

20 So as stated in the previous comment letters, an
21 RRM is a formula for reimbursing local agencies for
22 costs mandated by the State. Reimbursement through an
23 RRM is intended to be an approximation of costs and does
24 not represent actual costs.

25 Because it is an approximation of costs, RRM is not

1 intended to be perfect justice. Instead, it is intended
2 to serve as rough justice, as found by the Commission's
3 previous determinations accepting an RRM.

4 In the matter of habitual truant, the Commission
5 adopted an RRM for reimbursement based on the unit cost
6 per habitually truant student. In this adoption, the
7 Commission specifically found that an approximation of
8 local costs was sufficient to support an RRM.

9 It says, "An RRM is meant to be an approximation of
10 local costs and need not precisely reimburse every
11 dollar expended on the program."

12 As such, the Commission has previously acknowledged
13 that RRMs can be adopted to provide imperfect but
14 reasonable reimbursement.

15 With that background, I will turn it to John.

16 MR. QUENZER: All right. So I guess for everyone
17 to clarify, my role in this is --

18 CHAIRPERSON PERRAULT: Can you state your name for
19 the record.

20 MR. QUENZER: Oh, sorry. John Quenzer.

21 So my -- my role is to provide technical support.
22 I work on municipal program support in the San Diego
23 region. I have done so since 2004.

24 So my role was to look at the data provided by the
25 different claimants, to analyze it, and to propose the

1 reasonable reimbursement methodologies, or RRM_s.

2 So before we get into a couple of -- of them to
3 talk in a little bit more detail, broadly speaking,
4 there's two different kinds of RRM_s that we have
5 proposed.

6 One is based on work that was done by work groups
7 or groups of the claimant agencies. And in those cases,
8 typically one agency will either perform the work or
9 have the work performed by a consultant where they are
10 managing the contract for that work.

11 So the -- the billing will be through that agency,
12 and then it is distributed through a cost share
13 agreement or a Memorandum of Understanding.

14 So in -- in that type of formula, we do have, in
15 the record, the expenditure data, and we can tell you
16 what the amount of money is.

17 The other type of formula is a unit cost formula,
18 and the typical format of that is, there's a unit cost.
19 How much does it cost every time that you do that
20 activity times a quantity; how many times did you do the
21 activity.

22 So what we're proposing for those kind of formulas
23 is only the unit cost part of it. We're not making any
24 statements about how many, what the quantity is right
25 now.

1 As staff had mentioned earlier, in one of our
2 earlier submittals, we did have some quantities in
3 there, but that's not what we're proposing right now.

4 So if the Commission was to approve any of the unit
5 cost RRM's, the next step would be for the municipal
6 claimants to submit documentation of what is the
7 quantity. And that's how they would calculate the
8 amount that they would be due.

9 So, for example, one of the ones that we'll talk
10 about is cleaning out a storm drain or a catch basin.
11 What we're proposing on that one is to establish what is
12 the unit cost, which is about \$89.

13 That doesn't tell you how much is potentially
14 reimbursable because the next step would be for the
15 claimants to say, well, how many storm drains did we
16 clean? If they clean ten, for example, then 89 times
17 ten is 890. That would be the number, but they would
18 need to provide documentation of how do those ten storm
19 drain cleanings meet the criteria for reimbursable storm
20 drain cleanings.

21 So with that out of the way, I wanted to speak
22 first to a couple of the shared cost category RRM's. One
23 is for the long-term effective assessment and the other
24 is for some educational costs.

25 In both of those, our understanding of the

1 Commission's comments was that they were based on
2 budgets rather than actual expenditures.

3 So for the first one, for the long-term
4 effectiveness assessment, we -- we agree. It was the
5 case that what we submitted was based on budget, but we
6 do have, in the record, what the actual expenditures
7 are. And so we're proposing to change what we're --
8 what we're asking for on that one to be based on the
9 actual expenditure.

10 And I will try to go through this slowly because
11 we'll be citing some dollar amounts and pages in the
12 record.

13 So if I need to repeat anything, just let me know.

14 The -- the overall total that's based on the
15 expenditures would be \$232,673.30. That's based on the
16 following items:

17 So the first one, which is the majority, is an
18 invoice from a consultant, Weston Solutions. That had a
19 total amount billed for Task 2, which was long-term
20 effectiveness assessment, for a total of \$219,621.25.

