

**PUBLIC MEETING**

**COMMISSION ON STATE MANDATES**



**TIME:** 10:00 a.m.

**DATE:** Friday, January 24, 2014

**PLACE:** State Capitol, Room 447  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomate Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

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

KEN ALEX  
Director  
Office of Planning & Research

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member

ANDRÉ RIVERA  
Representative for BILL LOCKYER  
State Treasurer

DON SAYLOR  
Yolo County Supervisor  
Local Agency Member



COMMISSION STAFF PRESENT

HEATHER A. HALSEY  
Executive Director  
*(Items 2, 3, 16, and 19)*

JASON HONE  
Assistant Executive Director  
*(Item 8)*

CAMILLE N. SHELTON  
Chief Legal Counsel  
*(Item 18)*

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

*continued*

TYLER ASMUNDSON  
Commission Counsel  
(Item 4)

MATTHEW B. JONES  
Commission Counsel  
(Items 5, 6, 7, and 8)

KERRY ORTMAN  
Program Analyst  
(Item 17)



PUBLIC TESTIMONY

**Appearing Re Item 4:**

For 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

CONNIE D. DRAXLER  
Deputy Director  
Office of the Public Guardian  
County of Los Angeles  
320 West Temple Street  
Los Angeles, California 90012

For Department of Finance

MICHAEL BYRNE  
Department of Finance  
915 L Street  
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 4:**

For Department of Finance

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance  
915 L Street  
Sacramento, California 95814

**Appearing Re Item 5:**

For 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

For Department of Finance

MICHAEL BYRNE  
Department of Finance

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance

**Appearing Re Item 6:**

For Santa Clarita Valley Sanitation District of  
Los Angeles County:

CLAIRE HERVEY COLLINS  
Lewis Brisbois Bisgaard & Smith LLP  
221 B, Figueroa Street, Suite 1200  
Los Angeles, California 90012

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 6:** *continued*

For Santa Clarita Valley Sanitation District of  
Los Angeles County:

PAUL BECK  
Lewis Brisbois Bisgaard & Smith LLP  
221 B, Figueroa Street, Suite 1200  
Los Angeles, California 90012

PHILLIP FRIESS  
Head, Technical Services Department  
Santa Clarita Valley Sanitation Department  
1955 Workman Mill Road  
Whittier, California 90601

LAURENE WESTE  
Mayor  
City of Santa Clarita  
23920 Valencia Boulevard  
Santa Clarita California 91355

SCOTT WILK  
Assembly Member  
38<sup>th</sup> Assembly District  
27441 Tourney Road, Suite #160  
Santa Clarita, CA 91355

TIMBEN BOYDSTON  
Councilmember  
City of Santa Clarita  
23920 Valencia Boulevard  
Santa Clarita California 91355

For Los Angeles Regional Water Quality Control Board:

JENNIFER FORDYCE  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> Floor  
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 6:** *continued*

For State Water Resources Control Board:

MICHAEL LAUFFER  
Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> Floor  
Sacramento, California 95814

For Department of Finance

MICHAEL BYRNE  
Department of Finance

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance

**Appearing Re Item 7 and Item 8:**

For Requestor Department of Finance:

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance

MICHAEL BYRNE  
Department of Finance





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1           Our first item this morning is election of  
2 officers.

3           At the January 25<sup>th</sup>, 2013, hearing, the  
4 Commission on State Mandates elected Ana Matosantos as  
5 Director of Finance, as the chairperson of the  
6 Commission; and John Chiang, State Controller, as  
7 vice-chairperson.

8           State law requires the members to elect a  
9 chairperson and a vice-chairperson of the Commission on  
10 State Mandates at the first hearing of the year.

11           CHAIR ORTEGA: Okay, are there any nominations  
12 for the chair?

13           MEMBER ALEX: Yes. I will move that the  
14 Director of the Department of Finance be the chair of the  
15 Commission.

16           MEMBER CHIVARO: I'll second that

17           CHAIR ORTEGA: Any other nominations?

18           *(No response)*

19           CHAIR ORTEGA: Without objection, I'll close  
20 the nominations.

21           All those in favor?

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

23           CHAIR ORTEGA: Opposed?

24           *(No response)*

25           MEMBER SAYLOR: I would like a speech -- an

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1 acceptance speech.

2 CHAIR ORTEGA: We can call Michael up here.

3 Okay, thank you.

4 Let's see, the second officer is the -- or are  
5 there any nominations for the vice chair?

6 MEMBER ALEX: I can nominate the Treasurer for  
7 the vice chair.

8 MEMBER CHIVARO: Second.

9 CHAIR ORTEGA: Any other nominations?

10 *(No response)*

11 CHAIR ORTEGA: Okay, without objection, the  
12 nominations will be closed.

13 All those in favor?

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

15 CHAIR ORTEGA: Any opposed?

16 *(No response)*

17 CHAIR ORTEGA: Okay, thank you.

18 MS. HALSEY: Item 2 is the adoption of  
19 the minutes.

20 CHAIR ORTEGA: Are there any objections or  
21 corrections to the December 6<sup>th</sup> minutes?

22 *(No response)*

23 CHAIR ORTEGA: Any comments from the public on  
24 the minutes?

25 *(No response)*

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1 CHAIR ORTEGA: No?

2 Is there a motion?

3 MEMBER OLSEN: I move adoption.

4 CHAIR ORTEGA: A motion by Ms. Olsen.

5 MEMBER CHIVARO: Second.

6 CHAIR ORTEGA: Second by Mr. Chivaro.

7 All those in favor?

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

9 CHAIR ORTEGA: Any opposed or abstain?

10 *(No response)*

11 CHAIR ORTEGA: Okay, the minutes are approved.

12 MS. HALSEY: Public comment. Now, we can take  
13 up public comment. Public comment is for matters not on  
14 the agenda.

15 Please note though that the Commission cannot  
16 take action on items not on the agenda. However, it can  
17 schedule issues raised by the public for consideration at  
18 future meetings.

19 CHAIR ORTEGA: Okay, is there any general  
20 public comment?

21 *(No response)*

22 CHAIR ORTEGA: Seeing none, we'll move to the  
23 next item, the Consent Calendar.

24 MS. HALSEY: Next, we have a proposal to add  
25 three items to the Consent Calendar: 9, 10, and 11.



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1 CHAIR ORTEGA: Okay, any objection from the  
2 Members of adding Items 9, 10, and 11 to the Consent  
3 Calendar?

