

## **Item 1**

### **Proposed Minutes**

#### **COMMISSION ON STATE MANDATES**

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
July 22, 2016

Present: Member Eraina Ortega, Chairperson  
Representative of the Director of the Department of Finance  
Member Mark Hariri, Vice Chairperson  
Representative of the State Treasurer  
Member Ken Alex  
Director of the Office of Planning and Research  
Member Richard Chivaro  
Representative of the State Controller  
Member Sarah Olsen  
Public Member  
Member Carmen Ramirez  
City Council Member

Absent: Member Don Saylor  
County Supervisor

*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 Ortega called the meeting to order at 10:16 a.m. Executive Director Heather Halsey called the roll and announced that Member Saylor had notified Commission staff that he would not attend the July hearing but should attend the September hearing. Members Chivaro and Saylor were absent at roll call.

#### **APPROVAL OF MINUTES**

Member Alex made a motion to adopt the minutes. With a second by Member Olsen, the May 26, 2016 hearing minutes were adopted by a vote of 4-0 with Member Ramirez abstaining.

#### **PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA**

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

#### **CONSENT CALENDAR**

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS,  
TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570)  
(action)

## INCORRECT REDUCTION CLAIM

- Item 7\*      *Enrollment Fee Collection and Waivers*, 13-9913-I-01
- Education Code Section 76300; Statutes 1984, 2d Ex. Sess., Chapter 1; Statutes 1984, Chapters 274 and 1401; Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394; Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136; Statutes 1991, Chapter 114; Statutes 1992, Chapter 703; Statutes 1993, Chapters 8, 66, 67, and 1124; Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; Statutes 1999, Chapter 72;
- California Code of Regulations, Title 5, Sections 58501-58503, 58611-58613, 58620, and 58630
- Fiscal Years 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2003-2004, 2004-2005, 2005-2006, 2006-2007, and 2007-2008
- Gavilan Community College District, Claimant

## INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

### STATEWIDE COST ESTIMATE

- Item 9\*      *Immunization Records – Pertussis*, 11-TC-02 (14-PGA-01)
- Health and Safety Code Section 120335(d)
- Statutes 2010, Chapter 434 (AB 354)
- Desert Sands Unified School District, Requester

### ADOPTION OF PROPOSED REGULATION AMENDMENTS

- Item 10\*      General Cleanup Provisions, Proposed Amendments to California Code of Regulations, Title 2, Division 2, Chapter 2.5, Articles 1, 2, 3, 4, 5, 6, 7, 8, and 10

Chairperson Ortega asked if there was any objection to the Consent Calendar and if there were any comments from the public. No objection was made and there was no public comment.

Member Olsen made a motion to adopt the Consent Calendar. With a second by Member Alex, the Consent Calendar was adopted by a vote of 5-0.

## **HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570) (action)**

Executive Director Heather Halsey noted that after the binders were issued, Items 2 and 4 were postponed to the September 23 hearing by request of the claimants. Ms. Halsey swore in the parties and witnesses participating in the hearing.

Member Chivaro joined the meeting.

## INCORRECT REDUCTION CLAIMS

- Item 3      *School District of Choice: Transfers and Appeals*, 11-4451-I-05  
Education Code Sections 48209.1, 48209.7, 48209.9, 48209.10, 48209.13, 48209.14; Statutes 1993, Chapter 160 (AB 19); Statutes 1994, Chapter 1262 (AB 2768)  
Fiscal Year 1997-1998  
Chula Vista Elementary School District, Claimant

Ms. Halsey stated that the claimant notified Commission staff that they would not be appearing at this hearing and that they stand on their written submission for the record.

This Incorrect Reduction Claim addresses the State Controller's reduction of costs claimed for fiscal year 1997-1998.

Senior Commission Counsel Eric Feller presented this item stating that staff finds the Incorrect Reduction Claim was filed in a timely manner, but there is no evidence in the record that the Controller initiated the audit before the statutory deadline and therefore, the audit is void. Mr. Feller recommended the Commission adopt the Proposed Decision to approve this Incorrect Reduction Claim.

Parties were represented as follows: Jay Lal and Gwendolyn Carlos, representing the State Controller's Office.

The State Controller did not concur with the staff recommendation. Mr. Lal noted that this Incorrect Reduction Claim should be deemed as not timely filed because the original adjustment letter that was sent via first-class postage mail on January 15, 2002, notified the claimant of the adjustment. There was no comment from interested parties or the public on this matter. Member Olsen made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to approve this Incorrect Reduction Claim was adopted by a vote of 6-0.

- Item 5      *Handicapped and Disabled Students*, 13-4282-I-06  
Government Code Sections 7572 and 7572.5; Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);  
California Code of Regulations, Title 2, Division 9, Section 60040 (Emergency regulations filed December 31, 1985, designated effective January 1, 1986 [Register 86, No. 1] and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28])  
Fiscal Years 2003-2004, 2004-2005, and 2005-2006  
County of Los Angeles, Claimant

This Incorrect Reduction Claim addresses the State Controller's reductions of reimbursement claims for fiscal years 2003-2004, 2004-2005, and 2005-2006.

Senior Commission Counsel Paul Karl Lukacs presented this item stating that staff finds the Incorrect Reduction Claim was untimely filed; and by clear and convincing evidence, the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims. Mr. Lukacs recommended the Commission adopt the Proposed Decision to deny this Incorrect Reduction Claim.

Parties were represented as follows: Edward Jewik and Hasmik Yaghobyan, representing the claimant; Jim Spano and Chris Ryan, representing the State Controller's Office.

Ms. Yaghobyan requested that the Commission find in favor of the county because the county relied on the State Controller's August 6, 2010 notice following the final audit report filed June 30, 2010 indicating that the county had three years from the date of the August 6, 2010 notice to file an incorrect reduction claim. In addition, Ms. Yaghobyan indicated that the county did not waive its rights and agree with the results of the audit report. The State Controller concurred with the staff recommendation and clarified that the final audit report was filed June 30, 2010. Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. Following further discussion, Member Chivaro revised the motion to adopt the Proposed Decision through section IV.A (denying the IRC on statute of limitations grounds), and to delete section IV.B on waiver. With a second by Member Olsen, the motion to deny this Incorrect Reduction Claim was adopted by a vote of 6-0.

Item 6      *Handicapped and Disabled Students II*, 12-0240-I-01

Government Code Sections 7572.55 and 7576; Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);

California Code of Regulations, Title 2, Sections 60020, 60050, 60030, 60040, 60045, 60055, 60100, 60110, 60200 (Emergency regulations effective July 1, 1998 [Register 98, No. 26] final regulations effective August 9, 1999 [Register 99, No. 33])

Fiscal Years 2002-2003 and 2003-2004

County of Los Angeles, Claimant

This Incorrect Reduction Claim addresses the State Controller's reductions of reimbursement claims for fiscal years 2002-2003 and 2003-2004.

Senior Commission Counsel Paul Karl Lukacs presented this item stating that staff finds the Incorrect Reduction Claim was untimely filed; and by clear and convincing evidence, the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims. Mr. Lukacs recommended the Commission adopt the Proposed Decision to deny this Incorrect Reduction Claim.

Parties were represented as follows: Edward Jewik and Hasmik Yaghobyan, representing the claimant; Jim Spano and Chris Ryan, representing the State Controller's Office.

Ms. Yaghobyan requested that the Commission find in favor of the county because the county relied on the State Controller's June 12, 2010 notice following the final audit report filed May 28, 2010 indicating that the county had three years from the date of the June 12, 2010 notice to file an incorrect reduction claim. The State Controller concurred with the staff recommendation. Following discussion among the Commission members, staff, and parties, Member Ramirez made a motion to adopt the Proposed Decision through section IV.A (denying the IRC on statute of limitations grounds), and to delete section IV.B on waiver. With a second by Member Chivaro, the motion to deny this Incorrect Reduction Claim was adopted 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 6.5 (info/action)**

- Item 8      Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

No applications were filed.

**STAFF REPORTS**

- Item 11      Legislative Update (info)

Program Analyst Kerry Ortman presented this item.

- Item 12      Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 13      Executive Director: Workload Update and Tentative Agenda Items for the September and October 2016 Meetings (info)

Executive Director Heather Halsey presented this item. Ms. Halsey reported on the Commission's pending caseload and incorrect reduction claim backlog.