21 That invoice begins on Volume 13, page 11,982.

22 The next item would be that the County of San
23 Diego, as the contract manager, also assessed a
24 5 percent contract management fee on that amount.
25 5 percent of that amount would be \$10,981.06.

1 This one is -- is based on a couple of places in
2 the record. So both are Volume 13. One is an
3 expenditure report from the Fiscal Reporting and
4 Assessment Work Group, which is on page 11,979 of
5 Volume 13.

6 The other one is on an expenditure report from the
7 Monitoring and Assessment Work Group. Or excuse me.
8 The Regional Monitoring Work Group, which is on
9 Volume 13 again, pages 12,102 through 12,103.

10 And I would like to clarify on those that just,
11 without going too far into the details, the -- the
12 budget for the long-term effectiveness assessment was
13 shared between two different work groups. And the way
14 that the monitoring work group had it in their budget,
15 it was combined with some other activities that are
16 not-reimbursable. So that's why we're proposing to use
17 the invoice amount, which has a clear line item that
18 just says it's for the long-term effectiveness
19 assessment.

20 And then from those expenditure reports from the
21 work groups, you can see that the 5 percent management
22 fee was consistently charged.

23 The other two items are: The County of San Diego
24 reported some staff costs in an expenditure workbook
25 that is on page 11,978 of Volume 13. That amounts to

1 \$1,083.88.

2 The last item is the City of Santee also reported
3 staff costs to collect and analyze data for the
4 long-term effectiveness assessment of \$987.11. That is
5 also from Volume 13, page 12,111.

6 Do I need to repeat any of that?

7 (No response.)

8 MR. QUENZER: No? Okay.

9 The other shared cost item was for some educational
10 activities done through an education work group. And I
11 wanted to point out on that, that in Table 11 of my most
12 recent declaration, the values that are in there are
13 based on expenditure records and the citations to the
14 locations in the record. All are correctly citing the
15 expenditure amounts.

16 It is true that sometimes on those same pages
17 cited, there will be both a budget and an expenditure
18 amount, but when that was the case, we used the
19 expenditure amount.

20 So, for example, on page 12,305 of Volume 13, there
21 was a budgeted amount of \$73,665 for producing some
22 educational materials. But the expenditure was \$57,298.
23 And we used the expended amount, not the full budget, to
24 reflect what was actually spent, not what was budgeted.

25 The other note about the education activities is

1 that we were careful to only select the line items from
2 those expenditure records that relate to education of
3 the general public. We did not include line items that
4 might have been read to mean education targeted at,
5 let's say, the development industry or industrial
6 dischargers, which had been marked as not a reimbursable
7 activity.

8 Then I have a couple comments also about unit
9 costs, reasonable reimbursement methodologies.

10 So the first one that I would like to say is that,
11 in general, the way we develop these is by looking at
12 the median costs of the underlying data sets. It was
13 sometimes the case that there were outliers, especially
14 on the higher end, of the data set. So if we would have
15 taken the average, the average would be higher than the
16 median. And we felt that the median was a more
17 representative and conservative value.

18 So one example of that is the jurisdiction
19 watershed activities. This proposed unit cost was based
20 on a data set of 71 reported watershed activities.
21 Those were reported by the municipal claimants in annual
22 reports that were signed and certified by applicable
23 people within their agencies and submitted to the San
24 Diego Water Board, as required by the stormwater permit.

25 And this includes activities from all of the eight

1 watersheds that are within -- fully within San Diego
2 County.

3 And what we got from looking at that was that,
4 yes, there were some activities that were pretty
5 expensive. But using the median value, we get \$5,000
6 per activity. Using the average, we would have about
7 \$8,164.

8 So, again, we feel that given the spatial
9 distribution of the activities and that we have over 70
10 of them, that that's a good enough data set to be
11 representative.

12 We do understand that the proposed value we have
13 may be less than what some agencies actually spent, but
14 we still feel it is reasonably representative.

15 Similarly, if we move to the last thing that I'm
16 going to talk about, which is, there's a group of unit
17 cost RRM's that were originally based on some surveys
18 performed of the claimant agencies in about 2011.