4 *(No response)*

5 CHAIR ORTEGA: Seeing none, any objections or  
6 comments from the public on those items?

7 *(No response)*

8 CHAIR ORTEGA: Okay, seeing none, a motion on  
9 the Consent Calendar?

10 MEMBER ALEX: So moved.

11 CHAIR ORTEGA: Moved by Mr. Alex.

12 MEMBER SAYLOR: Second.

13 CHAIR ORTEGA: Second by Mr. Saylor.

14 CHAIR ORTEGA: All those in favor of the  
15 consent -- do we need a vote on the consent?

16 All those in favor of the Consent Calendar?

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

18 CHAIR ORTEGA: Any opposed or abstain?

19 *(No response)*

20 CHAIR ORTEGA: Seeing none, the Consent  
21 Calendar is adopted.

22 MS. HALSEY: Thank you.

23 Next, we have appeal of Executive Director  
24 decisions. And there are no appeals of Executive  
25 Director decision scheduled for this hearing.

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1           Item 4, do we have all of the -- before I swear  
2 in, do we have all the witnesses for Item 4 here?

3           MS. SHELTON:    Hasmik?

4           MS. YAGHOBYAN:   Yes.

5           MS. HALSEY:    Yes?

6           Okay, good.

7           Now, let's go ahead and swear everyone in who  
8 is going to be testifying on the Item 7 portion of the  
9 hearing.

10           *(Parties and witnesses stood.)*

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

15           *(Chorus of "I dos" was heard.)*

16           MS. HALSEY:   Thank you.

17           The first item we'll be taking up this morning  
18 is Item 4, a test claim on *Public Guardianship Omnibus*  
19 *Conservatorship Reform*.

20           And Commission Counsel Tyler Asmundson will be  
21 presenting that item.

22           MR. ASMUNDSON:   Good morning.

23           This test claim requests reimbursement for  
24 costs incurred by counties who comply with the Omnibus  
25 Conservatorship and Guardianship Reform Act of 2006,

1 which made comprehensive reforms to California's probate  
2 conservatorship program.

3           The test-claim statute imposes new requirements  
4 on the county office of the public guardian to receive  
5 continuing education, beginning an investigation within  
6 two business days of receiving a referral for  
7 conservatorship or guardianship, and file a petition for  
8 appointment as guardian or conservator when there is no  
9 one else qualified and willing to act, and there is a  
10 imminent threat to the person's health or safety or the  
11 person's estate.

12           However, these activities are triggered by  
13 the county's discretionary decision to create the  
14 Office of Public Guardian pursuant to Government Code  
15 section 27430, which specifies that the board of  
16 supervisors may, by ordinance, create or terminate the  
17 Office of Public Guardian.

18           As the courts have made clear, reimbursement  
19 is not required when requirements imposed by the statute  
20 are triggered by local government's discretionary  
21 decision to participate in a program. Therefore, the new  
22 requirements imposed upon the public guardian do not  
23 create a state-mandated program within the meaning of  
24 Article XIII B, section 6 of the California Constitution.

25           In addition, all other activities pled are

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1 either not required by local government or are triggered  
2 by a court order. Activities required to comply with  
3 mandates of the courts are not eligible for reimbursement  
4 under Article XIII B, section 6.

5 Staff recommends that the Commission adopt the  
6 proposed statement of decision to deny the test claim.

7 Will the parties and witnesses please state  
8 your names for the record?

9 MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of  
10 County of Los Angeles.

11 MS. DRAXLER: Connie Draxler, deputy director,  
12 Los Angeles County Public Guardian.

13 MR. SCOTT: Lee Scott, Department of Finance.

14 MR. BYRNE: Michael Byrne, Department of  
15 Finance.

16 MS. GEANACOU: Susan Geanacou, Department of  
17 Finance.

18 CHAIR ORTEGA: Ms. Yaghobyan?

19 MS. YAGHOBYAN: Thank you. Good morning.

20 Well, as you can see, the Commission staff's  
21 analysis, although correctly pointed that there are  
22 mandated activities proposed on the local agencies  
23 because of this new act; but, however, they said the  
24 reimbursement should be denied because of the Government  
25 Code section 72430, which the County created the body of

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1 public guardian and it was discretionary. And we also,  
2 if we decide just to get rid of the public guardian  
3 department or division, we can just dissolve it and there  
4 will be no penalty.

5 And in further support of their decision, the  
6 staff is citing three cases which, reviewing the cases  
7 reveals not only these cases are distinguishable from the  
8 County's test claim, but also they support our positions.  
9 Because none of these cases, the activities there were --  
10 like the counties or local agencies, they did not -- it  
11 didn't rise to compel to be either practical or legal  
12 compulsion. It was completely voluntary.

13 For example, one of the cases, the school board  
14 decided to hire a police officer versus the security.  
15 So they had the option. They didn't have to hire police  
16 officers and then go on and try to get reimbursement for  
17 POBR.

18 On the other hand, with the County's position,  
19 although creating a public guardian body was  
20 discretionary, on the other hand, the activities imposed  
21 by this Act, they're not discretionary. We are compelled  
22 to do it.

23 So if the Court orders the county or public  
24 guardian to take over incompetent or mentally ill  
25 people's affairs, we can't say no. Even if we didn't

1 have a public guardian body, still we have to go on and  
2 find and hire private/public guardians to do the  
3 activities. Otherwise, we would not be in compliance of  
4 the law; and we would be legally compelled to do it; and  
5 otherwise, we would be facing the consequences.

6 So we don't think that the staff analysis  
7 correctly points out the magnitude of us not providing  
8 the services because the only question one can ask --  
9 let's say if we get rid of the public guardian body, so  
10 what's going to happen? If there's an imminent danger,  
11 we have to take over, or the court orders us to take over  
12 somebody's affair, what are we going to do? We just have  
13 to find the person or the body to do the work.  
14 Otherwise, like I said, we would be subject to legal  
15 consequences.

16 The second disagreement or dispute we have with  
17 the Commission staff analysis, they say that because  
18 court mandates are barred from reimbursement; but what  
19 they are not realizing, I believe, is that this is not a  
20 court mandate. This mandate was enacted -- this statute  
21 was enacted by the Legislature. And the codes are  
22 mandated by, they're not mandating. So the Court has to  
23 order when there are situations or circumstances, they  
24 order the county to take over an incompetent person's  
25 legal affairs.

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1           So it is not the court mandate; rather, it's a  
2 court order. So, therefore, that disclaimer does not  
3 apply.

4           In conclusion, the public guardian clearly --  
5 all the cases cited by the Commission, they're -- they  
6 seem significantly different because there are other  
7 alternative resolutions, other alternative options for  
8 the local agencies to take. But in this case, with the  
9 County's case, the County carries a core mandatory  
10 function, and there is no alternative means of carrying  
11 that function, except having the public guardian body.

12           So what would you do if we don't have this body  
13 and we have these activities that we are ordered by the  
14 court? So what are we supposed to do?

15           Like I said, even if you get rid of the public  
16 guardian, we will still have to take on these orders by  
17 court or if there is imminent danger, we have to step in  
18 and then protect these people that they can't protect  
19 themselves.

