

Item 1

Proposed Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Park Tower, 980 9th Street, Second Floor Conference Room,
Sacramento, CA, 95814 and via Zoom
March 22, 2024

Present: Member Michele Perrault, Chairperson
 Representative of the Director of the Department of Finance
 Member William Pahland
 Representative of the State Treasurer, Vice Chairperson
 Member Lee Adams
 County Supervisor
 Member Deborah Gallegos
 Representative of the State Controller
 Member Jennifer Holman
 Representative of the Director of the Office of Planning and Research
 Member Renee Nash
 School District Board Member

Vacant: Public 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 10:00 a.m. Acting Executive Director Juliana Gmur introduced and welcomed the new Chairperson and Designee for the Department of Finance, Michele Perrault, the new Vice Chairperson and Designee for the State Treasurer, William Pahland, and the new Designee from the State Controller's Office, Deborah Gallegos, and called the roll. Members Adams, Gallegos, Holman, Nash, Pahland, and Perrault, all indicated that they were present.

APPROVAL OF MINUTES

Chairperson Perrault asked if there were any objections or corrections of the January 26, 2024 minutes. Member Adams made a motion to adopt the minutes. Chairperson Perrault asked if there was any public comment. There was no response. Chairperson Perrault asked if there was any further discussion. There was no response. Chairperson Perrault asked if there was a second to Member Adams' motion. Member Holman seconded the motion. Acting Executive Director Gmur called the roll. The Commission voted to adopt the January 26, 2024 hearing minutes by a vote of 5-0 with Member Pahland abstaining.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

Chairperson Perrault asked if there was any public comment. There was no response. Chairperson Perrault thanked departing Department of Finance Designee Gayle Miller for her outstanding service to the State of California and especially her work for this Commission as Chairperson since 2019. Chairperson Perrault asked if any other members would like to add any additional comments. There was no response.

CONSENT CALENDAR

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

ADOPTION OF ORDER TO ADOPT RULEMAKING

- Item 6* General Cleanup (Order 23-01), Proposed Amendments to California Code of Regulations, Title 2, Division 2, Chapter 2.5, Articles 1, 3, 4, 5, and 7

STATEWIDE COST ESTIMATES

- Item 7* Juveniles: Custodial Interrogation, 21-TC-01
Welfare and Institutions Code Section 625.6 as Amended by Statutes 2020, Chapter 335, Section 2 (SB 203)

Acting 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. There was no response. Member Adams made a motion to adopt the consent calendar. Member Nash seconded the motion. Acting Executive Director Gmur called the roll. The Commission voted to adopt the consent calendar by a vote of 6-0.

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

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

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

- Item 2 Appeal of Executive Director Decisions

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

TEST CLAIMS

- Item 3 *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, 10-TC-07*
California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, Sections IV; VI.D.1.a.vii; VI.D.1.c.i(8);

VI.D.2.c; VI.D.2.d.ii(d); VI.D.2.i; VII.B; VII.D.2; VII.D.3; VIII.A; VIII.C; VIII.H; IX.C; IX.D; IX.E; IX.H; X.D; XI.D.1; XI.D.6; XI.D.7; XI.E.6; XII.A.1; XII.A.5; XII.B; XII.C.1; XII.D.1; XII.E.1; XII.E.2; XII.E.3; XII.E.4; XII.E.6; XII.E.7; XII.E.8; XII.E.9; XII.F; XII.G.1; XII.K.4; XII.K.5; XII.H; XIV.D; XV.A; XV.C; XV.F.1; XV.F.4; XV.F.5; XVII.A.3; and Appendix 3, Section III.E.31, Adopted January 29, 2010

County of Riverside, Riverside County Flood Control & Water Conservation District, and Cities of Beaumont, Corona; Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto, Claimants

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

David Burhenn appeared on behalf of the claimants. Donna Ferebee appeared on behalf of the Department of Finance. Catherine Hagan and Jennifer Fordyce appeared on behalf of the State Water Resources Control Board and Santa Ana Regional Water Quality Control Board.

Following statements by Mr. Burhenn, Ms. Ferebee, Ms. Hagan, Member Pahland, Chief Legal Counsel Camille Shelton, and Senior Commission Counsel McGinnis, Chairperson Perrault asked if there was any public comment. There was no response. Chairperson Perrault asked if there was any further discussion. There was no response. Member Pahland made the motion to adopt the staff recommendation. Member Gallegos seconded the motion. Acting Executive Director Gmur called the roll. The Commission voted to adopt the Proposed Decision by a vote of 6-0.

Item 4 *Public School Restrooms: Menstrual Products*, 22-TC-04
Statutes 2021, Chapter 664, Sections 1 and 3 (AB 367);
Education Code Section 35292.6
Hesperia Unified School District, Claimant

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt the Proposed Decision to approve this Test Claim.

Dr. George Landon and Arthur Palkowitz appeared on behalf of the claimant. Martina Dickerson and Chris Ferguson appeared on behalf of the Department of Finance.

Acting Executive Director Gmur asked if Ms. Dickerson and Mr. Ferguson had been sworn in. Chairperson Perrault confirmed that both were not sworn in. Acting Executive Director Gmur swore in Ms. Dickerson and Mr. Ferguson.

Following statements by Mr. Palkowitz and Mr. Ferguson, Chairperson Perrault asked if there was any public comment. There was no response. Following a question from Mr. Palkowitz and answer from Chief Legal Counsel Shelton, Chairperson Perrault asked if there were any questions from board members. There was no response. Member Adams made the motion to adopt the staff recommendation. Member Nash seconded the motion. Acting Executive Director Gmur called the roll. The Commission voted to adopt the Proposed Decision by a vote of 6-0.

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

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

Acting Executive Director Gmur presented this item, stating that Item 5 is reserved for county applications for a finding of significant financial distress, or SB 1033 applications, and that no SB 1033 applications have been filed.

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: Budget, Workload Update, and Tentative Agenda Items for the May 2024 and July 2024 Meetings (info)

Acting Executive Director Gmur introduced the new Assistant Executive Director, Dennis Supachana, continued to present 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 10:55 a.m., pursuant to Government Code section 11126(e). The Commission met in closed session to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

A. PENDING LITIGATION

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

Trial Courts:

1. *County of Los Angeles v. Commission on State Mandates*
Los Angeles County Superior Court, Case No. 23STCP04362
(*Accomplice Liability for Felony Murder*, 19-TC-02)

B. POTENTIAL LITIGATION

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

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members or staff.

C. PERSONNEL

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

RECONVENE IN PUBLIC SESSION

At 11:08 a.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 Gallegos made a motion to adjourn the meeting. Member Holman seconded the motion. The March 22, 2024 meeting was adjourned at 11:09 a.m., by a vote of 6-0.

Juliana Gmur
Acting Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

PUBLIC MEETING

FRIDAY, MARCH 22, 2024

10:00 A.M.