19 And the Commission had noted that that's not a -- a
20 source of data that we can use for a variety of reasons.

21 So what we -- we still included those, but we also
22 concluded an alternative in our last submittal. And
23 it's that alternative that we're -- we're wanting to
24 propose.

25 The alternative is based on signed declarations

1 from a subset of the municipal claimants. So I will
2 just use one as an example. This applies to catch basin
3 cleaning and then reporting on conveyance cleaning and
4 street sweeping. But I will just talk about the catch
5 basin or storm drain cleaning portion of it.

6 So on that one, there were five of the 19 claimants
7 that submitted a signed declaration. Those claimants
8 range from larger agencies, like the City of Chula
9 Vista, which is one of the larger agencies in the
10 region, to smaller agencies, like the City of Solana
11 Beach, which is one of the smallest cities in the
12 region. They included agencies from the north and the
13 south and the east side of the county.

14 So in my opinion, five out of 19, and given that
15 there is the variation in size and geography, is enough
16 to be a representative data set.

17 Within that data set, three of the agencies had
18 costs per cleaning a storm drain that was about the
19 same, about 88 or 89 dollars per drain cleaned.

20 The other two had somewhat higher values. But,
21 again, because we're using the median, we get a value of
22 about \$89. It is true that this may be a little bit
23 less than what some of the agencies actually would have
24 paid to clean their storm drains.

25 But, again, we feel like it's reasonably

1 representative, and the agencies, the claimants, have
2 directed us that it is -- it is their direction to
3 propose that unit cost and that that is something they
4 are willing to accept.

5 So Anya's going to talk little bit more about that
6 aspect of it.

7 MS. KWAN: So John has talked substantively about
8 two categories of RRM's: Those based on actual costs and
9 those were the -- we have a -- like an RRM or a unit
10 cost that has been proposed. I'm really going to talk
11 about some of the fairness considerations that the
12 Commission staff raised in their last draft of the
13 parameters and guidelines.

14 In a settlement agreement -- I understand this is
15 not one -- there is a provision called the good faith
16 settlement determination, which considers whether or not
17 a settlement is brought in good faith. And then if it
18 is, then it acknowledges that somebody may propose a
19 settlement for reasons besides maximizing financial
20 return.

21 So here, the co-pre- -- the claimants are proposing
22 this RRM. In hiring BBK and D-Max to create this RRM
23 and propose it to you, there -- they acknowledge and
24 understood that it is not going to be a perfect
25 reimbursement of their costs; but, instead, of an

1 approximation based on this RRM supported by the data
2 that they are hoping you will accept, to receive their
3 reimbursement.

4 So as such, given that the claimants have hired us
5 to provide the RRM -- and we understand that not
6 everyone is going to be able to maximize financial
7 recovery based with this RRM is accepted, the claimants
8 believe the RRMs should not be rejected just because not
9 all the claimants will receive their maximum amount
10 because -- based on the nature of the RRM itself.

11 The municipal claimants thank the Commission for
12 the time to present on portions of the RRM to try to
13 explain why we believe they are fair and reasonable.
14 The claimants wish to reiterate that we have not
15 with- -- withdrawn or waived any of the previous
16 arguments made in the comment letters. However, we are
17 to specifically augment the arguments related to RRMs.
18 Specifically, the claimants wish to clarify that the
19 RRMs for the residential educational activities and the
20 long-term effectiveness assessment were based on actual
21 costs that were provided in the record.

22 Additionally, the claimants wish to provide
23 clarification on what data supported the unit costs for
24 the RRMs were reporting on street sweeping and
25 conveyance system cleaning, conveyance system cleaning,

1 and jurisdictional water activities.

2 The municipal claimants appreciate the Commission's
3 time in considering these additional comments.

4 The municipal claimants ideally would love if
5 the -- for the RRM's were accepted, but understand that
6 if we need to go back and work with Commission staff to
7 create better unit costs or flesh out data, we would be
8 happy and willing to do so.

9 Thank you.

10 CHAIRPERSON PERRAULT: Thank you.

11 Let me go ahead now and turn to Ms. Munoz and
12 Mr. Nguyen from the Department of Finance.

13 Do you have any additional comments?

14 MS. MUÑOZ: The Department of Finance concurs with
15 staff recommendation in this matter, and we are also
16 available to respond to any questions.