20           But keep in mind, that this Act came into the  
21 picture, enacted as a result of all those articles in the  
22 paper, that people, that they could not take care of  
23 their estate or their affairs and all these articles in  
24 that, you know -- and then the State, there was a reason  
25 to enact this statute, saying that if there's an imminent

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1 danger to people's lives and liberty, people who cannot  
2 take care of themselves or control themselves, that the  
3 County has to step in and take over.

4 So we have no option but to do it; otherwise,  
5 we are going to be held responsible or legal  
6 consequences.

7 Now, Connie Draxler, our director, she is going  
8 to give you more -- a bigger picture of the program.

9 MS. DRAXLER: Thank you, Commissioners, for  
10 allowing me to speak with you today. I apologize if  
11 I cover a little bit more or in depth of what Hasmik did;  
12 but I do want to explain the public guardian program.

13 Not many individuals do understand what a  
14 public guardian does.

15 First of all, we generally have two areas of  
16 responsibility: mental-health conservatorships and  
17 probate conservatorships.

18 The Omnibus Act, of course, is focusing on the  
19 probate conservatorships. But throughout the analysis,  
20 there are references back to the Welfare and Institutions  
21 Code and to our responsibilities with regards to our  
22 mentally ill population. So I do want to make sure that  
23 we're not confusing the two populations.

24 The mandates under the Welfare and Institutions  
25 Codes were codified in the LPS Act in the late 1960s. So



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1 even though the L.A. County Public Guardian asked for  
2 the creation of the public guardian back in 1945, that  
3 was all about our mentally ill individuals and not about  
4 the probate cases. And, again, I would say that the  
5 LPS Act superseded that 1945 request for the creation of  
6 the Office of the Public Guardian.

7 Public guardians statewide provide  
8 conservatorship and administrative services to older and  
9 dependent adults who are at risk for physical, emotional,  
10 and financial abuse, or are unable to care for  
11 themselves. As a health and safety program, the public  
12 guardian is the essential link to law enforcement and  
13 adult protective services -- both funded through various  
14 state funding streams.

15 We are also the provider of last resort for the  
16 most vulnerable and at-risk disabled and elderly persons.  
17 No other county department or agency has the legal  
18 capability or mandate to provide care and life-management  
19 decisions for this population. And without probate  
20 conservatorships, other protective agencies and superior  
21 court would have no viable resource to protect this  
22 vulnerable adult population.

23 The analysis appears to imply that counties  
24 could decide to terminate the office of the public  
25 guardian. This action, if a county would decide to do

1 that, would actually take us back to pre Omnibus Act  
2 time.

3 There were counties that, at the time, prior to  
4 Omnibus Act, that discretionarily decided not to pursue  
5 certain conservatorships. That's the whole reason for  
6 *The LA Times* article and the whole reason for the  
7 legislative acts that took place.

8 The Legislature did not want to have the public  
9 guardian have the discretion to only do cases coming from  
10 the court, but to actually require us to be involved with  
11 cases in imminent threat to our older adult and dependent  
12 adult vulnerable population.

13 So I think it is kind of -- I don't believe  
14 it would be realistic at this point, since counties have  
15 been filing these conservatorships for the past seven  
16 years under the mandate and the Probate Code, to think  
17 that a county government at this point could eliminate  
18 the program.

19 Realistically, what would happen? There would  
20 be no one available to assist our most vulnerable  
21 population.

22 It is unfortunate that at the time that the  
23 Omnibus Act was created, the inconsistency in the  
24 Government Code was not realized, that there was the  
25 "may" in the Government Code and the Probate Code was

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1       enacting the "*shall*." Unfortunately, that's not  
2       something anyone caught; but at this point, do not hold  
3       individual counties and public guardian programs  
4       responsible for failing to rectify that inconsistency.

5               Also recognize that the circum surrounding the  
6       Government Code, when that was enacted, or even some of  
7       the references back to 1945, when we asked for the  
8       creation of the office and had it as a "*may*," was a  
9       different time and place.

10              The identification and awareness of elder abuse  
11       and the need to protect older adult -- older, vulnerable  
12       adults now requires someone to provide these services and  
13       ensure that these services are being met.

14              There is no discretion at this point, and I  
15       don't think that any county could at this point decide to  
16       eliminate the public guardian without negative outcomes  
17       and increased liability.

18              Thank you.

19              CHAIR ORTEGA: Department of Finance?

20              MR. SCOTT: The Department of Finance concurs  
21       with staff.

22              CHAIR ORTEGA: Any comments or questions from  
23       the commissioners?

24              MEMBER SAYLOR: A question.

25              CHAIR ORTEGA: Please.

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1 MEMBER SAYLOR: A question of the public  
2 guardian.

3 You are -- I'm sorry, I missed your name.

4 Was it Connie Drexler?

5 MS. DRAXLER: Connie Draxler.

6 MEMBER SAYLOR: Ms. Draxler, so how many  
7 counties actually have offices of public guardian?

8 MS. DRAXLER: Every county does. And it's  
9 actually in the 24000 code of the Government Code. We're  
10 listed as one of the county officials, and so every  
11 county has a public guardian. It may be called "public  
12 guardian" or it may be called "public conservator."

13 MEMBER SAYLOR: So all 58 counties have this  
14 office?

15 MS. DRAXLER: Correct.

16 MEMBER SAYLOR: So are there responsibilities  
17 that are required by state law of those offices?

18 MS. DRAXLER: Under -- it depends on which part  
19 of the requirements we're talking. If we're talking  
20 about their LPS conservatorship program, there are  
21 mandates.

22 The Welfare and Institutions Code 5351  
23 designates that the county board must identify a county  
24 conservatorship investigator for the mental-health cases.  
25 Generally, in almost every county that I'm aware of,

1 that's public guardian or public conservator.

2 On the probate side, we're governed under 2920,  
3 and many other statutes within the Probate Code, which  
4 require us, A, to accept any order from the court to  
5 investigate whether or not a probate conservatorship is  
6 necessary and potentially file.

7 I will note that prior to the Omnibus Act, we  
8 did, in fact, get orders from the court. When a private  
9 individual goes into court, files a conservatorship, if  
10 something would happen with that private family member,  
11 they become incapacitated and you get a vacancy in that  
12 conservatorship role, the court has to find someone to  
13 fill that vacancy. It is usually the public guardian  
14 that they turn to, to fill that vacancy and to become the  
15 successor conservator.

16 I will also indicate, although I can't confirm  
17 because it was prior to my time with L.A. County, that  
18 at one time L.A. County did submit SB-90 reimbursement  
19 claims for those specific actions, that we received  
20 reimbursement on court-ordered referrals to file probate  
21 conservatorships. I understand that was suspended. But  
22 at one time, those activities were considered a program  
23 that should be reimbursed.