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

**A. PENDING LITIGATION**

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126(e)(1):

Trial Courts:

*Nothing pending.*

Courts of Appeal:

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.* (petition and cross-petition)  
Third District Court of Appeal, Case No. C070357  
Sacramento County Superior Court Case No. 34-2010-80000604  
[*Discharge of Stormwater Runoff*, Order No. R9-207-000 (07-TC-09), California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g, F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
2. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*  
Fourth District Court of Appeal, Division One, Case No. D068657  
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL

- [Mandate Redetermination, *Sexually Violent Predators*, (12-MR-01, CSM-4509); Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496) As modified by Proposition 83, General Election, November 7, 2006]
3. *Coast Community College District, et al. v. Commission on State Mandates*, Third District Court of Appeal, Case No. C080349  
Sacramento County Superior Court, Case No. 34-2014-80001842  
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31  
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]
  4. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*  
Third District Court of Appeal, Case No. C081929  
Sacramento County Superior Court, Case No. 34-2015-80002016  
[*Water Conservation* (10-TC-12/12-TC-01, adopted December 5, 2014), Water Code Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4 California Code of Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register 2012, No. 28.]

5. *California School Board Association (CSBA) v. State of California et al.*  
First District Court of Appeal, Case No. (Pending)  
Alameda County Superior Court, Case No. RG11554698  
[2010-2011 Budget Trailer Bills; Education Code sections 42238.24 and 56523]

California Supreme Court:

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al*  
(petition and cross-petition)  
California Supreme Court, Case No. S214855  
Second District Court of Appeal, Case No. B237153  
Los Angeles County Superior Court, Case No. BS130730  
[*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126(e)(2):

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

**B. PERSONNEL**

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

The Commission adjourned into closed executive session at 11:02 a.m., pursuant to Government Code section 11126(e), 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; and 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).

**RECOVENE IN PUBLIC SESSION  
REPORT FROM CLOSED EXECUTIVE SESSION**

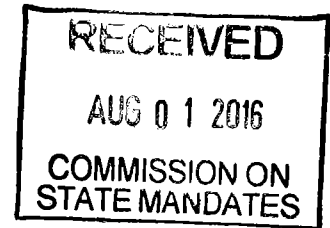
At 11:15 a.m., Chairperson Ortega reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

**ADJOURNMENT**

Hearing no further business, Chairperson Ortega adjourned the meeting at 11:16 a.m.

Heather Halsey  
Executive Director

**ORIGINAL**



**PUBLIC MEETING**  
**COMMISSION ON STATE MANDATES**

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**TIME:** 10:00 a.m.  
**DATE:** Friday, July 22, 2016  
**PLACE:** State Capitol, Room 447  
Sacramento, California

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**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

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Reported by:  
Daniel P. Feldhaus  
California Certified Shorthand Reporter #6949  
Registered Diplomate Reporter, Certified Realtime Reporter

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**Daniel P. Feldhaus, C.S.R., Inc.**  
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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA  
Representative for MICHAEL COHEN, Director  
Department of Finance  
(Chair of the Commission)

RICHARD CHIVARO  
Representative for BETTY T. YEE  
State Controller

KEN ALEX  
Director  
Office of Planning & Research

MARK HARIRI  
Representative for JOHN CHIANG  
State Treasurer

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member  
Local Agency Member



PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY  
Executive Director  
(Item 13)

CAMILLE N. SHELTON  
Chief Legal Counsel  
(Item 12)

ERIC FELLER  
Senior Commission Counsel  
(Item 3)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

*continued*

PAUL KARL LUKACS  
Senior Commission Counsel  
(Items 5 and 6)

KERRY ORTMAN  
Program Analyst  
(Item 11)



PUBLIC TESTIMONY

**Appearing Re Item 3:**

For State Controller's Office:

JAY LAL  
Manager, Local Reimbursements Section  
State Controller's Office  
3301 C Street, Suite 700  
Sacramento, California 95816

GWENDOLYN CARLOS  
Division of Accounting and Reporting  
State Controller's Office  
3301 C Street, Suite 700  
Sacramento, California 95816

**Appearing Re Items 5 and 6:**

For Claimant County of Los Angeles:

HASMIK YAGHOBYAN  
SB 90 Administration  
County of Los Angeles Auditor Controller's Office  
500 West Temple, Room 525  
Los Angeles, California 90012

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Items 5 and 6:** *continued*

For Claimant County of Los Angeles:

ED JEWIK  
Program Specialist V  
Department of Auditor-Controller Accounting Division  
500 W. Temple Street, Room 603  
Los Angeles, California 90012

For State Controller's Office:

JIM L. SPANO  
Chief, Mandated Cost and Financial Audits Bureaus  
State Controller's Office  
3301 C Street, Suite 725  
Sacramento, California 95816

CHRISTOPHER B. RYAN  
Audit Manager, Division of Audits  
State Controller's Office  
3301 C Street, Suite 725  
Sacramento, California 95816

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## **Commission on State Mandates – July 22, 2016**

# ERRATA SHEET

[illegible]

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Item 9\* *Immunization Records – Pertussis,*  
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## Commission on State Mandates – July 22, 2016

BE IT REMEMBERED that on Friday, July 22, 2016,  
commencing at the hour of 10:16 a.m., thereof, at the  
State Capitol, Room 447, Sacramento, California, before  
me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the  
following proceedings were held:



CHAIR ORTEGA: Good morning, everyone.

I'd like to call to order the July 22<sup>nd</sup> meeting of the Commission on State Mandates.

If you could call the roll, please.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Here.

MS. HALSEY: Mr. Chivaro?

(No response.)

MS. HALSEY: Mr. Hariri?

MEMBER HARIRI: Here.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Here.

MS. HALSEY: Ms. Ortega?

CHAIR ORTEGA: Here.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Here.

MS. HALSEY: Mr. Saylor notified us that he will not be at today's hearing; but we should see him next hearing, in September.



**Commission on State Mandates – July 22, 2016**

1 CHAIR ORTEGA: Okay, thank you.

2 We need to speak slowly and clearly today because  
3 there isn't a computer backup to the transcript. So make  
4 sure we're all trying to speak into the microphone and  
5 ensure we get a good record.

6 And tell me to slow down if I need to, because I'm  
7 probably the most guilty of speaking too fast.

8 So let's move to the first item, which is the  
9 adoption of the minutes from the previous meeting, that's  
10 from May 26<sup>th</sup>.

11 Any corrections or comments on the minutes?

12 Ms. Ramirez?

13 MEMBER RAMIREZ: I wasn't here.

14 CHAIR ORTEGA: Okay.

15 MEMBER RAMIREZ: But I think you need my vote to  
16 pass this.

17 MS. HALSEY: We need four.

18 CHAIR ORTEGA: We just need four, so I think as long  
19 as everyone else is...

20 MEMBER RAMIREZ: Then I'll abstain.

21 CHAIR ORTEGA: Okay, do we have a motion?

22 MEMBER ALEX: I'll move.

23 MEMBER OLSEN: Second.

24 CHAIR ORTEGA: Moved by Mr. Alex, and second by  
25 Ms. Olsen.

Commission on State Mandates – July 22, 2016

1 All in favor, say "aye."

2 (*A chorus of "ayes" was heard.*)

3 MEMBER RAMIREZ: I abstain.

4 CHAIR ORTEGA: We have one abstention, Ms. Ramirez.

5 Okay, and we will now move to public comment.

6 MS. HALSEY: And now we will take up public comment  
7 for matters not on the agenda.

8 Please note that the Commission cannot take action  
9 on items not on the agenda. However, it can schedule  
10 issues raised by the public for consideration at future  
11 meetings.