MEETING HELD

AT 980 9TH STREET

2ND FLOOR CONFERENCE ROOM

SACRAMENTO, CALIFORNIA

AND

VIA ZOOM

VIDEO COMMUNICATIONS PLATFORM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

REPORTED BY:

KATHRYN S. SWANK

Certified Shorthand Reporter No. 13061

Registered Professional Reporter

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



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A P P E A R A N C E S

COMMISSIONERS PRESENT

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

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

DEBORAH GALLEGOS
Representative for MALIA COHEN
State Controller

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

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

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

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

COMMISSION STAFF

JULIANA GMUR
Acting Executive Director

CAMILLE N. SHELTON
Chief Legal Counsel

ERIC FELLER
Senior Commission Counsel
(Via Zoom)

JILL MAGEE
Program Analyst
(Via Zoom)

ELIZABETH MCGINNIS
Senior Commission Counsel

JOSEPH ORTIZ
Information Specialist I
(Via Zoom)

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

2 ***PUBLIC PARTICIPANTS***

3 DAVID BURHENN
4 Burhenn & Gest
5 (Item 3)
6 (Via Zoom)

7 MARTINA DICKERSON
8 Department of Finance
9 (Item 4)
10 (Via Zoom)

11 DONNA FEREBEE
12 Department of Finance
13 (Item 3)
14 (Via Zoom)

15 CHRIS FERGUSON
16 Department of Finance
17 (Item 4)
18 (Via Zoom)

19 JENNIFER FORDYCE
20 State Water Resources Control Board
21 and
22 Santa Ana Regional Water Quality Control Board
23 (Item 3)
24 (Via Zoom)

25 CATHARINE HAGAN
26 State Water Resources Control Board
27 and
28 Santa Ana Regional Water Quality Control Board
29 (Item 3)
30 (Via Zoom)

31 DR. GEORGE LANDON
32 Hesperia Unified School District
33 (Item 3)

34 ARTHUR PALKOWITZ
35 Law Offices of Arthur M. Palkowitz
36 (Item 4)

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E R R A T A S H E E T

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Quality Control Board, Santa
Ana Region, Order No.

R8-2010-0033, Sections IV;

VI.D.1.a.vii; VI.D.1.c.i(8);

VI.D.2.c; VI.D.2.d.ii(d);

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XII.K.5; XII.H; XIV.D; XV.A;

XV.C; XV.F.1; XV.F.4; XV.F.5;

XVII.A.3; and Appendix 3,

Section III.E.31, Adopted

January 29, 2010

County of Riverside, Riverside

County Flood Control & Water

Conservation District, and

Cities of Beaumont, Corona;

Hemet, Lake Elsinore, Moreno

Valley, Perris, and San Jacinto,

Claimants

Item 4 Public School Restrooms: 41

Menstrual Products, 22-TC-04

Statutes 2021, Chapter 664,

Sections 1 and 3 (AB 367);

Education Code Section 35292.6

Hesperia Unified School District,

Claimant

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1 FRIDAY, MARCH 22, 2024, 10:00 A.M.

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3 CHAIRPERSON PERRAULT: Good morning. The meeting
4 on the Commission on State Mandates will come to order.
5 Welcome to our hybrid meeting. Senate Bill 544 amended
6 the Bagley-Keene Open Meeting Act to allow hybrid
7 meetings under Government Code Section 11123.2 --

8 Closer? Okay. I moved it a little closer. All
9 right.

10 Better? All right.

11 -- 11123.2, where access to this meeting is
12 provided both remotely and at a physical teleconference
13 location. The Commission continues its commitment to
14 ensure that its public meetings are accessible to the
15 public and that the public has the opportunity to
16 observe the meeting and to participate by providing
17 written and verbal comment on Commission matters.

18 For those participating in person, I have some
19 housekeeping information. On the table near the wall
20 are paper copies of the meeting notice and agenda, new
21 filings, witness list, and consent calendar.

22 The electronic public hearing binder is also
23 located there on an iPad. When called up for an item,
24 the parties and witnesses will please sit at the witness
25 tables. The restrooms are located out the door and down

1 the hall to the left. The men's room is across the open
2 atrium. The code for both restrooms is posted on the
3 door as you exit the conference room. Finally, please
4 take note of the emergency exits in the room.

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

9 When called for an item, the parties and witnesses
10 will please turn on your video and unmute your
11 microphone. At the conclusion of your item, please turn
12 off your video and mute your microphone.

13 In the event we experience technical difficulties
14 or the meeting is bumped offline, we will restart and
15 allow time for people to rejoin before recommencing the
16 meeting.

17 Juliana, will you please call the roll.

18 MS. GMUR: First, please join me in welcoming our
19 new Commission Chairperson, Ms. Michele Perrault.
20 Ms. Perrault is the Chief Deputy Director of Policy for
21 the Department of Finance. Prior to this, Ms. Perrault
22 was the Deputy Director of Legislation. Before joining
23 the Department of Finance, she was the Executive
24 Director of Communications for the Roseville City School
25 District.

1 Prior to that, she was the Director of the
2 Administrative Services Division of the California
3 Commission on Teacher Credentialing. She served as the
4 Advocacy and Communications Director for California
5 State University Chancellor's Office. She was the
6 Communications Grassroots Director for the California
7 Rehabilitation Association and the Media Relations
8 Director for the California Chamber of Commerce.

9 Welcome, Michele.

10 Second, please join me in welcoming our new
11 Commission Vice Chairperson, William Pahlund, general
12 counsel at the Treasurer's Office.

13 Welcome, William.

14 Finally, join me in welcoming our new Commission
15 Designee from the Controller's Office, Deborah Gallegos,
16 Deputy Controller of Investments and Financial
17 Management.

18 Welcome, Deborah.

19 And now I will call the roll.

20 Mr. Adams.

21 MEMBER ADAMS: Here.

22 MS. GMUR: Ms. Gallegos.

23 MEMBER GALLEGOS: Here.

24 MS. GMUR: Ms. Holman.

25 MEMBER HOLMAN: Here.

1 MS. GMUR: Ms. Nash.

2 MEMBER NASH: Here.

3 MS. GMUR: Mr. Pahland.

4 MEMBER PAHLAND: Here.

5 MS. GMUR: Ms. Perrault.

6 CHAIRPERSON PERRAULT: Here.

7 Okay. We will now move on to Item 1.

8 Are there any objections to or additional
9 corrections of the January 26, 2024, minutes?

10 MEMBER ADAMS: I would move approval.

11 CHAIRPERSON PERRAULT: Okay. Is there any public
12 comment on this item?

13 (No response.)

14 CHAIRPERSON PERRAULT: Seeing none.

15 Any further discussion?

16 MR. ORTIZ: Madam Chair, I'm Joe Ortiz from the
17 Commission on State Mandates, and I'm currently
18 monitoring public comments from our virtual attendees,
19 and there are no public comments to report at this time.

20 CHAIRPERSON PERRAULT: Thank you so much.

21 All right. I have a motion by Mr. Adams, I
22 believe.

23 Is there a second?

24 MEMBER HOLMAN: I will second. Sorry.

25 CHAIRPERSON PERRAULT: All right. A second by

1 Ms. --

2 MEMBER HOLMAN: Holman.

3 CHAIRPERSON PERRAULT: -- Holman. Thank you. I
4 will get that.

5 Roll call, please.

6 MS. GMUR: Mr. Adams.

7 MEMBER ADAMS: Aye.

8 MS. GMUR: Ms. Gallegos.

9 MEMBER GALLEGOS: Aye.

10 MS. GMUR: Ms. Holman.

11 MEMBER HOLMAN: Aye.

12 MS. GMUR: Ms. Nash.

13 MEMBER NASH: Aye.

14 MS. GMUR: Mr. Pahland.

15 MEMBER PAHLAND: Abstain.

16 MS. GMUR: Ms. Perrault.

17 CHAIRPERSON PERRAULT: Aye.

18 Okay. That motion is carried.

19 We will now move on to public comments for matters
20 that are not on the agenda.

21 MS. GMUR: Please note that the Commission may not
22 take action on items that are not on the agenda.

23 However, it may schedule issues raised by the public for
24 consideration at future meetings. We invite the public
25 to comment on matters that are on the agenda as they are

1 taken up.