24 What the Omnibus Act did is take it one step  
25 further. Not only were we required to take stuff from

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1 the court, but we were now required to investigate and  
2 petition for any case that involved imminent threat for  
3 any individual, any citizen within our county.

4 MEMBER SAYLOR: So a comment -- or, I'm sorry,  
5 if there are other questions, I'd appreciate those. But  
6 I have a comment.

7 CHAIR ORTEGA: Go ahead.

8 MEMBER RAMIREZ: I have some questions.

9 CHAIR ORTEGA: Sure, Ms. Ramirez.

10 MEMBER RAMIREZ: Thank you.

11 I'm familiar with this, having practiced some  
12 of that law in the past.

13 But I would like to ask you if -- I was going  
14 to ask you before you mentioned the reimbursement  
15 situation, who funds the public guardian office now at  
16 this time in L.A. County?

17 MS. DRAXLER: We are now a net County cost  
18 program. Prior to the Omnibus Act, we were one of those  
19 counties that had no county funding. Prior to the  
20 Omnibus Act, we relied on a few memorandums of  
21 understanding with hospitals that paid for our services;  
22 and we got some reimbursement from Targeted Case  
23 Management, which is a federal Medi-Cal reimbursement  
24 program for our clients that were Medi-Cal.

25 We are now -- we have those sources still

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1 available, and we are now receiving net county costs to  
2 fund our probate program.

3 MEMBER RAMIREZ: When you're dealing with a  
4 conservatee who has means -- which you probably do  
5 occasionally encounter -- do any part of your costs come  
6 from the estate of that person?

7 MS. DRAXLER: Absolutely. We are entitled to  
8 court-ordered fees for our services. We do have to file  
9 court accountings on every case that we do to show the  
10 services that we provided; and then the court will  
11 determine, A, whether or not those requests for fees will  
12 be approved; and then if they are, then the second step,  
13 is their funding within the estate to take that. If  
14 there is no funding, obviously, we don't get reimbursed  
15 for the court order.

16 MEMBER RAMIREZ: And I do have a question for  
17 staff, Mr. Asmundson.

18 MR. ASMUNDSON: Yes.

19 MEMBER RAMIREZ: Could you distinguish for us  
20 what the difference would be between a court order to  
21 take some action, do some work for an individual  
22 conservatee, and legislative mandate?

23 MR. ASMUNDSON: Well, in this instance, as the  
24 witness pointed out, the prior law stated that the Court  
25 could -- or it said "may" appoint the public guardian to

1 act. And here, the Legislature changed the language to  
2 require the court to do that when they find that there's  
3 no one else willing to act.

4 However, it's kind of a red herring because the  
5 Government Code does not require that the public guardian  
6 exist and allows the county to eliminate the position.  
7 There is nothing -- absolutely nothing that requires them  
8 to continue to do this.

9 And the amended statute, section 2920, speaks  
10 only to the public guardian. It does not speak to the  
11 county generally. That's why we found that this is not a  
12 mandate. Because it doesn't say the county must perform  
13 these services, it says the specific office of public  
14 guardian, which may be eliminated.

15 MEMBER RAMIREZ: Could you mention any other  
16 county or special district mandates that are  
17 discretionary -- not mandates that are discretionary,  
18 that's a contradiction. But discretionary programs,  
19 such as the public guardian program that we've dealt with  
20 in the Commission?

21 MR. ASMUNDSON: I can't. Not off the top of my  
22 head.

23 MS. SHELTON: We've had a lot of claims dealing  
24 with a "may," "shall," where we're talking about Peace  
25 Officer Procedure Bill of Rights which was mentioned by



1 the County earlier, where by the plain language of that  
2 statute, imposed requirements on school districts who  
3 employed peace officers. And we had information on the  
4 record in that case where a majority of the school  
5 districts had their own police department. But the Court  
6 still indicated that it still was a choice of theirs to  
7 have that department.

8 Just to back-tail on what Tyler was saying,  
9 under the Constitution, under Article XIII B, section 9,  
10 any order from the Court as an order from the court is  
11 not eligible for reimbursement under Section 6.

12 So here, although the statute did change the  
13 "may" to a "shall" with the direction to the court, the  
14 findings are still the same. So there was really  
15 technically no change in law there. Because under prior  
16 law, the court still had to make those findings, and  
17 still would be subject to an appealable order, had the  
18 court not made the findings consistent with the evidence  
19 in the record. So there was really no change in that  
20 respect to that subdivision.

21 MS. DRAXLER: May I?

22 I would actually respectfully disagree. Prior  
23 to the Omnibus Act, the Code -- there's two sections of  
24 the Probate Code that references, you know, the actions  
25 of the public guardian.

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1           In section 2920(b), there was a "*shall*" there  
2 prior to the Omnibus Act. The Court could -- we had to  
3 act if the Court ordered us.

4           The "*may*" was in all other populations. So if  
5 we got a referral from outside the court or some activity  
6 from adult protective services law enforcement referred  
7 to us, we had discretion not to move forward in that in  
8 those cases -- in those particular referrals or clients.

9           But there was the "*shall*" there for the court  
10 prior to the Omnibus Act, because we always -- we would  
11 receive those orders, and had been for years, and acting  
12 on those orders. And we could not refuse them.

13           MR. ASMUNDSON: If I can clarify?

14           Actually, there was a "*shall*" and a "*may*."

15           MS. DRAXLER: Yes.

16           MR. ASMUNDSON: But the "*shall*" applied to the  
17 public guardian. It said, "The public guardian *shall*  
18 apply for appointment as guardian or conservator if the  
19 court so orders. The court *may* make an order under this  
20 subdivision on motion of an interested party."

21           MS. DRAXLER: Yes.

22           MR. ASMUNDSON: So the court had discretion.  
23 But what Camille was trying to point out is that if  
24 certain evidence was presented, the court really couldn't  
25 say no. If they required a conservator or a guardian,

1 the court, after being presented with that evidence,  
2 would make the public guardian perform those services.

3 MS. DRAXLER: If there was no one else  
4 available to provide those services.

5 MR. ASMUNDSON: Yes.

6 MS. SHELTON: And still, all of that is  
7 stemming from a court order.

8 MEMBER SAYLOR: Okay. Another question. This  
9 is a question.

10 Tyler, so if all the counties have responded to  
11 the circumstance that exists of people needing certain  
12 kinds of attention and courts making orders by  
13 establishing this office, if all 58 counties have done  
14 so, and then the Legislature establishes requirements  
15 for those offices, I imagine -- it seems to me, with the  
16 presumption that the offices exist and will continue  
17 to exist, isn't that a practical compulsion?