12 CHAIR ORTEGA: Okay, is there any public comment?

13 (*No response*)

14 CHAIR ORTEGA: Seeing none, we'll move to the  
15 Consent Calendar.

16 We have Items 7, 9, and 10 proposed for consent.

17 Any objections to those items from the Commission?

18 MEMBER OLSEN: I'll move consent.

19 CHAIR ORTEGA: Okay, moved by Ms. Olsen.

20 MEMBER ALEX: Second.

21 CHAIR ORTEGA: Second by Mr. Alex.

22 Any public comments on Items 7, 9, or 10?

23 (*No response*)

24 CHAIR ORTEGA: Seeing none, all those in favor of  
25 the consent calendar?

1           *(A chorus of "ayes" was heard.)*

2           CHAIR ORTEGA: It passes unanimously.

3           MS. HALSEY: Then let's move to the Article 7  
4           portion of the hearing.

5           Please note that after the binders were issued,  
6           Items 2 and 4 were postponed to the September 23<sup>rd</sup>  
7           hearing by the request of the claimants.

8           Will the parties and witnesses for Items 3, 5, and  
9           6, please rise?

10          *(Parties/witnesses stood to be sworn or affirmed.)*

11          MS. HALSEY: Do you solemnly swear or affirm that  
12          the testimony which you are about to give is true and  
13          correct, based on your personal knowledge, information,  
14          or belief?

15          *(A chorus of affirmative responses was heard.)*

16          MS. HALSEY: Thank you.

17          *(Mr. Chivaro entered the hearing room.)*

18          MS. HALSEY: Senior Commission Counsel Eric Feller  
19          will present Item 3, an incorrect reduction claim on  
20          *School District of Choice: Transfers and Appeals.*

21          Claimant notified Commission staff that they will  
22          not be appearing at this hearing and that they will stand  
23          on their written submission for the record.

24          CHAIR ORTEGA: Okay, thank you.

25          And please note that Mr. Chivaro has joined us.

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1           Mr. Feller?

2           MR. FELLER: Good morning. This IRC challenges the  
3           Controller's findings that the Chula Vista Elementary  
4           School District claimed unallowable costs for fiscal year  
5           1997-98.

6           Staff finds that the IRC was filed in a timely  
7           manner, but there is no evidence in the record that the  
8           Controller initiated the audit before the statutory  
9           deadline. So the audit is void, and staff recommends  
10          that the Commission adopt the proposed decision to  
11          approve the IRC.

12          Will the parties and witnesses please state your  
13          names for the record?

14          MR. LAL: My name is Jay Lal, with the State  
15          Controller's Office.

16          MS. CARLOS: I'm Gwendolyn Carlos, from the State  
17          Controller's Office.

18          CHAIR ORTEGA: Okay, go ahead.

19          MR. LAL: Thank you, Commission Chair and Members.  
20          We thank the staff for their analysis but respectfully  
21          do not concur with the staff recommendation.

22          Just briefly, as stated in our comments, the IRC  
23          was not timely filed because the original adjustment  
24          letter, sent via first-class postage on January 15<sup>th</sup>,  
25          2002, notified the claimant of the adjustment.

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1 And that's all we have.

2 CHAIR ORTEGA: Okay, thank you.

3 Are there any comments or questions from the  
4 commissioners?

5 MEMBER OLSEN: I'll move the staff recommendation.

6 CHAIR ORTEGA: Okay, motion by Ms. Olsen.

7 MEMBER RAMIREZ: Second.

8 CHAIR ORTEGA: Second by Ms. Ramirez.

9 Is there any other public comment on this item?

10 *(No response)*

11 CHAIR ORTEGA: Okay, seeing none, please call the  
12 roll.

13 MS. HALSEY: Mr. Alex?

14 MEMBER ALEX: Aye.

15 MS. HALSEY: Mr. Chivaro?

16 MEMBER CHIVARO: Aye.

17 MS. HALSEY: Mr. Hariri?

18 MEMBER HARIRI: Aye.

19 MS. HALSEY: Ms. Olsen?

20 MEMBER OLSEN: Aye.

21 MS. HALSEY: Ms. Ortega?

22 CHAIR ORTEGA: Aye.

23 MS. HALSEY: Ms. Ramirez?

24 MEMBER RAMIREZ: Did you call me?

25 MS. HALSEY: Yes, sorry.

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1 MEMBER RAMIREZ: I didn't hear it.

2 Yes, aye.

3 MS. HALSEY: Thank you.

4 CHAIR ORTEGA: Okay, Item 3, the staff  
5 recommendation is adopted unanimously. Thank you.

6 MS. HALSEY: Item 4 was postponed to the  
7 September 23<sup>rd</sup> Commission hearing.

8 Senior Commission Counsel Paul Karl Lukacs will  
9 present Item 5, an incorrect reduction claim on  
10 *Handicapped and Disabled Students*.

11 MR. LUKACS: Good morning.

12 Staff recommends that the IRC be denied on two  
13 independent grounds. After a review of the record and  
14 the applicable law, staff finds that, one, the IRC was  
15 untimely filed; and two, by clear and convincing  
16 evidence, the claimant's intention in June 2010 was to  
17 agree with the results of the Controller's audit and to  
18 waive any right to object to the audit or to add  
19 additional claims.

20 Accordingly, staff recommends that the Commission  
21 adopt the proposed decision to deny this IRC.

22 Would the parties and witnesses please state your  
23 names for the record?

24 MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of the  
25 County of Los Angeles, the claimant.

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1           MR. JEWIK:   Ed Jewik on behalf of Los Angeles  
2           County.

3           MR. SPANO:   Jim Spano, State Controller's Office.

4           MR. RYAN:   Chris Ryan, State Controller's Office.

5           CHAIR ORTEGA:   Okay.   Go ahead, Ms. Yaghobyan.

6           Could you pull that microphone in closer?   I was  
7           having a hard time hearing you.

8           MS. YAGHOBYAN:   Yes, sure.

9           CHAIR ORTEGA:   Thank you.

10          Go ahead.

11          MS. YAGHOBYAN:   Good morning.   Thank you.

12          Thank you, staff, for their analysis; but however,  
13          respectfully we have to disagree for two reasons:

14          One of them, the analysis says that we have -- our  
15          IRC wasn't filed timely.   But if you look at the plain  
16          language of the code itself, the code -- this is what the  
17          code says:   An incorrect reduction claim shall be filed  
18          with the Commission no later than three years following  
19          the date of the Office of the Controller's final state  
20          audit report, letter, remittance advice, or other written  
21          notice of adjustment to reimbursement claim.

22          What happened was that after the audit was  
23          finalized, we got three notices for three different  
24          programs from the State Controller's Office, dated  
25          June 12, 2010.

1           And the State Controller's Office, in their  
2           subsequent communications with us, they kept referring to  
3           that date; that the clock is going to start ticking, for  
4           the purpose of IRC, from that date. So, therefore, we  
5           relied on that date correctly.

6           And the second result is correctly stated, that they  
7           said we could file our IRCs, which we did.

8           For example, with the *Handicapped and Disabled*  
9           *Students* program, the notice was dated June 10<sup>th</sup> --  
10          June 12<sup>th</sup>, 2010. Our IRC was filed June 11<sup>th</sup>, 2015, in  
11          accordance with the exact language of the code. But it  
12          seems that the staff forgets the second part of the code,  
13          which says "or written letter, notice of adjustment of  
14          the reimbursement claim." So the only notice we received  
15          from the State Controller's Office were those notices  
16          dated June 12<sup>th</sup>, 2010.

17          The staff also goes ahead and then admits, even  
18          though the notice might not be proper, but the notice is  
19          deficient. For example, it doesn't say the amount of  
20          interest to be charged. But the point is, actually, that  
21          argument has to be addressed to the State Controller's  
22          Office, not to us, even though if the notice was  
23          deficient, we accepted their notice. And from our past  
24          practices, the State Controller's Office, they never  
25          charged us the interest of any audit findings. So if



1 the staff would like to recommend that to the State  
2 Controller's Office for the future, they're welcome to;  
3 but for our case, that it is not relevant.

4 So, therefore, based on the exact language, plain  
5 language of the code, our IRC was filed between the time  
6 that ran -- three years after the first notice we got  
7 from the State Controller's Office regarding the  
8 adjustment.

9 But it would have been even nicer if the State  
10 Controller's Office, instead of concurring with the  
11 staff's recommendation, would have supported our  
12 decision, and saying, "Yes, that's the rule; and that's  
13 what they complied with, and that's what they have been  
14 doing forever," since -- I know for the past 17 years.

15 And also, the staff says, "We were mistaken." So  
16 even if the State Controller's Office says, "This is the  
17 date," they were mistaken; and we were mistaken, too.  
18 See, so both parties were mistaken. Then, "Oh, we have  
19 to deny their IRC."