17 CHAIRPERSON PERRAULT: Thank you so much.

18 I think -- so we'll now move to Ms. Fordyce and
19 Ms. Ryan.

20 Is Mr. Neill online? There he is. Okay.

21 For the State Water Resources Control Board. And
22 San Diego Regional Water Quality Control Board; do you
23 have any comments?

24 MS. FORDYCE: Yes, we do.

25 CHAIRPERSON PERRAULT: Okay. Thank you. Go ahead.

1 MS. FORDYCE: So good afternoon now, barely. The
2 commissioner -- commissioners and staff.

3 My name is Jennifer Fordyce.

4 (Court reporter clarification.)

5 MS. FORDYCE: All right. My name is Jennifer
6 Fordyce. I'm with the State Water Board's Office of
7 Chief Counsel. I'm joined by Erica Ryan next to me and
8 Ben Neill behind me, because we just didn't have a
9 chair. And -- with the San Diego Regional Water Board.
10 And we're going to keep our comments fairly brief.

11 We wanted to first express appreciation of the
12 thoughtful and exhaustive work of Commission staff in
13 developing the proposed decision you are considering
14 today.

15 I think, as most of you know, we don't always see
16 eye to eye on the various test claim matters, but here,
17 we definitely do.

18 We concur with Commission staff's careful analysis
19 and conclusion that the claimants' proposed reasonable
20 reimbursement methodologies, or RRM's, must be denied as
21 they are overbroad or not supported by evidence, not
22 limited to the activities previously found by this
23 Commission to be subject to reimbursement, and do not
24 represent eligible costs.

25 In addition to other numerous flaws, the claimants'

1 proposed RRM would unreasonably reimburse claimants for
2 a period of up to 425 days from the permit effective
3 date, regardless of whether they actually performed any
4 mandate -- mandated activities during this period.

5 The proposed RRMs would result in significant
6 overpayment to some claimants, which simply cannot
7 occur.

8 These flaws underscore that the alternative RRM
9 approach does not work here, and, frankly, it may not
10 work for any similar test case -- test claim for MS4
11 permitting that involves multiple co-permittees, each
12 with different governance, population size, budgeting
13 process, costs, and offsetting revenues for
14 MS4-related-mandated activities, where there's multiple
15 eligible costs and multiple time frames.

16 As these are not consistent across all claimants,
17 it does not lend itself to a single methodology or unit
18 cost per mandated activity. The proposed
19 one-size-fits-all, our approach to reimbursement, should
20 be denied here.

21 We support and urge the Commission to adopt the
22 proposed decision before you. Claimants must be
23 required to submit claims based only on actual costs and
24 with supporting source documentation for the actual
25 performance of State-mandated activities that the

1 Commission previously found reimbursable.

2 The claimants have already spent the money to
3 perform these activities and should be able to submit
4 documentation backing up those costs. The claimants'
5 contention that it's unreasonable to expect them to have
6 retained actual cost information to support
7 reimbursement is not illegal or a recognized basis to
8 approve an RRM.

9 And to address two points raised before:

10 One is, I think it is clear, this is not a
11 settlement so there's no good faith owed to what's been
12 submitted.

13 And, two, to the extent that the claimants are
14 trying to seek additional time to work with the
15 Commission on fixing some of these major flaws, we would
16 object to that. There's been multiple opportunities to
17 fix this along the way. We have -- we have raised these
18 issues, and they have been aware of these issues for
19 some time.

20 So we don't think any further opportunities should
21 be provided.

22 With that, we appreciate the opportunity to speak
23 today, and we're available to answer any questions.

24 CHAIRPERSON PERRAULT: Thank you. I appreciate
25 that.

1 Moving to public comment. Are there any -- is
2 there any public comment on this item?

3 (No response.)

4 CHAIRPERSON PERRAULT: I see none in the room.

5 Is there any online?

6 MR. SUPACHANA: Madam Chair, there are no public
7 comments online.

8 CHAIRPERSON PERRAULT: Okay. Thank you.

9 I'm going to go ahead and bring it back to staff;
10 if staff has any additional comments.

11 MS. SHELTON: Just a couple of things.

12 On the reasonable reimbursement methodology, the
13 decision does identify examples of where the Commission
14 did approve an RRM unit cost. They were examples where
15 it was all of the claimants basically had to do one
16 thing, like counting widgets.