18 Or how do you sort out that it's a  
19 discretionary act? This -- I get that the language issue  
20 is there, and that the word "may" exists in the statute.  
21 But isn't there a real consideration here, that the only  
22 way that counties have been able to carry out this  
23 function is through the office that all 58 of them have  
24 established?

25 MR. ASMUNDSON: Well, I'm not going to deny

1 that all counties have opted into this program, and that  
2 there would likely be consequences if they decided to  
3 terminate the office of the public guardian within, let's  
4 say, L.A. County, for instance, because they may be  
5 serving a population already.

6 However, when you're talking about practical  
7 compulsion, the result has to be -- it has to be a  
8 negative result, double taxation or something else, upon  
9 the county, not a population. So here, if they chose  
10 not to have a public guardian, you might likely have  
11 consequences to the population that's being served. But  
12 there is not a punishment or something that happens to  
13 the county itself.

14 MEMBER SAYLOR: A question to L.A.: If your  
15 office, the Office of the Public Guardian, was  
16 eliminated, would the County still have responsibilities  
17 that they would have to carry out on behalf of the  
18 clients? And wouldn't they have to find some way to  
19 contract or have some other private party do that at the  
20 expense of the County?

21 MS. YAGHOBYAN: Yes.

22 MS. DRAXLER: The elimination --

23 MS. YAGHOBYAN: You do because specifically,  
24 that's distinguishable from the case of *POBR* that  
25 Camille -- that your counsel mentioned it, too. Because

1 in that case, the Court said it is extra, it's voluntary  
2 and discretionary because they didn't have to hire police  
3 officers. So if they didn't hire police officers, so  
4 there was no legal consequences.

5 But in this case, let's say if we eliminate the  
6 public guardian, what will happen? We will still have to  
7 carry the court's order or act whenever there's an  
8 imminent danger. So it wouldn't change any -- make any  
9 difference.

10 We will not be in compliance with the Act if we  
11 didn't do that or got rid of the public guardian. This  
12 is where that practical compulsion comes into play.

13 MS. DRAXLER: We would also have the current  
14 700 probate conservatees that are under our authority,  
15 that have been ordered to -- that the court has ordered  
16 us to be conservator, that something would need to be  
17 done. We could not just walk into court and say, "Sorry,  
18 Your Honor, we've decided to eliminate this program.  
19 Here are your 700 cases back. Find someone to serve."

20 We're the last resort. They've already gone  
21 through all of those options, and we were the last  
22 resort. There is no one else for the court to turn to.

23 So there would be an immediate danger and  
24 impact to those 700 cases, and any going forward that  
25 would be placed on conservatorship with the public

1 guardian.

2 The option -- only option would be for the  
3 County to contract with someone else to provide that  
4 service; because there's -- you can't leave a vacancy  
5 in the conservatorship program for who's serving as  
6 conservator.

7 CHAIR ORTEGA: Camille?

8 MS. SHELTON: Just a couple. I think we're  
9 going -- we're talking about a lot of things, and I think  
10 I want to try to bring it back to this analysis. Because  
11 all of the activities that we are discussing are the  
12 ones that are triggered by the court order. Those, no  
13 matter if you find that the public guardian office has to  
14 exist, that would still not result in a reimbursable  
15 state-mandated program because it is coming from a court  
16 order.

17 So the only three activities that we're talking  
18 about are complying with continuing education, beginning  
19 an investigation, and filing the initial petition.

20 And under the law, the office of public  
21 guardian does not have to exist. There are alternatives.

22 If you turn to page 18, Footnote 58, there's a  
23 statute referenced, section 10002, which authorizes the  
24 county counsel, a different department within the county,  
25 to file the petition and to get a different conservator,

1 whether public or private.

2 There are options under the Code.

3 So just to bring it back to the three  
4 activities that truly are mandated by the State; and  
5 those are listed on page 6 of your executive summary.

6 CHAIR ORTEGA: Can I ask a question in  
7 follow-up to that then?

8 Are you saying that if the duties were shifted  
9 to the county counsel, then a petition -- a request for  
10 reimbursement for the county counsel staff could  
11 potentially be reimbursable?

12 MS. SHELTON: Well, right now, that statute  
13 says it authorizes county counsel to bring the petition.  
14 It doesn't require them to do that.

15 I agree. We had a difficult time with this  
16 analysis because clearly the Legislature is trying to  
17 require the public guardians to do something; and they  
18 didn't do a very good job in capturing all the different  
19 statutes in the different codes.

20 But they also -- you know, you could argue,  
21 when you're doing legislative intent, they did not make  
22 any changes to the statute authorizing the public  
23 guardian's office and they did not make any changes to  
24 the Welfare and Institutions Code section 10002,  
25 authorizing the county counsel's office to file the

1 petition.

2 MS. DRAXLER: So county counsel files the  
3 petition, but you have to name someone to actually act as  
4 the conservator.

5 So, yes, the County Counsel files our petitions  
6 right now. We don't actually go in and file our  
7 petitions right now. They are our attorney of record,  
8 and they file our petitions on our behalf. That's true  
9 for a private individual, too. They'll get an attorney  
10 to file on their behalf. But you have to name someone;  
11 and, in fact, you can't name someone to act as  
12 conservator unless they agree to serve as conservator.  
13 So they couldn't go into the court and name us unless we  
14 agreed to serve in that capacity.

15 MS. SHELTON: And the appointment of the  
16 conservator is an order of the court. And then the court  
17 maintains jurisdiction over the entire conservatorship  
18 and issues an order regarding all the functions and  
19 services provided by the conservator.

20 CHAIR ORTEGA: I'm going to let some other  
21 folks ask some questions.

22 Ken, go ahead.

23 MEMBER ALEX: So it strikes me as a fairly  
24 technical mandate situation here. So if the Legislature  
25 had directed the county to -- if a certain quantum of



1 evidence existed to take action, that would be a mandate;  
2 but because it directs the court to issue an order at the  
3 point that there is evidence, that that becomes a  
4 non-mandate.

5 MS. SHELTON: Well, there are two different  
6 subdivisions.

7 MEMBER ALEX: Okay.

8 MS. SHELTON: Okay, the first subdivision in  
9 (a) is directing the public guardian's office to file the  
10 petition in those imminent cases discussed earlier. And  
11 the second subdivision was always there, and it  
12 authorized the court to appoint a conservator in those  
13 cases where also the same findings had to be made as are  
14 being made now.

15 That statute was one of the "may's" authorizing  
16 the court to make the order, was changed to a "shall."  
17 You know, "The court *shall* make the order of  
18 conservatorship."

19 And the analysis there is that those findings,  
20 that doesn't create a new state-mandated program there  
21 because under prior law, the court would have still had  
22 to make the order if the evidence was presented.  
23 Otherwise, it was an appealable order. And it's a  
24 requirement imposed on the court which, under trial court  
25 funding, they're not eligible to get their costs through

1 mandate reimbursement, anyway.