20 But that's also, I think, the mistaken party is the  
21 staff, because they don't read the plain language of the  
22 code, that says any letter, that it initiates the  
23 adjustment.

24 So neither us, nor the State Controller's Office,  
25 were mistaken, because we went by the code and the law.

1 Since we have been doing that, we have never had any  
2 problems. Therefore, our IRCs was filed timely.

3 The second argument the staff is making, since we  
4 come to find their comments because of the -- based on  
5 the State Controller's office's, thereafter, audit  
6 report, we conspicuously, clearly, knowingly, we waived  
7 our rights.

8 In contrary, this is what we specifically say, that  
9 this is what has been the case with the State  
10 Controller's Office -- and if they want to, they can  
11 confirm it, this has been our practice. We always make  
12 sure that, in the future, if any -- there is any change  
13 in the law, we find any documentation -- and the State  
14 Controller's Office, actually they have been good with  
15 us, too.

16 For example, we had an issue with the *POBOR* almost  
17 a year or two after the audit was finalized, Jim Venneman  
18 called me, and he said there was an issue that came up  
19 and it would affect our audit findings. They can look  
20 at our audit again; and actually, we ended up getting a  
21 million dollars more.

22 So this is what we specifically said. So if the  
23 commissioners would agree with me, if anybody can  
24 interpret this paragraph as "we are willingly, knowingly,  
25 conspicuously giving up any right for any further

1 challenging the audit report," I believe they're  
2 mistaken.

3 This is what we said: The County's attached  
4 response indicates agreement with all the findings and  
5 the actions that the County will take to implement  
6 policies and procedures to ensure that the costs claimed  
7 under HDS are eligible mandate-related and supported. We  
8 also recognize that this is the main issue -- we also  
9 recognize that if the County subsequently provides  
10 additional information to support over \$18 million of  
11 unallowable costs, or if there are any changes in the  
12 laws and regulations, the State will revise the final  
13 audit report to include such additional allowable costs.

14 How could anybody interpret this that we waived all  
15 of our rights to challenge anything that the State  
16 relates to those audits, first?

17 Secondly, going back to the code section, again, the  
18 code section doesn't say the statute starts only from the  
19 date of the notice or letter, unless the party waives  
20 its rights. So, again, I don't think that the staff's  
21 arguments are valid, and they're meritless. And I would  
22 request that our IRCs to be granted.

23 Thank you. And if you have any questions...

24 CHAIR ORTEGA: Mr. Jewik, anything else?

25 MR. JEWIK: No. No additional comments.

1 CHAIR ORTEGA: Okay, Mr. Spano?

2 Mr. Ryan?

3 MR. RYAN: The State Controller's Office agrees --  
4 or supports the proposed decision.

5 CHAIR ORTEGA: Thank you.

6 For me, I would like for staff to -- the issue of  
7 whether it was timely issued, I think we've wrestled with  
8 this issue several times now, so I don't feel like I need  
9 any more information on that question about subsequent  
10 documents, and what they do or do not mean. But the  
11 issue of whether the agreement that the County stated in  
12 the letter, the agreement with the audit findings. And  
13 if you could say a little more about that, responding to  
14 the issue that they did not give up their right to file  
15 the IRC.

16 MR. LUKACS: Yes, Commissioner.

17 I believe the two letters in the record, both of  
18 which are dated June 16<sup>th</sup>, 2010, and both of which were  
19 signed by Wendy Watanabe, the Auditor-Controller of the  
20 County, need to be read together.

21 When you look at the first page of the first letter,  
22 which is page 558 in your record, as the witness has  
23 stated, the first sentence is very clear, "The County's  
24 attached response indicates agreement with the audit  
25 findings."

1           Then when you go through the remainder of that  
2       letter for the Controller's audit finding -- Findings 1,  
3       2, and 3 -- each one of the County's responses begins  
4       with "We agree with the recommendation." "We agree with  
5       the recommendation."

6           And then when you go to the letter dated June --  
7       the other, second letter dated June 16, which appears at  
8       page 1492 in the record, this is a statement of facts,  
9       the facts upon which the IRC is based on contradictory  
10      arguments.

11          In this letter, Ms. Watanabe signs off on the fact  
12      that all of the proper documents were maintained, all of  
13      the proper documents were given to the Controller. And,  
14      at the end, Number 8, there are no unasserted claims or  
15      assessments.

16          And now, in this IRC, the County is taking multiple  
17      positions, factual and legal, which, in staff's opinion,  
18      is directly contrary to the statements of facts and  
19      positions that Ms. Watanabe signed off on this in this  
20      letter of page 1492 of the record.

21           CHAIR ORTEGA: Thank you.

22           Go ahead, Ms. Olsen.

23           MEMBER OLSEN: You may not need to go back through  
24      the dates, but I do.

25           CHAIR ORTEGA: Okay. Please.

1 MEMBER OLSEN: So what I -- and I'm just wondering  
2 where the disagreement on the dates is.

3 So what we have in our record is that on June 16<sup>th</sup>  
4 of 2010, Wendy Watanabe of L.A. County sent a letter,  
5 okay, responding to the initial findings of the State  
6 Controller.

7 And on June 30<sup>th</sup>, 2010, the State Controller's  
8 Office, after receiving that letter, issued its final  
9 audit.

10 Do we all agree on that so far?

11 MR. LUKACS: Yes.

12 MR. SPANO: Yes.

13 MEMBER OLSEN: Okay. So then on August 2<sup>nd</sup>, 2013,  
14 the claimant filed the IRC.

15 Do we agree on that?

16 MS. YAGHOBYAN: No. That's the next one, Item 6.  
17 This is Item 5.

18 MS. SHELTON: No, that's correct.

19 MEMBER OLSEN: No, I'm on Item 5. I'm on Item 5  
20 right now.

21 MS. YAGHOBYAN: You're on Item 5?

22 MEMBER OLSEN: I'm on Item 5, page 2.

23 MS. YAGHOBYAN: But I thought we were -- the date,  
24 we filed that June 11<sup>th</sup>.

25 MEMBER ALEX: I've got the same as you.

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1 MS. YAGHOBYAN: I thought we filed this one, *HDS*, on  
2 June 11<sup>th</sup>, 2013.

3 MS. SHELTON: We've got the record here. Let us  
4 just look.

5 We have it on our chronology as August 2<sup>nd</sup>, 2014.

6 MEMBER ALEX: Correct.

7 MS. SHELTON: It's right there.

8 MEMBER OLSEN: Because if August 2<sup>nd</sup> is the date --

9 MR. LUKACS: Right, for both of them.

10 MS. HALSEY: It's August 2<sup>nd</sup>. That's the date stamp  
11 on it, received by the Commission. We have it in the  
12 record as Exhibit A.

13 MS. YAGHOBYAN: However, the notice was August 6<sup>th</sup>  
14 for that one, if you're referring to that one? The  
15 notice was August 6<sup>th</sup>.

16 MS. HALSEY: What notice?

17 MEMBER OLSEN: Okay, so here's -- I'm reading a  
18 sentence from the staff recommendation -- this is why  
19 I'm stuck, because this doesn't -- what you've been  
20 saying doesn't seem to agree with the dates that we have  
21 before us. And I just want to make sure where this issue  
22 is.

23 On August 2<sup>nd</sup>, 2013, the claimant filed this IRC --  
24 we're referring to Item 5 here --

25 MS. HALSEY: Yes.

1           MEMBER OLSEN: That's all I'm trying to figure out.  
2       Is that --  
3           MR. SPANO: I think I can clarify it.  
4           MEMBER OLSEN: Okay.  
5           MR. SPANO: Let me help clarify it.  
6           Where the confusion is, is that there's two IRCs:  
7       There's a first one and a second one. Right now, it's  
8       Item 5 and Item 6.  
9           MS. YAGHOBYAN: There is Item 6, too.  
10          MR. SPANO: Item 5, the final report, was filed  
11       June 30<sup>th</sup>, 2010. The IRC was filed August 2<sup>nd</sup>, 2013.  
12          On Item 6, the audit report was issued May 28<sup>th</sup>,  
13       2010. The IRC was filed June 11<sup>th</sup>, 2013. So that the  
14       June 11<sup>th</sup> relates to Item 6, not Item 5.  
15          MS. HALSEY: No, that's incorrect.  
16          MS. SHELTON: That's right -- he said it correctly.  
17          MS. YAGHOBYAN: I think there's a mistake in the  
18       dates because --  
19          MR. JEWIK: There were two IRCs filed: One was  
20       June 11<sup>th</sup>, and one was August 2<sup>nd</sup>.  
21          MR. SPANO: Yes, and so what happened, I think that  
22       in either case, it was beyond three years in both  
23       individual cases.  
24          MEMBER OLSEN: Okay, but let's talk of Item 5 right  
25       now.