2 CHAIRPERSON PERRAULT: Do we have any public
3 comments?

4 (No response.)

5 MS. GMUR: I see none in the room, Madam Chair.

6 CHAIRPERSON PERRAULT: Okay.

7 Online?

8 MR. ORTIZ: Madam Chair, no public comments.

9 CHAIRPERSON PERRAULT: Okay. At this time, I do
10 have something to add. In honor of departing Department
11 of Finance Designee Gayle Miller, I would like to thank
12 her for her outstanding service to the State of
13 California and especially her work for this Commission
14 as Chairperson since 2019.

15 Would any members -- other members like to add any
16 additional comments?

17 (No response.)

18 CHAIRPERSON PERRAULT: All right. Seeing none.

19 We will move to the next item, consent calendar.

20 Juliana.

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

22 Items 6 and 7 are proposed for consent.

23 CHAIRPERSON PERRAULT: All right. Are there any
24 objections -- excuse me -- to the proposed consent
25 calendar from the members or from members of the public?

1 (No response.)

2 CHAIRPERSON PERRAULT: Seeing none in the room.

3 MR. ORTIZ: Madam Chair, I have no public comments
4 online.

5 CHAIRPERSON PERRAULT: Is there a motion to adopt?

6 MEMBER ADAMS: I would -- I would so move.

7 CHAIRPERSON PERRAULT: All right. It's been moved.
8 Is there a second?

9 MEMBER NASH: Second.

10 CHAIRPERSON PERRAULT: Okay. Moved and second.
11 We can have a roll call, please.

12 MS. GMUR: Mr. Adams.

13 MEMBER ADAMS: Aye.

14 MS. GMUR: Ms. Gallegos.

15 MEMBER GALLEGOS: Aye.

16 MS. GMUR: Ms. Holman.

17 MEMBER HOLMAN: Aye.

18 MS. GMUR: Ms. Nash.

19 MEMBER NASH: Aye.

20 MS. GMUR: Mr. Pahlant.

21 MEMBER PAHLANT: Aye.

22 MS. GMUR: Ms. Perrault.

23 CHAIRPERSON PERRAULT: Aye.

24 Okay. That motion carries; so we will move to
25 swearing in.

1 MS. GMUR: Will the parties and witnesses for Items
2 3 and 4, participating remotely, please turn on your
3 video and unmute your microphone. And will all parties
4 please rise and state your name for the record.

5 MR. BURHENN: David Burhenn, Burhenn & Gest, a
6 representative of claimants in Agenda Item 3.

7 MS. FEREBEE: Donna Ferebee, Department of Finance.

8 MS. FORDYCE: Jennifer Fordyce, State Water Board.
9 Catherine, I think you are on mute.

10 MS. HAGAN: My apologies.

11 Catherine Hagan with the Office of Chief Counsel,
12 the State Water Resources Control Board.

13 Thank you.

14 MS. GMUR: Mr. Palkowitz.

15 DR. LANDON: Dr. George Landon with Hesperia
16 Unified.

17 MR. PALKOWITZ: Arthur Palkowitz on behalf of the
18 claimant Hesperia Unified School District.

19 (Parties/witnesses stood to be sworn or
20 affirmed.)

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

25 (Affirmative responses.)

1 MS. GMUR: Thank you. Please be seated.

2 Item 2 is reserved for appeals of the Executive
3 Director decisions. There are no appeals to consider
4 for this hearing.

5 Next is Item 3. Senior Commission Counsel
6 Elizabeth McGinnis will please present a proposed
7 decision on California Regional Water Quality Control
8 Board, Santa Ana Region, Order Number R8-2010-0033,
9 10-TC-07.

10 At this time we invite the parties and witnesses
11 for Item 3, participating remotely, to please turn on
12 your video and unmute your microphone.

13 MS. MCGINNIS: Good morning. Can you hear me okay?

14 (No response.)

15 MS. MCGINNIS: This test claim alleges reimbursable
16 costs mandated by the State to comply with the 2010 test
17 claim permit issued by the Santa Ana Regional Water
18 Quality Control Board, which requires the development
19 and implementation of a local implementation plan
20 template and jurisdiction-specific local implementation
21 plans; the development and implementation of ordinances
22 to control known pathogen or bacteria indicator sources;
23 the one-time review and revision of the Illicit
24 Discharges and Illegal Connections program to include a
25 proactive Illicit Discharge Detection and Elimination

1 program, using specified guidance; requires the County
2 of Riverside to create and maintain a database of new
3 septic systems approved since 2008; increases the scope
4 of certain commercial facilities' inspections and
5 requires an annual evaluation of the residential
6 facilities program; imposes new requirements for
7 regulating stormwater discharges from new development
8 and significant redevelopment projects; requires the
9 development and implementation of a Watershed Action
10 Plan; requires formal training for permittee staff
11 responsible for the review and approval of
12 project-specific water quality management plans; and
13 requires the development of a proposal for assessing the
14 effectiveness of the Urban Runoff Management program
15 that uses specific criteria and guidance.

16 Staff finds that many alleged activities in the
17 test claim are not new but were required by the prior
18 permit. Staff further finds that the requirements
19 regarding municipal new development or redevelopment
20 projects are not mandated by the State and are not
21 unique to government, and, therefore, do not mandate a
22 new program or higher level of service.

23 Staff recommends that the Commission partially
24 approve the test claim for the new mandated requirements
25 identified in the proposed decision addressing the

1 following: local implementation plans; the proactive
2 Illicit Discharge and Elimination program; the septic
3 system database; the Watershed Action Plan; employee
4 training; and Urban Runoff Management program
5 effectiveness assessment, all from January 29th, 2010,
6 through December 31st, 2017, only.

7 Beginning January 1st, 2018, the claimants have fee
8 authority sufficient as a matter of law to cover the
9 costs of the program within the meaning of Government
10 Code Section 17556(d), and, thus, there are no costs
11 mandated by the State on or after this date.

12 In addition, consistent with two recent Court of
13 Appeal decisions, the claimants have the authority to
14 impose regulatory fees for all new mandated activities
15 relating to new development and significant
16 redevelopment projects, and the inspection of commercial
17 properties, which are sufficient as a matter of law to
18 cover the costs and, thus, there are no costs mandated
19 by the State for these activities under Government Code
20 Section 17556(d).

21 Finally, staff finds that there is no evidence in
22 the record that the Riverside County Flood and Water
23 Conservation District was forced to spend its own
24 proceeds of taxes and therefore does not have any costs
25 mandated by the State.

1 Staff therefore recommends that the Commission
2 adopt the proposed decision to partially approve the
3 test claim and authorize staff to make any technical or
4 nonsubstantive changes to the decision following the
5 hearing.

6 Thank you.

7 CHAIRPERSON PERRAULT: Thank you.

8 Parties and witnesses, please state your names for
9 the record.

10 Mr. Burhenn, for the claimants, would you like to
11 begin?

12 MR. BURHENN: Yes, please.

13 David Burhenn, Burhenn & Gest, in Los Angeles. I
14 am claim representative for the Riverside County Flood
15 Control Water Conservation District, the County of
16 Riverside, and the cities of Beaumont, Corona, Hemet,
17 Lake Elsinore, Moreno Valley, Perris, and San Jacinto.