2 So any function following the court order on to  
3 the public guardian's office is a mandate of the court  
4 and not a mandate from the State.

5 MEMBER SAYLOR: This includes continuing  
6 education requirement for conservators?

7 MS. SHELTON: No, no, those three -- those  
8 three activities are a mandate of the state, you know,  
9 if you were to find that the office of public guardian  
10 was required by law to exist. So it would be -- the  
11 three activities were: continuing education, doing the  
12 investigations upon, you know --

13 MS. DRAXLER: Within two days.

14 MS. SHELTON: -- within two days, and then the  
15 filing of the petition, which really is a function of the  
16 county counsel's office.

17 MS. DRAXLER: Although anyone can file a  
18 petition.

19 MS. SHELTON: Yes.

20 MS. DRAXLER: We just choose as a government  
21 agency to use our attorneys. But a private individual  
22 can file.

23 MS. SHELTON: And let me just make that clear.  
24 Just that the language in the statute is requiring the  
25 public guardian's office to file a petition in those

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1 imminent cases, when there is no one else available.

2 CHAIR ORTEGA: Are there any other questions?

3 *(No response)*

4 CHAIR ORTEGA: Comments?

5 MEMBER SAYLOR: Yes. I think this kind of gets  
6 to the heart of some of the work that we do here.

7 Yes, we are making judgments on the basis --  
8 we're making quasi-judicial determinations based on  
9 evidence presented and based on interpretations of the  
10 statutes. But there is also a practicality of what we're  
11 doing. And I believe that this is one of the cases that  
12 I'm beginning to see where, why would anybody bother with  
13 this whole process of state-mandate review?

14 This is incredible. There is no practical  
15 choice for our county other than to have an office of  
16 public guardian. It's demonstrated by the fact that all  
17 58 counties do it. The requirements that are imposed in  
18 these three areas, they're very specific new, additional  
19 requirements on those offices. The counties don't have a  
20 practical option to eliminate the office of public  
21 guardian. They come forward and say, "Look, you're  
22 asking us to do more. You're demanding and requiring us  
23 to do more. We appreciate -- you know, those are all  
24 good ideas, great, wonderful. We're not going to be  
25 eliminating the office of public guardian. There's no

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1 way we could do it." "We'd have to go back in," they're  
2 saying, "and establish some other office to do it; and  
3 then we'd have the same requirement to go there."

4 I just can't see us taking such a narrow view  
5 on this claim. So I won't be supporting the staff  
6 recommendation in this case.

7 And I think it is worth noting that it's un- --  
8 to me, it seems very unlikely that the Legislature  
9 assumed that counties would be faced with a choice to  
10 eliminate the public guardian's office rather than comply  
11 with the requirements that they made in this Omnibus Act.  
12 The Legislature's intent had to be, it seems to me, to  
13 continue these offices and simply bolster and strengthen  
14 their quality and their timeliness.

15 That was what they were doing. They weren't  
16 setting out a choice that you either do these additional  
17 requirements or eliminate the office entirely. That was  
18 not even in the cards. They thought the offices would  
19 continue because they were all in place. So I can't  
20 support this.

21 And I hope that somebody is listening to this  
22 box who is a member of the Legislature because if this  
23 Commission takes the path that our staff have recommended  
24 based on the interpretation of the statutes, I hope that  
25 those statutes change very quickly.

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1 CHAIR ORTEGA: Ms. Ramirez?

2 MEMBER RAMIREZ: Well, this is our quandary as  
3 a commission. We are very legalistic, and I think this  
4 is sometimes why people are very unhappy with the legal  
5 profession because we do take a look at the law, and  
6 sometimes it's very draconian.

7 I think the problem is the Legislature -- the  
8 legislative process, that doesn't take into consideration  
9 what these things cost. Obviously, we've got to have a  
10 public guardian's office everywhere. I mean, it's how  
11 we treat our ill and elderly folks who are dependent is  
12 a hallmark of our society. It's got to be paid for.

13 But I see the quandary is, our Commission,  
14 what we're obligated to do, and what is the precedent if  
15 we go beyond our strict mandate about what we can and  
16 cannot allow.

17 So I sympathize. I hope the public guardian  
18 remains healthy. But I think the problem is in the  
19 Legislature, not with the Commission's charter.

20 MEMBER ALEX: I want to echo Ms. Ramirez's  
21 comments. And I do agree with Mr. Saylor that the  
22 Legislature hopefully will take note of this. We're not  
23 allowed to do equity. That's kind of a part of our  
24 charter. And I think the mandate issue is set out  
25 clearly by staff. And thank you for that. But this is a

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1 very tough pill to swallow.

2 CHAIR ORTEGA: Okay, any other questions or  
3 comments?

4 *(No response)*

5 CHAIR ORTEGA: Is there a motion?

6 MEMBER ALEX: All right, I'll move this staff  
7 recommendation.

8 MEMBER RAMIREZ: Second.

9 CHAIR ORTEGA: We have a motion by Mr. Alex and  
10 a second by Ms. Ramirez.

11 Please call the roll.

12 MS. HALSEY: Mr. Alex?

13 MEMBER ALEX: Aye.

14 MS. HALSEY: Mr. Chivaro?

15 MEMBER CHIVARO: Aye.

16 MS. HALSEY: Ms. Olsen?

17 MEMBER OLSEN: Aye.

18 MS. HALSEY: Ms. Ortega?

19 CHAIR ORTEGA: Aye.

20 MS. HALSEY: Ms. Ramirez?

21 MEMBER RAMIREZ: Aye.

22 MS. HALSEY: Mr. Rivera?

23 MEMBER RIVERA: Aye.

24 MS. HALSEY: Mr. Saylor?

25 MEMBER SAYLOR: No.

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1 MS. RAMIREZ: With regret.

2 CHAIR ORTEGA: Then the motion is approved.

3 Thank you, everyone.

4 We'll move to Item Number 5.

5 MS. HALSEY: Commission Counsel Matt Jones will  
6 present Item 5, a test claim on SARATSO.

7 MS. YAGHOBYAN: Good morning.

8 MR. JONES: Good morning. This test claim  
9 alleges reimbursable state-mandated costs related to the  
10 Sex Offender Punishment and Control Act, the Sex Offender  
11 Registration Act, and an alleged executive order from the  
12 SARATSO review committee.

13 Staff finds that the test-claim statutes  
14 imposed new mandated activities on counties to receive  
15 training on the Sex Offender Risk-Assessment Tool as  
16 identified by the SARATSO review and training committees,  
17 and to administer risk assessments to eligible persons as  
18 specified.