1           So if this one was filed on August 2<sup>nd</sup>, then it is  
2       clearly outside the three-year time limit?

3           MS. YAGHOBYAN: We disagree. We disagree.

4           MEMBER OLSEN: Okay.

5           MS. YAGHOBYAN: But -- may I?

6           MEMBER OLSEN: Yes.

7           MS. YAGHOBYAN: Jim, if you're saying we were late,  
8       are you just retracting your letter that you told us what  
9       were the dates for us to file an IRC? So are you saying  
10      you were wrong?

11          CHAIR ORTEGA: That's addressed in the --

12          MS. HALSEY: No, we're looking at the IRC in the  
13      record right now.

14          CHAIR ORTEGA: -- in the staff recommendation.

15          So I think we can ask staff to comment on that  
16      rather than Mr. Spano.

17          MR. SPANO: Okay.

18          MR. LUKACS: Yes, the witness appears to be  
19      referring to the letter from Jim L. Spano to Robin Kay,  
20      dated May 7, 2013. It appears in the record on page 485.

21          On the second page of that letter, Mr. Spano  
22      wrote -- Mr. Spano linked the statute of limitations to  
23      these computer-created notices that were dated August 6.  
24      We believe that that was an incorrect opinion of law  
25      stated by Mr. Spano.

1           And while staff has sympathy for the claimants,  
2           people who are doing business with the State have an  
3           independent obligation to ascertain what the laws are.  
4           The laws are fairly clear on that. Otherwise, any sort  
5           of misstatement by a State employee could potentially  
6           bind the state or government.

7           And that can't be the rule -- and is not the rule.

8           MR. JEWIK: Our position is that we filed the IRC  
9           within three years of the notice of adjustment. That is  
10          what we are referring to.

11          CHAIR ORTEGA: Right.

12          And I guess, Ms. Olsen, when I'm saying we had  
13          discussed this issue before, that's the issue that we  
14          have discussed a few times in a row now.

15          MEMBER OLSEN: Right.

16          CHAIR ORTEGA: That these notices that come after  
17          the final audit do not start the clock -- the initial.

18          MEMBER OLSEN: Right.

19          CHAIR ORTEGA: Which is, so the audit date goes back  
20          to the June 30<sup>th</sup>.

21          MEMBER OLSEN: Right. I just was wanting to make  
22          sure that everybody concurred that August 2<sup>nd</sup> was the  
23          date on which they filed their IRC. And I believe there  
24          is concurrence on that.

25          CHAIR ORTEGA: Yes.

1 MEMBER OLSEN: Yes.

2 CHAIR ORTEGA: Any other questions?

3 MEMBER ALEX: Okay, I have a question on the second  
4 part of this. I suspect we're not going to get to your  
5 second finding. But I'm wondering if the staff's view  
6 is that once -- whether there is some sort of  
7 administrative estoppel by the County, saying that they  
8 have no issue with the claim, does that preclude them  
9 from later -- if they had timely filed it, does that  
10 preclude them from raising issues later because they had  
11 sent a letter, stating that there were no issues?

12 MR. LUKACS: I hope this does not sound like an  
13 overall legalistic distinction, but --

14 MEMBER ALEX: That's okay, I'm a lawyer.

15 MR. LUKACS: But I just note that you used the word  
16 "estoppel." And what we're talking about here is not  
17 estoppel, which is about how two people's statements  
18 interact. Here, we're simply talking about waiver, which  
19 is unilateral: Did the County at that time intend to  
20 waive its rights, and do you find evidence of that by  
21 clear and convincing evidence?

22 And it would be my advice that if Your Honors  
23 believe that there is clear and convincing evidence of  
24 waiver in the record, then the answer to your question  
25 will be yes. Once you waive something, it is waived.

1 MEMBER ALEX: Okay, I actually -- I think we --  
2 for me, I think the statute-of-limitations issue is  
3 definitive. But at some point, we may revisit this  
4 because I'm not sure that's a legal waiver. But, okay.

5 MEMBER CHIVARO: I'll move staff recommendation.

6 CHAIR ORTEGA: We have a motion by Mr. Chivaro;  
7 but Ms. Ramirez has a question.

8 MEMBER RAMIREZ: I want to ask staff about waiver.

9 So once -- what if, just hypothetically, a party  
10 erroneously, because they haven't checked something, puts  
11 in writing they're waiving all objections, what would be  
12 your take on that?

13 MR. LUKACS: Without seeing the record, what I would  
14 point to is that the waiver is a matter of the intent of  
15 the person at the time of the waiver.

16 Your Honor is discussing what appears to be a  
17 unilateral mistake of fact, which I would need to  
18 double-check. But the point is, if there is an intent to  
19 waive, let's say perhaps it's based on bad advice, then  
20 it would seem that the waiver --

21 MEMBER RAMIREZ: It'd be withdrawn?

22 MR. LUKACS: -- applies -- applies; and then any  
23 recourse is to the person -- by the person giving bad  
24 advice -- against the person who gave bad advice.

25 MEMBER OLSEN: So now I have a question.

1 MEMBER RAMIREZ: My head is spinning.

2 MEMBER OLSEN: Because based on what you said  
3 before, it sounds like there is a difference in the  
4 application of the standard on this issue -- which isn't  
5 compelling in this case because I think the dates of the  
6 IRC are compelling.

7 But what you're saying is, the State can't be held  
8 to a misstatement by one of its employees or a statement  
9 that becomes a misstatement later; but that the local  
10 government can be held to that. And I find that a  
11 disturbing standard.

12 MR. LUKACS: I think that it would really depend on  
13 what the facts are, and whether or not you have either  
14 unilateral mistakes or bilateral mistakes, and whether  
15 those are mistakes of fact or those mistakes are of law.

16 I mean, the law that we had cited in the staff  
17 analysis says that, "Acts or conduct performed under a  
18 mutual mistake of law do not constitute grounds for  
19 estoppel." And what we have in the record here is a  
20 situation which appears that Mr. Spano and the people in  
21 the County both made a mutual mistake of law as to the  
22 filing date.

23 CHAIR ORTEGA: Camille?

24 MS. SHELTON: Let me just say a couple things:

25 One, you don't have to adopt the finding on the

1 waiver to resolve this matter. So your motion may just  
2 be on the grounds of the first issue.

3 But, two, I was looking at this issue yesterday for  
4 another matter. And one of our cases in the binder,  
5 Carmel Valley Special District case, versus the State,  
6 the very first 1987 *Carmel Valley* case. In that case,  
7 it was dealing with the regulations on firefighter  
8 protection services. In that case, the Court of Appeal  
9 found that the State actually waived their right to  
10 challenge the Board of Control decision. And it went  
11 through the waiver elements that we have indicated here,  
12 but also, bolstered the argument by indicating that the  
13 State filed their complaint beyond the statute of  
14 limitations. So they did it hand in hand.

15 So that if, you know, the State at that point said,  
16 "Well, we may have not argued that before the Board of  
17 Control but we're arguing that now; we've thought about  
18 it a little bit more, and now it's a question of law, and  
19 we believe that it's a wrong decision."

20 The Court said, "Sorry, you know, you did not  
21 affirmatively make your arguments before the Board of  
22 Control. You've waited too long past the statute of  
23 limitations to even file your complaint, and your  
24 allegations are dismissed."

25 The case went on to proceed, though, with respect to

1 the special districts challenge.

2 So there were -- that is a holding from the Second  
3 District Court of Appeal, where they did bolster the  
4 waiver argument with the statute of limitations.