18 CHAIRPERSON PERRAULT: Thank you, Mr. Burhenn.

19 Ms. Ferebee, for the -- for the Department of
20 Finance, do you have any comments?

21 MS. FEREBEE: Yes. Thank you.

22 The Department of Finance previously filed written
23 comments on the test claim, and we have no additional
24 comments to offer today.

25 Thank you.

1 CHAIRPERSON PERRAULT: Thank you.

2 MR. BURHENN: Excuse me --

3 CHAIRPERSON PERRAULT: Yes.

4 MR. BURHENN: -- Madam Chair, we do have comments.
5 I thought you were just having counsel identify
6 themselves. So if you want me to proceed with those, I
7 would be happy to do so.

8 CHAIRPERSON PERRAULT: Please go ahead and proceed
9 with comments.

10 MR. BURHENN: Thank you very much.

11 I want -- first want to thank Chair Miller for her
12 service to the Commission and welcome the new Chair and
13 Vice Chair. Sorry for these long test claims, but it is
14 nature of the beast.

15 I also want to thank staff for their considerable
16 work in -- in promulgating the draft and final proposed
17 decisions, and it is -- it is a lot of work. We do
18 appreciate it.

19 I want to today incorporate all of our previous
20 comment and correspondence on this test claim. My
21 comments at today's hearing also do not represent any
22 waiver of those previous comments.

23 We appreciate that the final proposed decision,
24 which I will call the FPD, was modified from the draft
25 to award claimants' reimbursement for some additional

1 test claim permit elements. Claimants believe that some
2 additional permit requirements, which have been
3 identified in our comments, and which I will briefly
4 touch on today, are also unfunded mandates. And the
5 first are those LIP, local implementation plan,
6 requirements, in Section VII. When I say -- when I use
7 "seven," I mean Roman VIIIs; so I will try to make that
8 clear.

9 The FPD determined that various requirements
10 relating to LIPs did constitute unfunded State mandates;
11 however, it also concluded that one section of the
12 permit, Section Roman VII.D.3, which required that
13 permittees implement the applicable LIPs that were
14 adopted in response to continued exceedances of water
15 quality standards, was not new.

16 We disagree, respectfully.

17 The LIP provisions in the test claim permit clearly
18 are new, as reflected by the FPD's treatment of those
19 provisions. For the first time the test claim permit,
20 each permittee was required to develop such
21 implementation plans.

22 How then can a provision directing permittees to
23 implement those new provisions also not be new?

24 While the FPD draws parallels with similar
25 provisions in the preceding 2002 permit, requiring

1 implementation, revise BMPs, and other requirements --
2 by the way, "BMPs," for the new people on the Board --
3 on the Commission rather -- are best management
4 practices. Basically things you do to improve water
5 quality.

6 They concluded that because that provision was in
7 the previous permit, simply including LIPs in this
8 requirement is not new. We disagree.

9 At minimum, including LIPs represents a higher
10 level of service required of permittees in the test
11 claim permit. Even though the mechanism for
12 implementing those requirements may be similar to that
13 in the previous permit, the obligations being
14 implemented, the LIP themselves, are new. Thus, the
15 requirements of Section VII.D.3 are, in fact, a new
16 and/or higher level of service and are, thus,
17 reimbursable.

18 I would next like to discuss the IC/ID and IDDE
19 provisions of Section IX and Appendix 3. And, again,
20 more acronyms. But I think counsel has explained that.

21 While the FPD agrees that Section IX.D and the
22 provisions of Section IX.H and Appendix 3, Section
23 III.E.3, are unfunded mandates, the FPD also concludes
24 that the requirements of Section IX.E are not.

25 Section IX.E requires permittees to enhance their

1 existing IC/ID programs by incorporating proactive IDDE
2 practices, well laid out in guidance documents.

3 Sections IX.D and IX.E work together to require
4 this incorporation. This is a clear example of a
5 provision which requires permittees to upgrade existing
6 programs which constitute a new program and/or higher
7 level of service.

8 While the FPD concludes that Section D's
9 requirements are new, it also concludes that Section
10 IX.E, which requires incorporation of those principles
11 in a series of IC/ID tasks, is not.

12 The FPD contends that because these IC/ID tests
13 were performed under the 2002 permit, then Section IX.E
14 is not new. Thus, if there was a public education
15 component of the IC/ID program, incorporating IDDE
16 principles into that component, is not new because IC/ID
17 public education was done under the previous permit.

18 With respect, we believe that the FPD has gotten it
19 backwards. The Water Board itself, in the fact sheet
20 and in a test claim permit finding, indicated that
21 permittees are required to revise their IC/ID programs,
22 those existing programs, to incorporate IDDE concepts.

23 The Water Board admitted in comments the test claim
24 permit required permittees to develop, quote, "a more
25 proactive IDDE program to increase effective control of

1 illicit discharges."

2 That is the intent of Section IX.E, as its plain
3 language states. It is to require permittees to
4 incorporate IDDE concepts into five identified elements
5 of their IC/ID programs. It is not to perform those
6 programs themselves, which may be but are not
7 necessarily preexisting, but to review and revise those
8 existing programs as necessary to incorporate the new
9 IDDE principles.

10 And even if the IC/ID tasks themselves were the
11 focus of this provision, as the FPD contends, Section
12 IX.E still requires a higher level of service by
13 permittees due to the need to incorporate the IDDE
14 concepts.

15 Section IX.E required real effort by permittees, as
16 the exhibits to the declaration of Rohini Mustafa in our
17 comments demonstrate. It is not the case where
18 claimants were simply spending more money, as the FPD
19 asserts. The section required permittees to perform and
20 pay for new activities required by the new requirements
21 of the permit, which is the definition of what
22 constitutes a new program or, at minimum, a higher level
23 of service.

24 With regard to Section IX.H, which was granted in
25 part in the -- in the FPD, the FPD would deny

1 reimbursement for costs associated with maintaining a
2 database of IC/ID incidents that led to enforcement on
3 the ground that this was in the previous permit.
4 However, the test claim permit went farther by requiring
5 each permittee to maintain a base and to create a new
6 database covering additional incidents.

7 I would note that the report of waste discharge,
8 which was issued by the permittees in 2014, which is in
9 the record, stated that the overwhelming majority of
10 these IC/ID incidents, in fact, did not lead to
11 enforcement, which I would add is a good thing because
12 it shows that informal -- informal enforcement is being
13 effective in that region.

14 I would next like to discuss commercial and
15 residential inspection requirements in Section XI. The
16 FPD concludes that the requirements of Test Claim
17 Section -- Permit Section XI.E.6, which is to evaluate
18 residential programs and to report on that evaluation in
19 their annual reports, is not new because federal
20 regulations in the prior permit included elements of
21 control measures directed at residential activities. We
22 respectfully disagree.

23 The approach told in the FPD of looking to the
24 context of these requirements rather than the plain
25 permit language is, we submit, in error. The permit in

1 Section XI.E.1 and the fact sheet states that permittees
2 were to develop and implement a residential program.
3 Moreover, the requirements of Sections XI.E.2 through
4 XI.E.5 do not constitute the entirety of what that
5 residential program is, but set minimum -- minimum
6 standards.

7 The Commission must assume that the Water Board
8 meant what it adopted. Had the permit merely required
9 permittees to continue to do the work required in the
10 prior permit, the residential program either would be
11 absent, or the permit would state the permittees should
12 continue to carry out residential elements.