19 In addition, staff finds that the test-claim  
20 statutes impose a number of reporting and documentation  
21 requirements to be completed prior to the sentencing of  
22 an eligible offender.

23 Staff recommends that the Commission adopt the  
24 proposed statement of decision, partially approving the  
25 test claim.

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1 Will the parties and witnesses please state  
2 your names for the record?

3 MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of  
4 County of Los Angeles.

5 MR. BYRNE: Michael Byrne, Department of  
6 Finance.

7 MS. GEANACOU: Susan Geanacou, Department of  
8 Finance.

9 MS. YAGHOBYAN: Thank you.

10 Generally, the County of Los Angeles agrees  
11 with the staff's recommendation. The only disagreement  
12 we have is the part that they are denying the mandate for  
13 the probations in situations where there should be  
14 intensive supervision versus regular supervision. And  
15 that happens when the SARATSO does the evaluation and if  
16 the persons are called or categorized as "*high risk*,"  
17 which is six and more, their supervision is -- it's  
18 supposed to be more intense.

19 So the staff is recommending to deny that part  
20 of the activity, saying that this is the part of the  
21 punishment and crime so, therefore, it's one of those  
22 disclaimers to reimbursement, so it shouldn't be  
23 reimbursed.

24 We disagree because this is not a part of  
25 punishment. Because the population under SARATSO is not



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1       only the sex offenders -- registered sex offenders who  
2       are on probation. The registered sex offenders could be  
3       released from probation but still under SARATSO, still  
4       needs intensive supervision.

5               The purpose of the SARATSO statute was to try  
6       to eliminate reoffending by these registered sex  
7       offenders. So once you are categorized as a sex  
8       offender, a registered sex offender, you have lifetime  
9       registration until you get pardoned by an official or an  
10      elected official. Otherwise, you have to register.

11             So one thing to keep in mind is that this is  
12      not a part of punishment because everybody else -- it  
13      applies to everybody, it's not only the people who are on  
14      probation. Therefore, although it's a Penal Code  
15      section, but that doesn't automatically make it part of  
16      punishment or punitive. Therefore, we don't think it's  
17      punishment or crime, so it should be reimbursed, the  
18      intensive supervision on certain probationers.

19             CHAIR ORTEGA: Thank you.

20             MR. BYRNE: The Department of Finance concurs  
21      with the staff recommendation.

22             CHAIR ORTEGA: Okay, Matt, do you want to...?

23             MR. JONES: I will answer any questions the  
24      Members have. But otherwise, staff recommends adoption  
25      of the decision.

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1 CHAIR ORTEGA: Are there any questions or  
2 comments from the Members?

3 *(No response)*

4 CHAIR ORTEGA: No?

5 *(No response)*

6 CHAIR ORTEGA: Is there a motion?

7 MEMBER CHIVARO: I'll move staff  
8 recommendation.

9 MEMBER OLSEN: Second.

10 CHAIR ORTEGA: Okay, motion by Chivaro and  
11 second by Ms. Olsen.

12 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: Ms. Olsen?

18 MEMBER OLSEN: Aye.

19 MS. HALSEY: Ms. Ortega?

20 CHAIR ORTEGA: Aye.

21 MS. HALSEY: Mr. Ramirez?

22 *(No response)*

23 MS. HALSEY: Ms. Rivera?

24 *(No response)*

25 MS. HALSEY: Mr. Saylor?

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1 MEMBER RAMIREZ: I'm sorry, we got up there.

2 MS. HALSEY: Sorry.

3 MEMBER RAMIREZ: Start again.

4 The R's, you got them..

5 MS. HALSEY: Where did I leave off?

6 MEMBER RAMIREZ: I didn't hear my name.

7 MS. HALSEY: We have Ms. Ortega?

8 CHAIR ORTEGA: Yes. Aye.

9 MS. HALSEY: And, Ms. Ramirez?

10 MEMBER RAMIREZ: Aye.

11 MS. HALSEY: Mr. Rivera?

12 MEMBER RIVERA: Aye.

13 MS. HALSEY: Mr. Saylor?

14 MEMBER SAYLOR: Aye.

15 CHAIR ORTEGA: Thank you.

16 Item 6.

17 Before we start on Item number 6, I do want to  
18 say that we have a lot of folks here on this item, so  
19 we're going to set a time limit for each side, of  
20 45 minutes for each side. And I will try to keep a  
21 little bit of attention to the time and give you a  
22 heads-up when your approaching the end of your allotted  
23 slot.

24 Thank you.

25 MS. HALSEY: Was everybody sworn in, or do I

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1 need to re-administer the oath?

2 For all the witnesses who are here who haven't  
3 been sworn in yet, I will re-administer the oath.

4 If you would please stand and raise your right  
5 hand.

6 *(Parties and witnesses stood.)*

7 MS. HALSEY: Do you solemnly swear or affirm  
8 the testimony which you are about give is true and  
9 correct based on your personal knowledge, information,  
10 and belief?

11 *(Chorus of "I dos" was heard.)*

12 MS. HALSEY: Thank you.

13 Commission Counsel Matt Jones will present  
14 Item 6, a test claim on *Upper Santa Clara River Chloride*  
15 *Requirements*.

16 MR. JONES: This test claim alleges  
17 reimbursable state-mandated increased costs resulting  
18 from a resolution adopted December 11<sup>th</sup>, 2008, by the  
19 California Regional Water Quality Control Board for the  
20 Los Angeles region.

21 Staff finds that the resolution does not impose  
22 any new mandated activities because the resolution  
23 imposes a lower level of service than required under  
24 prior law.

25 In addition, staff finds that the test-claim

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1 executive order does not impose new costs mandated by  
2 the State as defined under section 17514, because the  
3 claimant has authority to raise fees or assessments  
4 sufficient to cover the cost of the program.

5 And staff wants to point out that this mandate  
6 determination is a question of law, not of equity. The  
7 fairness of the costs of the Regional Board's order are  
8 not at issue. And it's not the Commission's purview to  
9 consider the reliability of the science behind the  
10 Regional Board order of the efficacy of the decision.  
11 Therefore, staff recommends that the Commission adopt  
12 the proposed statement of decision denying the test  
13 claim.

14 Will the parties and witnesses please state  
15 your names for the record?

16 MS. COLLINS: Claire Collins, District Counsel  
17 for the Santa Clarita Valley Sanitation District.

18 MR. BECK: Paul Beck, District Counsel for  
19 Santa Clarita Valley Sanitation District.

20 MS. FORDYCE: Jennifer Fordyce, attorney for  
21 Los Angeles Regional Water Quality Control Board.

22 MR. LAUFFER: Michael Lauffer with the State  
23 Water Resources Control Board.

24 MR. BYRNE: Michael Byrne, Department of  
25 Finance.

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1 MS. GEANACOU: Susan Geanacou, Department of  
2 Finance.