17 And so the range of costs for all the different
18 claimants were not that wide. It was -- you know, there
19 was some variation in costs. We did consider an
20 approximation of all the costs. But it wasn't a wide
21 variation of costs.

22 And here, we have really wide variation of costs
23 depending on the activities that we're talking about.

24 So that was kind of a primary concern. And I sort
25 of agree, this is just not a case that we -- the

1 Commission would typically adopt an RRM, especially with
2 the amount. I don't ever think that the Commission has
3 ever adopted a statewide cost estimate of that amount.
4 So I -- you know, it was -- that was one of the
5 concerns.

6 On the eligible claimant issue with the Airport
7 Authority and the Port District, the problem with the
8 claimants' arguments is that they are not referring to
9 case law.

10 Case law talks about -- the whole point of Article
11 XIII B, section 6, is because of the tax and spend
12 limitations in the Constitution. And, you know, the
13 Supreme Court has said it ties directly -- the purpose
14 of reimbursement is directly tied to the appropriations
15 limit, and it is only dealing with costs that are
16 recovered solely from tax revenues.

17 The City of El Monte case said you can't accept the
18 benefit of a nontax revenue that is exempt from the
19 spending limits and also claim reimbursement for those
20 costs.

21 That's why we have 17556(d), that says that if you
22 are getting money, you have authority from nontax
23 sources, like fees and assessments, then you are not
24 entitled to reimbursement.

25 This argument comes up periodically. It's come up

1 over the last 30 years. We've been in court on it a
2 number of times and have won. So it is a situation
3 where you have to be able to show that you have the
4 authority to levy taxes, which the Airport Authority
5 does not; and that you had the authority to levy taxes
6 and actually levy those taxes in the 77/78 fiscal year;

7 And the Port District, while it has authority to
8 levy taxes, their financial statements show that they
9 have not levied taxes since 1970. So they have not
10 spent any tax revenue on these programs.

11 I'm happy to answer any questions on any particular
12 RRM. I did go through each one. It was difficult to
13 understand. You know, the record is probably, I don't
14 know, 150,000 pages of things.

15 So a lot of it was the survey data, which is really
16 hearsay and we've -- the Commission has found out before
17 that that's hearsay and not reliable, one, because I
18 don't know who it is that's signing it. I don't know
19 where they are getting their information. Is the
20 information an estimate? Is it based on actual costs?
21 What direction were they given? They don't identify
22 their sources or who they are. So it is just not
23 reliable, and there's been no foundation laid for those
24 surveys.

25 But I'm happy to answer any questions that you

1 might have.

2 CHAIRPERSON PERRAULT: Thank you.

3 Let me go ahead now and bring it back to the
4 Commission.

5 Do commissioners have any questions?

6 Mr. Adams.

7 MEMBER ADAMS: Just a comment.

8 While I appreciate the place for an RRM, it seems,
9 to me, the keyword there is "reasonable." And, again,
10 as a member of local government, we would love to see
11 these kind of things when they are appropriate.

12 But just picking out one thing, on page 28, I see a
13 range of \$138 versus \$67,000 for a street sweeping. To
14 try and use a middle or a median or an average,
15 obviously somebody is going to get way under-reimbursed
16 and somebody is going to get way over-reimbursed.

17 So I appreciate, again, both sides of this. But
18 that's tough to swallow.

19 Thanks.

20 CHAIRPERSON PERRAULT: Thank you.

21 Others?

22 Mr. Pahland.

23 MEMBER PAHLAND: Yes. Thanks.

24 I have got a question for the claimant. I have got
25 a question for the claimant.

1 Where do the airport and ports' revenues come from?

2 MS. KWAN: One second.

3 Commission, I don't believe I have written about
4 this, and so I'm not a hundred percent sure I can answer
5 that question at this time. My apologies.

6 MEMBER PAHLAND: Okay. No further questions from
7 me.

8 CHAIRPERSON PERRAULT: Okay. Any other questions
9 from commissioners?

10 (No response.)