13 This is not the case.

14 I draw your attention to some language in the FPD,
15 on page 204, where it states, quote, "The Commission
16 must therefore presume that the regional Board intended
17 every word, phrase, and provision in the test claim
18 permit to have meaning and to perform a useful function.
19 The Water Board intended the requirements in Section
20 XI.E.6 to perform a function, and the Commission should
21 treat that requirement as a new mandate."

22 My last comment on the permit itself -- I apologize
23 for the flickering lights -- is on Section XII,
24 Development Requirements.

25 The FPD concludes that requirements at issue in

1 Section XII are not reimbursable State mandates.

2 First, it concludes that certain development
3 requirements are not reimbursable because, if they are
4 related to a municipal project, that project was
5 triggered by a decision of a municipality and not a
6 mandate of the State. However, that analysis, we
7 believe, ignores the requirements of the provisions at
8 issue.

9 For example, Section XII.C.1 requires permits to
10 review their general plan and other planning documents
11 to eliminate barriers to low-impact development or
12 hydrological constituents of concern, HCOC, policies,
13 and to report on that review. This work is required of
14 permittees whether or not they construct any significant
15 development or redevelopment projects.

16 The same is true for Section XII.E.4, which
17 requires permittees to revise their ordinances, codes,
18 and building standards, to promote green infrastructure
19 and LID techniques. Neither of these efforts are
20 connected with any BMP requirements that would apply to
21 any specific municipal or, for that matter, private
22 development projects. But they must be performed.

23 A similar analysis applies to Sections XII.E.1,
24 XII.E.3, XII.F.1 and 2, and XII.G.1.

25 Second, the FPD errs in concluding that Sections

1 XII.A.5, C.1, D.1, E.1 through 4, E.9, and G.1, are not
2 requirements unique to government or which provide
3 peculiarly governmental service.

4 The FPD appears to mix the implementation of these
5 requirements with their promulgation.

6 Yes, both municipal and private development
7 projects are subject to Section XII BMP requirements.
8 But promulgation of those requirements themselves is
9 strictly the responsibilities of the permittees. This
10 is true, looking at the plain language of these
11 sections, which refer, in every case, to requirements
12 that are imposed on a permittee or permittees.

13 And the regulation of development is a core
14 municipal activity, one unique to government.

15 In addition, these requirements provide a
16 peculiarly governmental service by regulating
17 development and providing a service to the public
18 through promotion of clean water.

19 Thus, citation of the County of Los Angeles case is
20 in opposite. There the County was found not to have an
21 unfunded mandates claim or having to comply with State
22 elevator regulations that applied to both public and
23 private operators.

24 Here, the analogy would be for the State to require
25 the County itself to devise those regulations.

1 Finally, the requirements at issue in the test
2 claim regarding Section XII are not subject to the
3 Mitigation Fee Act, because those requirements relate to
4 general development requirements, not project-specific
5 exactions.

6 Finally, I would like to briefly discuss the --
7 some of the cost recovery issues. Our comments set
8 forth in some detail why SB 231, which restricts our
9 recovery to the period ending December 31st, 2017,
10 should not be relied on by the Commission. I won't
11 repeat that here.

12 However, I do want to address some other of the
13 conclusions.

14 We disagree with the FPD regarding our ability to
15 raise regulatory fees for Section XII.B.7. This is one
16 that we were given in the new -- in the final proposed
17 decision.

18 That provision requires permittees to develop an
19 enforcement strategy for mobile businesses. A strategy
20 is not connected with any benefit to mobile benefit --
21 businesses, even in the aggregate. It is preparatory to
22 the actual implementation of the strategy, which we
23 agree potentially could be recovered by costs.

24 Similarly, Section XII.C.1, which I mentioned
25 above, requires permittees to revise ordinances and

1 building standards to promote green infrastructure, but
2 there is no link to any development project. And such
3 requirements are not incidental to any such development
4 project. So there is no way to raise regulatory fees to
5 pay for that effort.

6 This is not the same as where permittees were
7 required to develop model BMPs for subsequent
8 development projects, which was the case in the San
9 Diego permit case that was cited in the FPD.

10 The work required here is to remove barriers. LID
11 and HCOC requirements, which, like the Newhall Water
12 case that was cited, benefit all residents.

13 And, in fact, neither provision here refers to
14 development projects at all. Like the Watershed Action
15 Plan requirements discussed in the FPD, these
16 requirements, and others noted in our comments, are not
17 linked to any actual or even projected development
18 project.

19 They are a step before the kind of requirements
20 that the Court in the San Diego permit case found to be
21 recoverable from regulatory fees.

22 Our comments set forth why the costs of these
23 requirements and others are at issue in Section XII
24 cannot be recovered through regulatory fees.

25 I want to thank you for your attention to these

1 matters. I would be happy to answer any questions that
2 Commission members may have.

3 CHAIRPERSON PERRAULT: Thank you, Mr. Burhenn.

4 Before I move on, let me back up and please have
5 the remaining parties and witnesses state your name for
6 the record.

7 MS. HAGAN: This is Catherine Hagan with the State
8 Water Resources Control Board.

9 MS. FORDYCE: Jennifer Fordyce, State Water
10 Resources Control Board.

11 CHAIRPERSON PERRAULT: Thank you so much. All
12 righty.

13 So, Ms. Hagan and Ms. Fordyce, for the State Water
14 Resources Control Board and the Santa Ana Regional Water
15 Quality Control Board, do you have any comments?

16 MS. HAGAN: Yes. Good morning, Commission members
17 and staff. We just have very brief comments.

18 We wanted to note that we appreciate the -- and
19 recognize the very thorough and exhaustive work by the
20 Commission staff in developing this draft proposed
21 decision that you are considering today. We agree with
22 a significant number of the recommendations in that
23 final decision.

24 We do continue to disagree with some aspects of the
25 proposed decision, but we have already expressed these

1 concerns in prior written comments in this matter. So
2 we will not be reiterating those here today.

3 With that, we appreciate the opportunity to speak
4 and are available to answer any questions you may have.

5 CHAIRPERSON PERRAULT: Thank you.

6 Are there any questions from the Board?

7 MEMBER PAHLAND: Yes. I do have some questions if
8 I may.

9 In particular, for FPD counsel.

10 First, just a level-setting question.

11 When you refer to "FPD," I'm assuming that's Flood
12 Protection District; is that accurate?

13 MS. SHELTON: He's talking about the final proposed
14 decision.

15 MEMBER PAHLAND: Oh, okay. Okay. All right.

16 Then the second question: When you were
17 challenging these determinations and proposed decision,
18 are you doing so on behalf of each one of your clients,
19 or is there any particularization?

20 MR. BURHENN: We -- because the permit does
21 differentiate somewhat with regard to certain
22 provisions. For example, some of the development
23 provisions I believe are not applicable to the Flood
24 Control District, which does not have land-use
25 authority; that would only be on behalf of our claimants

1 who are municipalities.

2 But I'm speaking today on behalf of all of our --
3 all claimants, as I am their claim representative.

4 And another example would be County of Riverside
5 alone has the database requirement.

6 MEMBER PAHLAND: All right. Thank you.

7 Then, also, a question about your final argument.

8 Essentially it sounded to me like you were saying
9 the Flood Protection District did not have the ability
10 to capitalize certain expenses -- it looked like
11 general-type overhead expenses -- into its regulatory
12 fee structure; therefore, that resulted in a new or
13 additional expense that you are seeking recovery for.