5 MS. HALSEY: Found against the State.

6 MEMBER ALEX: Of course, the waiver was whether the  
7 argument was raised in an administrative tribunal, which  
8 is not the same as a letter to the Controller.

9 MS. SHELTON: Yes. You're right. Absolutely.  
10 That's exactly right, yes.

11 CHAIR ORTEGA: So we ended -- did you want to...?

12 MEMBER OLSEN: Well, I will second the motion.  
13 Let's get back to that.

14 MS. SHELTON: So what's the motion?

15 CHAIR ORTEGA: So, let's clarify if the motion is on  
16 the complete staff recommendation or on the issue of the  
17 timeliness of the filing.

18 I'll ask the maker of the motion to clarify.

19 MEMBER CHIVARO: It was on the issue of the  
20 timeliness.

21 MS. SHELTON: Could I restate that?

22 CHAIR ORTEGA: Yes.

23 MS. SHELTON: The motion then would be to adopt the  
24 proposed decision through section IV.A, and to delete  
25 section IV.B.

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1 CHAIR ORTEGA: Okay, Ms. Olsen, is that what your  
2 second was?

3 MEMBER OLSEN: I'm comfortable with that, yes.  
4 That's fine.

5 CHAIR ORTEGA: Okay, are there any other comments  
6 that anyone -- no?

7 MS. YAGHOBYAN: I don't think it's going to make any  
8 difference.

9 CHAIR ORTEGA: Okay, thank you.  
10 Any other public comment on this item?

11 *(No response)*

12 CHAIR ORTEGA: Okay, please call the roll.

13 MS. HALSEY: Mr. Alex?

14 MEMBER ALEX: Aye.

15 MS. HALSEY: Mr. Chivaro?

16 MEMBER CHIVARO: Aye.

17 MS. HALSEY: Mr. Hariri?

18 MEMBER HARIRI: Aye.

19 MS. HALSEY: Ms. Olsen?

20 MEMBER OLSEN: Aye.

21 MS. HALSEY: Ms. Ortega?

22 CHAIR ORTEGA: Aye.

23 MS. HALSEY: Ms. Ramirez?

24 MEMBER RAMIREZ: Aye.

25 MS. HALSEY: Thank you.



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1 CHAIR ORTEGA: Okay, that item is adopted.

2 We'll move on to Item Number 6.

3 MS. HALSEY: Senior Commission Counsel Paul Karl  
4 Lukacs will present Item 6, an incorrect reduction claim  
5 on *Handicapped and Disabled Students II*.

6 MR. LUKACS: Item No. 6 is similar to Item No. 5.  
7 And staff recommends that the IRC be denied on two  
8 independent grounds.

9 After review of the record and the applicable law,  
10 staff finds that, one, the IRC was untimely filed; and  
11 two, by clear and convincing evidence, the claimant's  
12 intention in April 2010 was to agree with the results of  
13 the Controller's audit and to waive any right to object  
14 to the audit or to additional claims.

15 Accordingly, staff recommends that the Commission  
16 adopt the proposed decision to deny this IRC.

17 Would the parties and witnesses please state your  
18 names for the record?

19 MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of the  
20 County of Los Angeles.

21 MR. JEWIK: Ed Jewik on behalf of Los Angeles  
22 County.

23 MR. SPANO: Jim Spano, State Controller's Office.

24 MR. RYAN: Chris Ryan, State Controller's Office.

25 CHAIR ORTEGA: Ms. Yaghobyan?

1 MS. YAGHOBYAN: Well, as we stated earlier, we still  
2 hold the same position that the staff's recommendation is  
3 wrong, it is the misapplication of the clear and  
4 convincing code section, which clearly says the date the  
5 statute starts -- the clock starts ticking from the date  
6 of the written notice, which in this case, I believe it  
7 was August 6<sup>th</sup> -- or whatever the date was, I'm not sure.  
8 But we did file the day before the deadline; and I still  
9 believe that we complied with the rule.

10 And although we relied on the State Controller's  
11 Office's letter, which actually I'm going to recite that  
12 because it's like -- I discussed with Jim -- Mr. Spano,  
13 he gave us the notice, saying, "In reference to your  
14 question on that due process, the State Controller's  
15 Office does not have an internal audit due process.  
16 Appeals are filed with the Commission on State Mandates  
17 through an incorrect reduction claim. An IRC must be  
18 filed within three years following the date we notified  
19 the County of the claimed reduction," which is the date  
20 we went by.

21 "The State Controller's Office notified the County  
22 of the claim." These are the dates. "The State  
23 Controller's Office notified the County of a claimed  
24 reduction on August 6<sup>th</sup>, 2010, for *HDS* program audit; and  
25 on June 12<sup>th</sup>, 2010, for the *HDS II* audit. Information

1 related to...IRC will be found" on such-and-such a Web  
2 site.

3 He goes further and says, "I discussed your request  
4 with my supervisor, Jeffrey V. Brownfield, Chief,  
5 Division of Audits. Mr. Brownfield concurred that the  
6 proper venue to resolve your issue is through the  
7 Commission on State Mandates."

8 Is it our fault? What did we do wrong? Why should  
9 we be blamed for their mistake, which now they turn  
10 around and say, "We are concurring with the staff's  
11 recommendation"?

12 So where is our remedy?

13 CHAIR ORTEGA: Thank you.

14 Anything else, Mr. Spano?

15 MR. SPANO: No further comment.

16 The Commission was quite clear that the statute of  
17 limitation relates to the agency of the final report. So  
18 based on the analysis, we concur with the Commission.

19 CHAIR ORTEGA: Any questions from commissioners?

20 Ms. Ramirez?

21 MEMBER RAMIREZ: Could we have the staff review?

22 CHAIR ORTEGA: Sure.

23 MR. LUKACS: I'm sorry?

24 MEMBER RAMIREZ: Would you review the -- just  
25 respond to the --

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1 CHAIR ORTEGA: Just review the staff --

2 MR. LUKACS: Based on the prior argumentation on  
3 the previous item number, the commissioners are probably  
4 interested in the fact that on this particular record,  
5 the final audit report was issued May 28<sup>th</sup>, 2010. The  
6 IRC was filed June 11<sup>th</sup>, 2013. Those are on page 1 and  
7 page 96 of the record. So we believe it's untimely on  
8 its face.

9 And that the -- as has been discussed in the  
10 previous decisions, which we mentioned in the staff  
11 report, it's from the first element which occurs, in  
12 this case, the issuance of the final audit report.

13 MS. SHELTON: Can I also just mention that we had  
14 that up in the record, page 96 of the final audit report.  
15 The cover letter to that does clearly state that from  
16 the audit report, you may file an IRC three years from  
17 the date of this audit report. So it does state that in  
18 the record.

19 CHAIR ORTEGA: Mr. Jewik?

20 MR. JEWIK: I just want to state what the code  
21 actually says.

22 "All incorrect reduction claims shall be filed with  
23 the Commission no later than three years following the  
24 date of the Office of State Controller's final state  
25 audit report, letter, written remittance advice" -- the

1 key word here is "or other written notice of adjustment  
2 to a reimbursement claim."

3 It does not end with the "final audit report." It  
4 also includes any notice of adjustment. We filed our  
5 IRC within the date of the notice of adjustment.

6 CHAIR ORTEGA: So, Ms. Shelton, maybe you can  
7 address that issue since we've considered this question  
8 several times.

9 MS. SHELTON: We've had a lot of these issues; and  
10 what you have -- this is a regulation that you're  
11 reading.

12 The statute requires that the audit be completed  
13 with a report that has four elements: One, it has to  
14 identify the amount reduced; it has to identify the  
15 reasons for the reduction; it has to identify any  
16 interest that is charged; and one other element. Under  
17 the law of statute of limitations, a date cannot keep  
18 moving. You are required -- it is triggered when you  
19 are first notified of an ill against your county.

20 And in this case, you were first notified with the  
21 issuance of the final report.

22 The two subsequent letters do not even meet the  
23 definition of a notice of adjustment pursuant to  
24 Government Code section 17558.5, because it doesn't  
25 adjust anything. It's just a repeat of the information

1 on a computerized-generated form from the final audit  
2 report. So the triggering date for the statute of  
3 limitations is your first -- the final audit report,  
4 which complies with Government Code section 17558.5.