11 CHAIRPERSON PERRAULT: Okay. All right. Seeing
12 none, this is an action item.

13 There is -- is there a motion to adopt staff
14 recommendation or an alternative?

15 MEMBER GREENE ROSS: I move to adopt staff
16 recommendation.

17 CHAIRPERSON PERRAULT: Moved by Ms. Greene Ross.

18 Is there a second?

19 MEMBER OPPENHEIM: I will second.

20 CHAIRPERSON PERRAULT: Seconded by Mr. Oppenheim.

21 If we could please have a roll call.

22 MS. GMUR: Mr. Adams.

23 MEMBER ADAMS: Aye.

24 MS. GMUR: Ms. Greene Ross.

25 MEMBER GREENE ROSS: Aye.

1 MS. GMUR: Mr. Oppenheim.
2 MEMBER OPPENHEIM: Aye.
3 MS. GMUR: Mr. Pahland.
4 MEMBER PAHLAND: Aye.
5 MS. GMUR: Ms. Perrault.
6 CHAIRPERSON PERRAULT: Aye.
7 MS. GMUR: Mr. Powell.
8 MEMBER POWELL: Aye.
9 CHAIRPERSON PERRAULT: Thank you so much. That
10 motion carries.

11 And I think we are now on to Item Number 5.

12 MS. GMUR: We will now ask the presenters
13 participating remotely for Item 4 to please turn off
14 their video and mute their microphones; and those
15 presenting in person, please return to your seats.

16 Item 5. Senior Commission Counsel Laura Dougherty
17 will please present a proposed decision and parameters
18 and guidelines on Elections: Ballot Label, 24-TC-01.

19 MS. DOUGHERTY: Good afternoon.

20 These parameters and guidelines address
21 State-mandated activities arising from Elections Code
22 section 9051, as amended by the test claim statute,
23 which requires counties to print supporter and opponent
24 lists in the ballot label for statewide measures,
25 including in other languages, when required by state or

1 federal law and instructed to do so by the Secretary of
2 State, following the Attorney General's Condensed Ballot
3 Title and Summary.

4 No substantive comments were filed on the draft
5 expedited parameters and guidelines, nor on the proposed
6 decision and parameters and guidelines. On each, the
7 Controller recommended no changes.

8 Staff recommends that the Commission adopt the
9 proposed decision and parameters and guidelines with the
10 reimbursement period beginning July 1st, 2023; and
11 authorize staff to make any technical, nonsubstantive
12 changes following the hearing.

13 Thank you.

14 CHAIRPERSON PERRAULT: Thank you so much.

15 Okay. I don't believe we received any parties and
16 witnesses for Item 5, if I'm correct.

17 But before I move on, are there any parties or
18 witnesses who would like to appear on this item who have
19 arrived after our swearing in?

20 (No response.)

21 CHAIRPERSON PERRAULT: I see none in the room.

22 MR. SUPACHANA: There are none online, Madam Chair.

23 CHAIRPERSON PERRAULT: Oh, okay. Thank you so
24 much.

25 With that, is there any public comment on this

1 item?

2 (No response.)

3 CHAIRPERSON PERRAULT: I see none in the room.

4 Is there any online?

5 MR. SUPACHANA: Madam Chair, there are no online
6 public comments.

7 CHAIRPERSON PERRAULT: Great. Thank you so much.

8 Then let me bring it back to the Commission. Are
9 there any comments or questions from Commissioners on
10 this item?

11 (No response.)

12 CHAIRPERSON PERRAULT: Okay. Seeing none, this is
13 an action item.

14 Is there a motion to approve -- or to adopt the
15 staff recommendation?

16 MEMBER OPPENHEIM: I will move to adopt the staff
17 recommendation.

18 CHAIRPERSON PERRAULT: Moved by Mr. Oppenheim.

19 Is there a second?

20 MEMBER GREENE ROSS: Second. I will second.

21 CHAIRPERSON PERRAULT: Second by Ms. Greene Ross.

22 If we could please have a roll call.

23 MS. GMUR: Mr. Adams.

24 MEMBER ADAMS: Aye.

25 MS. GMUR: Ms. Greene Ross.

1 MEMBER GREENE ROSS: Aye.

2 MS. GMUR: Mr. Oppenheim.

3 MEMBER OPPENHEIM: Aye.

4 MS. GMUR: Mr. Pahland.

5 MEMBER PAHLAND: Aye.

6 MS. GMUR: Ms. Perrault.

7 CHAIRPERSON PERRAULT: Aye.

8 MS. GMUR: Ms. Powell.

9 MEMBER POWELL: Aye.

10 CHAIRPERSON PERRAULT: Thank you so much.

11 That motion carries.

12 I think that brings us now to -- we already took up
13 the consent calendar, so I think that brings us to
14 Item 8, Ms. Gmur.