14 Is that the crux of your argument, or is there
15 nuance I'm missing?

16 MR. BURHENN: I think so.

17 Yeah. I mean, what we are saying -- again, what
18 the final proposed decision states is that based on some
19 recent California law, costs associated with, for
20 example, providing template BMPs for people who are
21 doing development projects -- you know, a new shopping
22 center or a new firehouse, whatever -- even though those
23 costs were incurred by the permittees, they can be
24 recovered from the development proponent, at least the
25 private one.

1 And what we are saying is that the requirements --
2 some of the requirements that were identified in the FPD
3 as being subject to recovery from regulatory fees are,
4 in fact, not, because they are not related to any
5 particular development project, nor do they serve any
6 particular development project.

7 They are, instead, basically, what I would call
8 "deck-clearing requirements," requirements to make sure
9 that the plans, the ordinances, etc., of a particular
10 municipality, are -- promote basic green development
11 initiatives.

12 MEMBER PAHLAND: Okay. So that sounds to me like a
13 requirement that is generally applicable across
14 everybody within the jurisdiction and not, you know,
15 particularized to a specific applicant. Therefore, you
16 are not able to charge that applicant for those costs.

17 Is that a summary of your argument?

18 MR. BURHENN: Yes, sir.

19 MEMBER PAHLAND: Then are there other general-type
20 overhead costs, though, that the Protection District
21 incurs that it likewise doesn't capitalize into its
22 regulatory fees? Costs of copier, costs of desk.

23 These other general overhead-type costs -- how do
24 those get recovered, then, by the District?

25 MR. BURHENN: Again, I want to just be careful.

1 There is no such thing as a Flood Protection District.

2 MEMBER PAHLAND: Okay. I'm using the wrong term.

3 I'm sorry. I --

4 MR. BURHENN: Yeah. I mean, let's just call them

5 "claimants." I think it is probably easier for me --

6 MEMBER PAHLAND: Okay. But --

7 MR. BURHENN: -- for me to understand the question.

8 MEMBER PAHLAND: -- this is just one specific
9 claimant though. Because the argument of this one
10 claimant is it can raise its fees, and therefore isn't
11 subject to any recovery; whereas the other basket of
12 claimants seem to be able to, you know, per the proposed
13 decision, recover costs for certain items incurred
14 between two dates.

15 MR. BURHENN: I'm not -- I don't think that's
16 exactly what the proposed decision is.

17 What the proposed decision is saying is that the
18 Flood Control District, because it has a benefit
19 assessment, is not using proceeds of taxes to perform
20 these permit functions and, thus, is not entitled to
21 reimbursement.

22 However, the requirements in Section XII, and
23 throughout the permit, that are at issue here, are
24 incurred by each of the claimants, which are the County
25 and those several Cities.

1 MS. MCGINNIS: And if I may, just to add some
2 clarification, the proposed decision separately
3 addresses the Flood Control District and finds that
4 because it did not use its own proceeds of taxes,
5 there's no further analysis. They are not a potential
6 claimant here. They have not incurred any fee.

7 So the analysis that you are performing or speaking
8 to really goes to the County and the Cities within the
9 County.

10 MEMBER PAHLAND: Okay.

11 MS. MCGINNIS: So -- and then in regards to the
12 issue of promulgation versus implementation, the
13 analysis for implementation of these new development
14 requirements was analyzed as they apply to municipal
15 development projects and then, separately, as they apply
16 to private development projects.

17 And then there's another tier to it, which is the
18 actual promulgation, which would -- that would apply to
19 both, and the implementation -- I'm sorry. The
20 promulgation is an activity that is performed in a -- in
21 a regulatory capacity, but the implementation would be
22 the municipal developer itself. What duties are imposed
23 on it. What it has to do then as a developer in that
24 capacity.

25 So there's sort of three aspects to that analysis,

1 which are separately analyzed in the decision.

2 MS. SHELTON: And just to dovetail.

3 All of those costs that relate to the municipal
4 developer are recommended for denial on the ground that
5 they are not mandated by the State. They are decisions
6 that are made at the local level, and there's no State
7 direction for those.

8 The activities that are required relating to the
9 private developers -- adoption of the regulations; you
10 know, the planning activities as they relate to private
11 development -- all have regulatory fee authority and are
12 recommended for denial based on 17556(d).

13 MEMBER PAHLAND: Okay. Thank you.

14 MR. BURHENN: If I may just respond briefly to
15 Ms. Shelton.

16 And I also -- and counsel I think has accurately
17 described the analysis in the decision.

18 It is our contention that the municipal private
19 distinction does not hold water when the requirements,
20 again, are unrelated to the decision to build a project.

21 The decision and the position of the Commission has
22 been that if a city, for example, decides to build a new
23 firehouse, that firehouse is a discretionary act by the
24 city and is not mandated by the State. I should say
25 that the water pollution control elements of that

1 project. We don't agree with that, but we understand
2 that to be the position.

3 What we are saying is that requirements that are
4 not related to that particular decision to build the
5 firehouse -- that is, to review one's ordinances,
6 general plans, etc. -- should not be subject to that
7 municipal discretionary act exception.

8 MEMBER PAHLAND: No further questions. Thank you.

9 CHAIRPERSON PERRAULT: Further questions?

10 (No response.)

11 CHAIRPERSON PERRAULT: Is there any public comment
12 on this item?

13 MS. GMUR: I see no public comment, Madam Chair. I
14 see no public comment, Madam Chair.

15 CHAIRPERSON PERRAULT: Thank you.

16 Online?

17 MR. ORTIZ: No public comment, Madam Chair.

18 CHAIRPERSON PERRAULT: Okay.

19 Is there any further discussion?

20 (No response.)

21 CHAIRPERSON PERRAULT: Okay. Is there a motion?

22 MEMBER PAHLAND: Okay. I will move to adopt the
23 proposed decision.

24 CHAIRPERSON PERRAULT: Okay. Moved by --

25 MEMBER GALLEGOS: Second.

1 CHAIRPERSON PERRAULT: -- moved by Mr. Pahland.
2 Second by Ms. Galle- --
3 MEMBER GALLEGOS: Gallegos.
4 CHAIRPERSON PERRAULT: -- Gallegos. I know I said
5 that wrong. I'm so sorry.
6 Would you please call the roll.
7 MS. GMUR: Mr. Adams.
8 MEMBER ADAMS: Aye.
9 MS. GMUR: Ms. Gallegos.
10 MEMBER GALLEGOS: Aye.
11 MS. GMUR: Ms. Holman.
12 MEMBER HOLMAN: Aye.
13 MS. GMUR: Ms. Nash.
14 MEMBER NASH: Aye.
15 MS. GMUR: Mr. Pahland.
16 MEMBER PAHLAND: Aye.
17 MS. GMUR: Ms. Perrault.
18 CHAIRPERSON PERRAULT: Aye.
19 That motion carries.
20 MS. GMUR: We now ask the presenters participating
21 remotely for Item 3 to please turn off their video and
22 mute their microphones.
23 Next is Item 4. Senior Commission Counsel Eric
24 Feller will please turn on your video and microphone and
25 present a proposed decision on public school restrooms:

1 menstrual products, 22-TC-04.

2 At this time, we invite the parties and witnesses
3 for Item 4, participating remotely, to please turn on
4 your video and unmute your microphone.