5 MS. HALSEY: Or other specified document that gives  
6 the reason for adjustment.

7 MS. YAGHOBYAN: Well, with respect to your comment,  
8 actually, the staff is telling us what the State  
9 Controller's has been giving us all these years, it was  
10 wrong.

11 So the point is, this is all we get. So like I said  
12 earlier, if you have any problem with their notices,  
13 their notices are deficient, then that's not our issue,  
14 that's their issue.

15 We still accepted their deficient notice because  
16 that has been the custom, that's how we've been working  
17 with them, and that's what they've been giving us; and  
18 we accept that.

19 So now you're saying, we should not have accepted  
20 it?

21 MS. SHELTON: Let me just make it clear.

22 I'm not suggesting --

23 MS. YAGHOBYAN: Okay, whose fault is it?

24 MS. SHELTON: I'm not suggesting that their notices  
25 are deficient. But you received three --

1 MS. YAGHOBYAN: Right.

2 MS. SHELTON: -- I think three notices.

3 MS. YAGHOBYAN: Because that's what they used to  
4 give us, and that's what we always got.

5 So now you're saying, they should have given us  
6 something different. Then you should address that to  
7 them, not to us.

8 MS. SHELTON: Facts in other cases are not before  
9 the Commission for this particular item.

10 But in this item --

11 MS. YAGHOBYAN: You have copies of the notices in  
12 front of you for both.

13 MS. SHELTON: You have a --

14 MS. YAGHOBYAN: And you're looking at those notices  
15 and analyzing them.

16 CHAIR ORTEGA: Ms. Yaghobyan, let's have one at a  
17 time.

18 Ms. Shelton?

19 MS. SHELTON: You do have a final audit report that  
20 was issued first that complies with Government Code  
21 section 17558.5.

22 After that, they provided computerized-generated  
23 notices that talk about the money owed or money to be  
24 paid back -- I don't have it in front of me -- but they  
25 were just computerized-generated notices of the amounts.

1 It doesn't do anything different than the final audit  
2 report.

3 MS. YAGHOBYAN: Okay, so are you saying the second  
4 part of the code section, which says, "or other written  
5 notice of adjustment of reimbursement claim" is bogus?

6 CHAIR ORTEGA: I think the issue here is that those  
7 other notices didn't adjust anything.

8 MS. SHELTON: That's correct.

9 MS. YAGHOBYAN: Yes, they did.

10 MS. SHELTON: They do nothing different.

11 MS. YAGHOBYAN: No, they did. There is a negative  
12 \$315,000, for example, on this one that I am looking.

13 And it says also, "We have reviewed your 2002-03  
14 fiscal year reimbursement claim for the mandated costs  
15 program and the result of our review are as follows:"  
16 Amount claimed this much, and adjustment to claim  
17 \$315,464. Total adjustment: negative 315,464.

18 So what is this?

19 CHAIR ORTEGA: They don't revise the audit; right?

20 And that's the issue.

21 MS. SHELTON: Your first notice of adjustment was  
22 with the final audit report. And the way the statute of  
23 limitations work, is --

24 MS. YAGHOBYAN: Well, we disagree.

25 MS. SHELTON: -- when you first receive notice.



1 CHAIR ORTEGA: We understand your position.

2 Mr. Jewik?

3 MS. HALSEY: Can I ask, can you point us to the  
4 pages when you're telling us in the record so everyone  
5 can follow?

6 And also, are you asserting that there is an  
7 additional reduction with this later letter or --

8 MS. YAGHOBYAN: No, this was the only letter we got.  
9 And accordingly, they did offset our payments against all  
10 the programs. They did take the money.

11 What I'm trying to say, this is how they have been  
12 doing this, and this is how the practice and custom has  
13 been. So now that we have an issue with the IRC, you,  
14 out of nowhere, come and say, "This notice is deficient."  
15 So even if it's deficient, we give credit to this notice;  
16 and if you're in disagreement, I think you have to  
17 address your argument to them, not to us. We didn't  
18 issue this letter; they did. And the letter complies  
19 with the regulation, and we relied on it.

20 And you somehow touched upon an order about, you  
21 know, justifiable reliance. Even if they were wrong,  
22 we justifiably relied on their opinion because that's  
23 how we work with them. We always, you know, actually  
24 work together very well, too.

25 However, there was no reason for us to doubt their

1        comments and all their paperwork, that's how we've been  
2        working.

3                So now that there's a complaint or there is an  
4        issue, you're saying, "This is not right. This is not  
5        sufficient," then maybe you can create something new  
6        going forward. But you cannot go backward.

7                CHAIR ORTEGA: Thank you.

8                Anything else, Mr. Spano?

9                MR. SPANO: No. I think the Commission was clear  
10       that it's the first notification which takes effect.  
11       The first notification is actually the audit report, not  
12       the subsequent adjustment letters.

13               CHAIR ORTEGA: Okay, anything else from  
14       commissioners?

15               Ms. Ramirez?

16               MEMBER RAMIREZ: I just have a question -- a general  
17       question about this.

18               Is this a common misunderstanding that we're seeing  
19       from other entities?

20               MS. SHELTON: We've adopted several decisions on  
21       this very same issue, yes. It is definitely, you know,  
22       an issue.

23               A lot of times, we have a final audit report, and  
24       then we have a lot of different types of subsequent  
25       documents, not just the computer-generated ones.

1           The issue on Item 2 that's being postponed, is  
2           actually a subsequent revised audit report. There is a  
3           lot of actions that seem to be taking place after  
4           sometimes the final audit report. So it has been an  
5           issue.

6           And so for the first time with these incorrect  
7           reduction claims, we've had to interpret what the  
8           Government Code requires. And the Government Code  
9           requires that the Controller complete the audit within a  
10          certain period of time; and that the completion of the  
11          audit is when they provide notice under 17558.5(c), and  
12          the notice has to contain those four elements. So it  
13          has to be the amount adjusted; the reason for the  
14          adjustment; the interest charged; and the fourth, which  
15          I cannot remember.

16          And so the final audit report will satisfy that  
17          because it contains all of that information.

18          And then the computer-generated notices usually are  
19          just -- you know, just "We took this amount" because  
20          they're allowed to move the money around from different  
21          programs, and it identifies how they moved the money  
22          around. But they're not -- they're just implementing the  
23          final audit report.

24          MEMBER RAMIREZ: It just seems to me, because of the  
25          potential confusion continuing, it could be ripe for some

1 sort of fix, going forward in the future.

2 MS. HALSEY: This record is slightly different,  
3 though, from some of the others, because it did have the  
4 statement in the later letter that the three-year statute  
5 of limitations, that could lead to confusion. It was a  
6 misstatement of law, so that had not come up in prior  
7 decisions.

8 MEMBER OLSEN: Okay. So I think one of my concerns  
9 here is, you know, language matters. And I'm not a  
10 lawyer; and some of the people who are dealing with these  
11 things are not lawyers. So what it says should be what  
12 it means.

13 Is there something that we, as the Commission, can  
14 do, in our regulations, to clarify that would help with  
15 this?

16 MS. SHELTON: You already have an item in your --  
17 and you've already adopted the item on your agenda today  
18 that did clarify -- it inserts some clarifying language  
19 that says it's the first notice of adjustment that  
20 complies with Government Code section 17558.5(c).

21 MEMBER OLSEN: And then my question -- I'm not even  
22 sure if this is the right arena in which to ask the  
23 question, so shut me down if it's not the right arena --  
24 but I think this is a question for the State Controller's  
25 Office; and that is, is part of this problem happening

1     because of the three-year time limit on your final audit?  
2     And so in order to get the final audit out, there are  
3     issues that are straggling to catch up with that final  
4     audit, and that's what the real issue is here?

5             I'm just trying to figure out why does this keep  
6     happening.

7             CHAIR ORTEGA: Mr. Spano or Mr. Ryan, do you have  
8     any response?

9             MR. SPANO: I don't think we're going to have this  
10    issue on a go-forward basis because of these issues,  
11    because we're considering our final report as being  
12    final. You know, I think we've been trying to be very  
13    responsive and cooperative. But the fact of the matter  
14    is, during the audit process, sometimes it takes up to  
15    two years to finish them, and we give agencies a lot of  
16    time and effort to come up with the documentation; and  
17    then later on, they say "We want to give you more later,"  
18    and it never closes right now.