15 MS. GMUR: Yes, ma'am.

16 Next, Program Analyst Jill Magee will please
17 present Item 8, the Legislative Update.

18 MS. MAGEE: Good morning.

19 The following are the legislative updates since the
20 last time the Commission met:

21 First, SB 414, School Accountability: Office of the
22 Education Inspector General: school financial and
23 performance audits: charter school authorization,
24 oversight, funding, operations, and networks: flex-based
25 instruction: local educational agency contracting.

1 SB 414 was introduced by Senator Ashby.
2 Among other amendments to the Education Code
3 regarding charter schools, this bill amends Government
4 Code section 17518 and adds charter school to the
5 definition of "local agency" as follows:

6 "Local agency means any city, county, special
7 district, authority, charter school, or other political
8 subdivision of the State."

9 On September 3rd, 2025, this bill was read a second
10 time and ordered to a third reading.

11 On September 9th, 2025, this bill was suspended per
12 Joint Rule 61(a)(13); was read a third time and amended;
13 and was ordered to a third reading.

14 On September 13th, 2025, this bill was suspended
15 per Joint Rule 61(a)(14) and 51(a)(4); was read a third
16 time, passed, and was ordered to the Senate with
17 concurrence in assembly amendments pending that were
18 concurred in. And this bill was ordered to engrossing
19 and enrolling.

20 On September 23rd, 2025, this bill was enrolled and
21 presented to the governor at 2:00 p.m.

22 On October 13th, 2025, this bill was vetoed by the
23 governor and remains in the Senate with consideration of
24 the governor's veto pending.

25 Next, AB 964. Commission on State Mandates: state

1 mandates.

2 AB 964 was introduced by Assembly Member Hadwick.

3 This bill amends Government Code section 17558.5.

4 This bill would require the Controller to notify the
5 claimant in writing within 30 days of any adjustment
6 that results from an audit or review, and now requires
7 the Controller to allow a local agency or school
8 district, at the sole discretion of the local agency or
9 school district, to offset any reduced reimbursement as
10 prescribed or to remit funds to the Controller.

11 There has been no new action on this bill.

12 Next, AB 1452. State mandates: claims.

13 AB 1452 was introduced by Assembly Member Ta.

14 This bill amends Government Code section 17564.
15 This bill would change the minimum claim amount that
16 requires the State to reimburse a local government from
17 \$1,000 to \$800.

18 There has been no new action on this bill.

19 Next, SB 470, Bagley-Keene Open Meeting Act:
20 teleconferencing.

21 SB 470 was introduced by Senator Laird.

22 This bill now amends Government Code sections
23 11123.2 and 11123.5.

24 The act authorizes an additional alternative set of
25 provisions under which a state body may hold a meeting

1 by teleconference, subject to specified requirements.

2 Existing law repeals these provisions on
3 January 1st, 2026. This bill now repeals these
4 provisions on January 1st, 2030.

5 On October 1st, 2025, this bill was approved by the
6 governor and was chaptered by the Secretary of State as
7 Statutes 2025, Chapter 222.

8 Finally AB 395: Holidays.

9 AB 395 was introduced by Assemblymember Gabriel.

10 This bill amends Government Code section 11131, the
11 Bagley-Keene Open Meeting Act.

12 Among other things, this bill would require that a
13 state agency shall make every reasonable effort to avoid
14 conducting any meeting, conference, or other function on
15 a date for which the state agency knows, or has reason
16 to know, that members of the public would be unable to
17 participate or be present due to the ritual observance
18 of a religious, cultural, or ancestral holiday.