5 And those participating in person, please come to
6 the table.

7 MR. FELLER: All right. Good morning.

8 This test claim is based on the Menstrual Equity
9 for All Act of 2021 that requires public schools that
10 maintain any combination of classes from grades 6 to 12
11 to stock all women's restrooms, any all-gender
12 restrooms, and at least ones -- one men's restroom with
13 an adequate supply of menstrual products at all times
14 free of charge for pupils on or before the start of the
15 2022-23 school year.

16 The test claim statute also requires these schools
17 to post a notice regarding the statutory requirements in
18 a prominent and conspicuous location in every restroom
19 required to stock menstrual products. The notice must
20 include the text of the statutory section and contact
21 information for the person who maintains the supply of
22 the products.

23 Under prior law, only certain Title I schools in
24 grades 6 to 12 were required to stock 50 percent of
25 their restrooms with menstrual products, and the

1 Commission determined this was a reimbursable State
2 mandate in May 2019.

3 The requirement to stock all women's restrooms,
4 all-gender restrooms, and at least one men's restroom,
5 mandates a higher level of service for these Title I
6 schools and a new program for the remaining non-Title I
7 schools. And a notice requirement is new for all
8 schools.

9 So staff finds the test claim statute imposes a
10 reimbursable, State-mandated program beginning
11 January 1, 2022, and recommends the Commission adopt the
12 proposed decision to approve this test claim and
13 authorize staff to make any technical, nonsubstantive
14 changes following the hearing.

15 MS. GMUR: Madam Chair, if I may.

16 CHAIRPERSON PERRAULT: Yes.

17 MS. GMUR: I'd like to verify that Ms. Dickerson
18 and Mr. Ferguson have been sworn in.

19 CHAIRPERSON PERRAULT: No, I don't believe so.

20 MS. GMUR: Then would you please rise.

21 (Parties/witnesses stood to be sworn or
22 affirmed.)

23 MS. GMUR: Do you solemnly swear or affirm that the
24 testimony which you are about to give is true and
25 correct, based on your personal knowledge, information,

1 or belief?

2 MS. DICKERSON: I do.

3 MR. FERGUSON: I do.

4 MS. GMUR: Thank you.

5 CHAIRPERSON PERRAULT: Thank you.

6 At this time, if parties and witnesses would please
7 state your names for the record, and we'll start with
8 those in the room.

9 MR. PALKOWITZ: Good morning. Art Palkowitz on
10 behalf of the claimant Hesperia Unified School District.

11 DR. LANDON: Dr. George Landon, Deputy
12 Superintendent with the Hesperia Unified School
13 District.

14 CHAIRPERSON PERRAULT: And we'll move online.

15 MS. DICKERSON: Martina Dickerson with the
16 Department of Finance.

17 MR. FERGUSON: Chris Ferguson with the Department
18 of Finance.

19 CHAIRPERSON PERRAULT: Thank you.

20 Mr. Palkowitz and Dr. Landon, for the claimants,
21 would you like to begin?

22 MR. PALKOWITZ: Yes. Thank you very much.

23 We would like to thank staff for their thorough
24 analysis.

25 As Mr. Fuller [sic] correctly stated, there was a

1 prior law that was applicable to only 40 percent of
2 schools based on their poverty level. That was approved
3 by this Commission 7-0, and Mr. Adams was one of the
4 individuals at that Commission hearing.

5 This new law extends this requirement to provide
6 sanitary products to all schools. And, as Mr. Fuller
7 correctly stated, it also goes to providing to at least
8 one men's restroom at a facility.

9 It was the intent of this bill to extend the gender
10 to others than just the females. As a result, in the
11 statute, the test claim statute that we provided, it
12 states that this is -- to provide access to menstrual
13 products is a basic human right, vital for ensuring
14 health, dignity, and full participation of all
15 Californians in public life.

16 The legislature identifies gender equity for women,
17 men's, transgender, or gender-nonconforming people who
18 may also menstruate, decreasing emotional distress,
19 physical infection, disease, and basic education equity,
20 preventing or reducing absenteeism, and significant
21 performance gaps.

22 This intent by the legislature is clear that this
23 is meant to be a new program for the public, a higher
24 level of service. And we agree with the staff's
25 recommendation.

1 And myself and Dr. Landon are here to answer any
2 questions you might have.

3 Thank you.

4 CHAIRPERSON PERRAULT: Any further comments,
5 Dr. Landon?

6 (No response.)

7 CHAIRPERSON PERRAULT: Okay.

8 Ms. Dickerson and Mr. Ferguson, for the Department
9 of Finance, do you have any comments?

10 MR. FERGUSON: No. We don't have any comments
11 beyond what we have already submitted via letters.

12 CHAIRPERSON PERRAULT: Thank you.

13 Is there any public comment on this item?

14 MS. GMUR: No comment in the room, Madam Chair.

15 MR. ORTIZ: No public comment online.

16 CHAIRPERSON PERRAULT: Go ahead.

17 MR. PALKOWITZ: I have a comment. Thank you.

18 So in the -- obviously we agree with the draft
19 final decision.

20 In the decision, pages 20 through 24 summarize the
21 finance comments. We submitted objections to these
22 comments when they were filed based on it is not
23 confirming [sic] with specific code of regulations that
24 require certification.

25 As someone who appears before the Commission for

1 years, I would like to know how this issue is handled.

2 Should it remain in this draft analysis, based on
3 that nonconforming, or is this still going to be allowed
4 in this -- future comments?

5 Thank you.

6 MS. SHELTON: I would like to address that. Thank
7 you.

8 First of all, the comments that were raised were
9 issues of fact that were more appropriately -- will be
10 more appropriately addressed during the parameters and
11 guidelines phase.

12 The issue here is a pure question of law. We
13 always summarize party positions. They will continue to
14 always be summarized in these test claim decisions. So
15 you -- they will be as stated. But our analysis is a
16 question of law. And we apply the law.

17 And so, as we indicated, we did not address those
18 comments. They are more appropriately addressed during
19 parameters and guidelines, where you do have different
20 standards of review that are applicable to particular
21 costs.

22 Yes.

23 MR. PALKOWITZ: Thank you.

24 CHAIRPERSON PERRAULT: Okay. Seeing no further
25 public comments.

1 Are there any comments from the Board -- from the
2 Commission?

3 (No response.)

4 MEMBER ADAMS: Madam Chair, I would move approval
5 of the proposed decision.

6 CHAIRPERSON PERRAULT: All right. Moved by
7 Mr. Adams.

8 Do I have a second?

9 MEMBER NASH: I'll second.

10 CHAIRPERSON PERRAULT: Okay. I think I heard
11 Ms. Nash.

12 Was that correct?

13 MEMBER NASH: Yes.

14 CHAIRPERSON PERRAULT: First. Okay. There's a
15 second.

16 If I could get a roll call, please.

17 MS. GMUR: Mr. Adams.

18 MEMBER ADAMS: Aye.

19 MS. GMUR: Ms. Gallegos.

20 MEMBER GALLEGOS: Aye.

21 MS. GMUR: Ms. Holman.

22 MEMBER HOLMAN: Aye.

23 MS. GMUR: Ms. Nash.

24 MEMBER NASH: Aye.

25 MS. GMUR: Mr. Pahlant.

1 MEMBER PAHLAND: Aye.

2 MS. GMUR: Ms. Perrault.

3 CHAIRPERSON PERRAULT: Aye.

4 All right. The motion carries.

5 MS. GMUR: We now ask the presenters, participating
6 remotely, for Item 4, to please turn off their video and
7 mute their microphones.