19            So we actually -- our report actually clarifies now,  
20    too, that the final report is our final. There's no --  
21    you know, it is the final document. The statute of  
22    limitation applies to this final report here on a  
23    move-forward basis right now. So we're not -- I think  
24    that early on in the process, we were trying to be, you  
25    know, I guess, nice guys here. But I think at the

1 point in time is, we did close out the report as a final  
2 report. And we don't -- anything beyond the final report  
3 had to go through the Commission, because we need closure  
4 in this process.

5 MEMBER OLSEN: Thank you. I appreciate that.

6 MS. SHELTON: And I was just going to say, the  
7 difficulty with these cases is that they really are  
8 fact-intensive, and each file presents a little bit  
9 different facts.

10 CHAIR ORTEGA: Okay, thank you.

11 Any other comments from commissioners?

12 *(No response)*

13 CHAIR ORTEGA: Is there a motion on this item?

14 MEMBER RAMIREZ: I'll move the recommended action.

15 CHAIR ORTEGA: Okay, are we going to have the  
16 same -- do you want to --

17 MS. SHELTON: Is your motion to adopt the proposed  
18 decision through section IV.A, and to delete IV.B?

19 MEMBER RAMIREZ: Yes.

20 CHAIR ORTEGA: Thank you.

21 MEMBER CHIVARO: Second.

22 CHAIR ORTEGA: Moved by Ms. Ramirez, second by  
23 Mr. Chivaro.

24 Please call the roll.

25 MS. HALSEY: Mr. Alex?

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1 MEMBER ALEX: Yes.

2 MS. HALSEY: Mr. Chivaro?

3 MEMBER CHIVARO: Yes.

4 MS. HALSEY: Mr. Hariri?

5 MEMBER HARIRI: Aye.

6 MS. HALSEY: Ms. Olsen?

7 MEMBER OLSEN: Aye.

8 MS. HALSEY: Ms. Ortega?

9 CHAIR ORTEGA: Aye.

10 MS. HALSEY: Ms. Ramirez?

11 MEMBER RAMIREZ: Aye.

12 CHAIR ORTEGA: Okay, thank you.

13 Moving on to Item 11.

14 MS. HALSEY: Item 8 was reserved for county  
15 applications for a finding of significant financial  
16 distress or SB 1033 applications. No SB 1033  
17 applications have been filed.

18 Program Analyst Kerry Ortman will present Item 11,  
19 the Legislative Update.

20 MS. ORTMAN: Good morning.

21 On June 27<sup>th</sup>, the Governor adopted SB 826, the  
22 2016-17 Budget Act, which adds a one-time \$1.28 billion  
23 increase in Prop. 98 funds to K-12 school districts and  
24 a one-time \$105.5 million increase to community-college  
25 districts to reimburse for state-mandated programs.

1           The Budget Act newly adds four programs to the list  
2 of suspended mandates. Those programs are: *Sex*  
3 *Offenders Disclosure Requirement, Absentee Ballots, Open*  
4 *Meetings/Brown Act Reform, and Mandate Reimbursement*  
5 *Process I and II.* The Budget Act also newly adds one  
6 program to the list of funded mandates, which is the *Post*  
7 *Election Manual Tally* program.

8           In the legislative update, we reported AB 1608, the  
9 State Government Budget trailer bill; but it turns out  
10 that the bill was in both houses, and SB 836 was the one  
11 that was passed and chaptered on June 27<sup>th</sup>.

12           SB 836 adds the RRM language that we have been  
13 tracking; and requires that the audited data be submitted  
14 with reimbursement claims in RRM's until July 1<sup>st</sup>, 2019.  
15 The bill also requires the State Controller, in  
16 coordination with the Commission and the Department of  
17 Finance, by October 1<sup>st</sup>, 2018, to prepare a report on the  
18 new RRM process, and specifies that the Legislature will  
19 hold hearings on that report.

20           We're also monitoring two bills this legislative  
21 session:

22           AB 2851, *State Mandates*, was introduced in  
23 February 2016 as a spot bill. This bill did not make it  
24 out of its house of origin prior to the deadline, and  
25 it's dead now.



1           Finally, on June 20<sup>th</sup>, AB 575, *Teachers: Best*  
2           *Practices Teacher Evaluation System*, was gutted and  
3           amended; and it no longer affects the mandates process.

4           MS. HALSEY: Thank you, Kerry.

5           CHAIR ORTEGA: Thank you.

6           MS. HALSEY: Chief Legal Counsel Camille Shelton  
7           will present Item 12, the Chief Legal Counsel Report.

8           MS. SHELTON: Since the Commission's last meeting,  
9           we have not received any new filings; and we don't also  
10          have any new decisions.

11          We are awaiting for the Supreme Court's decision  
12          in the *Municipal Stormwater and Urban Runoff Discharge*  
13          test claim; and their deadline for issuing that is  
14          August 31<sup>st</sup>.

15          MS. HALSEY: Item 13 is the Executive Director's  
16          Report.

17          After this hearing, we now have 14 test claims, all  
18          but one of which are regarding *Stormwater Permits*. We  
19          also have one parameters and guidelines pending and one  
20          statewide cost estimate; and those are also regarding  
21          *Stormwater Permits*.

22          These matters have been on inactive status since --  
23          pending the resolution of the litigation in the  
24          California Supreme Court. The California Supreme Court  
25          has heard the case, and will issue its decision no later

1 than August 31<sup>st</sup>, 2016, at which time all of these water  
2 matters will become active, once again.

3 As a result, the Commission staff are beginning to  
4 switch their attention to these matters, which are  
5 unusually large files and address complex issues of law  
6 and fact. So you will see a decline in the overall  
7 number of matters being set for hearing in the next  
8 several agendas.

9 In addition, there is one parameters-and-guidelines  
10 amendment on inactive status pending the outcome of  
11 litigation in the CSBA case, which is now pending in the  
12 First District Court of Appeal.

13 And finally, we have four additional statewide cost  
14 estimates and 30 IRCs pending.

15 Currently, Commission staff expects to complete the  
16 IRC backlog, including all IRCs filed to date, by  
17 approximately the January 2018 Commission meeting,  
18 dependent on staffing and other workload.

19 Staff also anticipates completing all the pending  
20 test claims by approximately the September 2018 hearing,  
21 again, depending on staffing and other workload.

22 Please check the Executive Director Report in the  
23 binder to see if your items are coming up over the next  
24 couple of hearings; and if they are, expect to see draft  
25 proposed decisions for review and comment at least

1 eight weeks prior to the hearing date and our proposed  
2 decision two weeks before the hearing.

3 And that's all I have.

4 CHAIR ORTEGA: Okay, thank you.

5 Any questions?

6 *(No response)*

7 CHAIR ORTEGA: Okay, seeing none, we will now recess  
8 into closed executive session pursuant to Government Code  
9 section 11126(e), to confer with and receive advice from  
10 legal counsel for consideration and action, as necessary  
11 and appropriate, upon the pending litigation listed on  
12 the published notice and agenda; and to confer with and  
13 receive advice from legal counsel regarding potential  
14 litigation. The Commission will also confer on personnel  
15 matters pursuant to Government Code section 11126(a)(1).  
16 And we will reconvene in open session in approximately  
17 15 minutes.

18 *(The Commission met in closed executive*  
19 *session from 11:02 a.m. to 11:15 a.m.)*

20 CHAIR ORTEGA: The Commission met in closed  
21 executive session pursuant to Government Code section  
22 11126(e)(2), to confer with and receive advice from legal  
23 counsel for consideration and action, as necessary and  
24 appropriate, upon the pending litigation listed on the  
25 published notice and agenda; and to confer with and

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1 receive advice from legal counsel regarding potential  
2 litigation; and pursuant to Government Code section  
3 11126(a)(1), to confer on personnel matters.

4 If there is no further business before the  
5 Commission, the meeting will be adjourned.

6 *(The Commission meeting concluded at 11:16 a.m.)*

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REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

*In witness whereof*, I have hereunto set my hand on the 28<sup>th</sup> day of July 2016.



Daniel P. Feldhaus  
California CSR #6949  
Registered Diplomat Reporter  
Certified Realtime Reporter