19 There has been no new action on this bill.

20 Staff will continue to monitor legislation for
21 bills that impact the mandates process.

22 Thank you.

23 MS. GMUR: Thank you, Jill.

24 Next, Chief Legal Counsel Camille Shelton will
25 please present Item 9, Chief Legal Counsel Report.

1 MS. SHELTON: Good morning.

2 The Commission does not have any litigation pending
3 and so I have nothing new to report.

4 Thank you.

5 MS. GMUR: Thank you, Camille.

6 All right. And now on to Item 10, the Executive
7 Director's Report. I have got three information items:

8 First, the Commission's 40th year. With this
9 December hearing, the Commission completes its
10 40th year.

11 On January 1st, 1985, the Commission was
12 established to render sound quasi-judicial decisions
13 regarding the application of Article XIII B, section 6,
14 to alleged unfunded state mandates; and to provide an
15 effective means of resolving disputes over the existence
16 of State-mandated local programs.

17 We acknowledge the dedication and service of our
18 Commission members and the staff members who have served
19 the Commission for the past 40 years.

20 Item 2. Workload.

21 As of December 1st, there are 37 pending test
22 claims, 32 of which are regarding stormwater NPDES
23 permits. There are three parameters and guidelines,
24 five statewide cost estimates, and one incorrect
25 reduction claim pending.

1 Third. Tentative agenda items.
2 This is just a reminder to please check the
3 tentative agenda items on the Executive Director's
4 Report or the pending caseload documents on the
5 Commission's website, which are updated at least
6 bimonthly to see when something is tentatively set for
7 hearing.

8 Draft proposed decisions for all test claims and
9 IRC matters are issued for review and comment at least
10 eight weeks prior to the hearing date, and a proposed
11 decision approximately two weeks before the hearing.

12 Madam Chair, that's all I have.

13 CHAIRPERSON PERRAULT: Thank you so much.

14 We are going to move into closed session.

15 But before I do so, this is our last meeting of the
16 year, and I did want to just take a moment to thank
17 staff. It has, I know, been an exhaustive year with a
18 lot of work. And I just wanted to -- to thank all of
19 you and -- and wish you hopefully some happy holidays
20 and a little bit of a break.

21 So -- but with that, we are going to go ahead and
22 move into closed session.

23 The Commission will meet in closed executive
24 session pursuant to Government Code section 11126(e), to
25 confer 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 to confer with and receive advice
4 from legal counsel regarding potential litigation.

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

7 And we will reconvene in open session in
8 approximately ten minutes.

9 Thank you so much.

10 (Closed session was held:

11 12:33 p.m. to 12:55 p.m.)

12 CHAIRPERSON PERRAULT: Thank you. Welcome back.

13 We are going to reconvene into open session.

14 The Commission met in closed executive session
15 pursuant to Government Code section 11126(e) to confer
16 with and receive advice from legal counsel for
17 consideration and action, as necessary and appropriate,
18 upon the pending litigation. Listed on the published
19 notice and agenda; and to confer with and receive advice
20 from legal counsel regarding potential litigation.

21 The Commission also conferred on personnel matters
22 pursuant to Government Code section 11126(a)(1).

23 With no further business to discuss, I will go
24 ahead and entertain a motion to adjourn.

25 MEMBER OPPENHEIM: So moved.

1 CHAIRPERSON PERRAULT: Moved by Mr. Oppenheim.
2 MEMBER GREENE ROSS: Second.
3 CHAIRPERSON PERRAULT: Seconded by Ms. Greene Ross.
4 And it has been moved and seconded.
5 So if you would please call the roll, Ms. Gmur.
6 MS. GMUR: Yes, ma'am.
7 Mr. Adams.
8 MEMBER ADAMS: Aye.
9 MS. GMUR: Ms. Greene Ross.
10 MEMBER GREENE ROSS: Aye.
11 MS. GMUR: Mr. Oppenheim.
12 MEMBER OPPENHEIM: Aye.
13 MS. GMUR: Mr. Pahland.
14 MEMBER PAHLAND: Aye.
15 MS. GMUR: Ms. Perrault.
16 CHAIRPERSON PERRAULT: Aye.
17 MS. GMUR: Mr. Powell.
18 MEMBER POWELL: Aye.
19 CHAIRPERSON PERRAULT: Thank you.
20 That motion carries. And the meeting is adjourned
21 at 12:56. Thank you so much, everybody.

22 (Proceedings concluded at 12:56 p.m.)

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CERTIFICATE OF REPORTER

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

5 That I am a disinterested person herein; that the
6 foregoing proceedings were reported in shorthand by me,
7 Kathryn S. Swank, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said proceedings nor
12 in any way interested in the outcome of said proceedings.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 12th day of January 2026. 

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

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