8 And those participating in person, please return to
9 your seats.

10 Item 5 is reserved for county applications for a
11 finding of significant financial distress or SB 1033
12 applications.

13 No SB 1033 applications have been filed.

14 Next, Program Analyst Jill Magee will please turn
15 on her video and microphone and present Item 8, the
16 Legislative Update.

17 MS. MAGEE: Good morning. The following are the
18 legislative updates since the last time the Commission
19 met.

20 First, AB 1781 State Mandates: claims. This
21 substantive spot bill would change the minimum mandate
22 reimbursement claim amount from \$1,000 to \$800.

23 On January 3rd, 2024, this bill was read for the
24 first time. And on January 16th, 2024, it was referred
25 to the Assembly Committee on Local Government.

1 Staff will continue to monitor legislation for
2 bills that impact the mandates process.

3 Thank you.

4 MS. GMUR: Thank you, Jill.

5 Next, Chief Legal Counsel Camille Shelton will
6 please present Item 9, the Chief Legal Counsel Report.

7 MS. SHELTON: Good morning. Just one thing to
8 report during this Open Session report.

9 Yesterday, the L.A. County Superior Court did hear
10 the demurrers filed by the Commission on State Mandates
11 and the Department of Finance. The Court granted both
12 demurrers, and the case was dismissed.

13 Thank you.

14 MS. GMUR: Item 10 is the Executive Director
15 Report.

16 Assistant Executive Director Dennis Supachana will
17 please turn on his video and unmute his microphone for
18 his introduction to the Commission.

19 It is my pleasure to introduce Dennis Supachana,
20 our Assistant Executive Director. Dennis earned his
21 B.A. in government from Sacramento State. He is coming
22 to us from the Department of Transportation, Division of
23 Construction, where he was Acting Branch Chief since
24 September 2023, supervising a team of six working on
25 labor compliance matters and working with internal and

1 external stakeholders on DBE and DVBE compliance.

2 Prior to that, he was an AGPA working on labor
3 compliance modules and analysis of labor law
4 legislation.

5 Before the Department of Finance -- strike that.

6 Before the Department of Transportation, Dennis was
7 an AGPA for the Secretary of State, where he acted as
8 CalRIM Team Leader for various projects, including the
9 development of records management training for State
10 agencies, providing guidance to State agencies,
11 reviewing records retention schedules from State
12 agencies, and analyzing legislation and procedures that
13 affected records management.

14 Prior to State service, Dennis was a Political
15 Finance Analyst for a private law firm.

16 Dennis started with the Commission on February 20.

17 MR. SUPACHANA: Thank you. And it's a pleasure to
18 be working with the Commission.

19 MS. GMUR: Welcome to the Commission, Dennis.
20 Please turn off your video and mute your microphone.

21 And now back to my report. I have three
22 information items.

23 The Commission's 2024/2025 budget.

24 The Budget Act of 2024 was introduced on
25 January 10, which includes the Commission's operating

1 budget of \$3.399 million. This is a decrease of
2 \$116,000 from last budget after adjustments for salaries
3 and benefits.

4 The Governor's budget also includes
5 \$129.997 million for local assistance for local
6 agency-mandated programs. This is a decrease of
7 \$39.51 million. The specific programs and their funding
8 are listed in my Executive Director's Report.

9 The Commission's budget will be heard in Assembly
10 Budget Subcommittee 5 on April 9.

11 Workload.

12 After this hearing, there are 37 pending test
13 claims, 34 of which are regarding stormwater NPDES
14 permits. There is one parameters and guidelines
15 regarding stormwater with lengthy comment periods
16 pursuant to a stipulation of the parties. There are
17 four statewide cost estimates and one IRC pending.

18 Commission staff expects to complete all currently
19 pending test claims and IRCs by approximately
20 September 2026 Commission hearing. Depending on
21 staffing and other workload.

22 However, some of the test claims may be heard and
23 decided earlier than currently indicated if they are
24 consolidated for hearing.

25 Finally, tentative agenda items.

1 Please check the tentative agenda items on my
2 Executive Director's Report to see if an item you are
3 interested in is coming up. You can also use the
4 pending caseload documents on the Commission's website,
5 which are updated at least bimonthly, to see when
6 something is tentatively set for hearing.

7 Please expect to receive draft proposed decisions
8 on all test claim and IRC matters for review and comment
9 at least eight weeks prior to the hearing date and a
10 proposed decision approximately two weeks before the
11 hearing.

12 Finally, a reminder to please notify Commission
13 staff not later than the Wednesday prior to a hearing
14 that you or a witness that you are planning -- that you
15 are bringing plan to testify. Please include the names
16 of the people who will be speaking for inclusion on the
17 witness list and also include email addresses for remote
18 participants to receive their panelist links.

19 Madam Chair, that concludes my report.

20 CHAIRPERSON PERRAULT: Thank you.

21 At this time the Commission will meet in Closed
22 Executive Session, pursuant to Government Code Section
23 11126(e), to confer with and receive advice from legal
24 counsel for consideration and action, as necessary and
25 appropriate, upon the pending litigation listed on the

1 published notice and agenda. And to confer with and
2 receive advice from legal counsel regarding potential
3 litigation.

4 The Commission will also confer on personnel
5 matters, pursuant to Government Code Section
6 11126(a)(1), and we will reconvene in Open Session in
7 approximately 15 minutes.

8 (Closed session was held from
9 10:55 a.m. to 11:08 a.m.)

10 CHAIRPERSON PERRAULT: Okay. The Commission met in
11 Closed Executive Session, pursuant to Government Code
12 Section 11126(e), to confer with and receive advice from
13 legal counsel for consideration and action, as necessary
14 and appropriate, upon the pending litigation listed on
15 the published notice and agenda. And to confer with and
16 receive advice from legal counsel regarding potential
17 litigation.

18 The Commission also conferred on personnel matters
19 pursuant to Government Code Section 11126(a)(1).

20 With no further business to discuss, I will
21 entertain a motion to adjourn.

22 MEMBER GALLEGOS: So moved.

23 CHAIRPERSON PERRAULT: Moved by Ms. Gallegos.

24 MEMBER HOLMAN: I will second.

25 CHAIRPERSON PERRAULT: Second by Ms. Holman.

1 And motion -- oh.
2 We have to roll call.
3 MS. GMUR: Mr. Adams.
4 MEMBER ADAMS: Aye.
5 MS. GMUR: Ms. Gallegos.
6 MEMBER GALLEGOS: Aye.
7 MS. GMUR: Ms. Holman.
8 MEMBER HOLMAN: Aye.
9 MS. GMUR: Ms. Nash.
10 MEMBER NASH: Aye.
11 MS. GMUR: Mr. Pahlant.
12 MEMBER PAHLANT: Aye.
13 MS. GMUR: Ms. Perrault.
14 CHAIRPERSON PERRAULT: Aye.
15 All right. Motion carries, and the meeting is
16 adjourned.
17 (Proceedings concluded at 11:09 a.m.)

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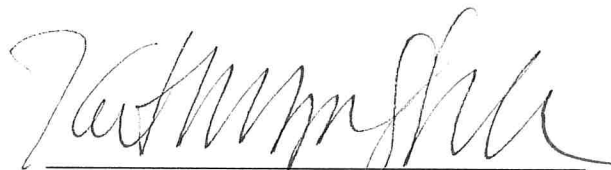
CERTIFICATE OF REPORTER

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand
this 18th day of April 2024.



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

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