3 CHAIR ORTEGA: Ms. Collins?

4 MS. COLLINS: Thank you.

5 Good morning, Commissioners, Counsel, staff.

6 May I stand to present, if that's all right?

7 Your commission is charged with reviewing test  
8 claims that the State has imposed an unfunded mandate on  
9 a local agency. The voters essentially said, there are  
10 local agencies that are put between a rock and a hard  
11 place by state mandates and that the State should,  
12 therefore, pay.

13 We come to you today because the District and  
14 the people it serves are caught between that rock and a  
15 hard place.

16 The essence of this claim is that the State has  
17 required the District to desalinate wastewater. Not  
18 drinking water, but fully treated wastewater that comes  
19 out of a publicly owned treatment works. This is water  
20 that is otherwise perfectly clean and safe for humans and  
21 animals. And to our knowledge, there is not a single  
22 other treatment works in this state or in the nation that  
23 is required to desalinate wastewater that goes to a  
24 surface water pond.

25 CHAIR ORTEGA: Ms. Collins, I'm going to

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1 interrupt you for just a second and go back to what the  
2 staff said earlier about the science behind the issue.  
3 And that's not before the Commission.

4 MS. COLLINS: I understand.

5 CHAIR ORTEGA: So I'm going to ask you to stick  
6 to the decision that is before us today.

7 MS. COLLINS: Let me give you some context.

8 So this is the state of California, as you can  
9 see. The Santa Clarita Valley -- not to be confused with  
10 Santa Clara -- is located about 35 miles northwest of the  
11 City of Los Angeles, as you can see on the map.

12 Santa Clarita Valley consists of the City of  
13 Santa Clarita plus unincorporated county portions. And  
14 you can see on this map as well, a blue line that runs  
15 through that. That's an approximation of the Santa Clara  
16 River.

17 The Santa Clara River, however, is not wet in  
18 all places. It actually goes dry in many portions and  
19 runs wet only during high-rain events.

20 Chloride. Chloride is the word that is  
21 obviously throughout this entire TMDL -- or, I'm sorry,  
22 throughout this entire test claim. It's the title of the  
23 test claim. But it's really just salt, right? We  
24 learned in high-school chemistry that sodium chloride is  
25 the chemical name for salt. And that's really what we're

1 talking about today. So to some degree, I'm just going  
2 to talk about salt.

3 I know you don't want me to talk about this,  
4 but just to give context, again, the drinking water limit  
5 generally is about 250 milligrams per liter. That's the  
6 degree to which usually you can taste salt in water. The  
7 limit for groundwater in Ventura County, which is where  
8 most irrigation water comes from, is 200 milligrams per  
9 liter. The standard limit to protect agriculture is 142.  
10 But the limit at issue in this case is 100 milligrams per  
11 liter, which is basically a few grains of salt for a big  
12 bottle of Dasani.

13 Now, the only potential beneficiary of this is  
14 a single user on the river. And what I'd like to do is  
15 orient you to how this works because we're talking about,  
16 again, chloride. And most people don't know what that  
17 means.

18 So this graphic, what it shows, is really  
19 what's happening, the real-world implications of what  
20 happens here.

21 This is a graphic that depicts the Santa  
22 Clarita Valley. And here, you can see the two sources of  
23 the drinking water in Santa Clarita Valley. One is the  
24 state, the state's water project; and the other is local  
25 groundwater. That local groundwater goes to a water



1 treatment facility where it's then distributed to homes  
2 and businesses in the Santa Clarita Valley.

3 At the point it's delivered to users, as of  
4 last year, it had about 68 milligrams of chloride per  
5 liter. So the influent water already has potentially  
6 moderately high chloride.

7 The homes and businesses then use it. They  
8 wash their dishes with it; they wash their laundry. And  
9 chloride is part of the discharge that everybody puts  
10 into the sewer. And so homes and businesses add  
11 approximately, at last year, about another 35 milligrams  
12 of chloride to the water.

13 That then runs into the sewer to our treatment  
14 plants. And there are two of them in Santa Clarita. And  
15 at that point currently, we disinfect it with chlorine,  
16 and that adds about 10 milligrams of chloride.

17 We're planning on doing a new treatment through  
18 UV light, which will reduce that by about 6.

19 But ultimately, as it enters our plants, it's  
20 about -- it's over 100. And as it leaves our plants,  
21 it's about 113, as of last year. But two-thirds of that  
22 is from the influent water. It's not added by the people  
23 of Santa Clarita; it can't be controlled by them.

24 That ultimately goes into the Santa Clara  
25 River, which goes downstream, ultimately leading to the

1 ocean.

2 This is a Google map, essentially looking at  
3 some of the same areas.

4 You may notice, Santa Clarita also -- most  
5 people recognize it by Six Flags Magic Mountain. That's  
6 the gateway to going over the Grapevine.

7 So here's the 5, which you would take to go  
8 over the Grapevine.

9 The City of Santa Clarita is here (*pointing*).  
10 And in the papers, you'll see reference to Reach 4B, 5,  
11 and 6, which I would assume most people have no idea what  
12 that means. So this is the picture that shows you what  
13 that means.

14 Our water reclamation plants, or recycling  
15 plants, are located at Saugus and Valencia, right next to  
16 the river. This is Reach 6. The river is dry north of  
17 this. We're the only flow that contributes to this  
18 portion of the river. It comes out of the water  
19 treatment plant. If it runs dry again a little bit  
20 around here at the end of Reach 6, going to Reach 5, then  
21 the Valencia Water Treatment Plant discharges water into  
22 the river.

23 It crosses over the Ventura County line and  
24 into Reach 4B, where the only identified diverter of  
25 water is one ranch, Camulos Ranch. That ranch has

1 alleged that high chloride levels might contribute to  
2 lower crop yields for avocados and strawberries. They're  
3 the only diverter of surface water here.

4 So ultimately, what is being requested here is  
5 that those two water reclamation plants bring that water  
6 down to 100 milligrams per liter, which requires desal --  
7 desalinization -- I think we've got it -- for these.

8 The issues that Santa Claritas face is that  
9 that desal plant is going to cost \$130 million to build.  
10 And they don't receive any of the water that comes out of  
11 that for their use as it goes downstream to Camulos  
12 Ranch.

13 It turns out that most of Camulos Ranch, we  
14 understand, grows on groundwater. And that limit is  
15 200 milligrams, twice what the limit is that the District  
16 is required to treat this to. And for that reason, the  
17 District has consistently fought this permit limit for  
18 decades.

19 The primary basis that the staff report states  
20 for denying this test claim is that there is prior law  
21 here. And we disagree with that. And we have staff  
22 members here who have participated in the negotiations.  
23 But the 100-milligram limit has been constantly and  
24 consistently fought for over a decade. And to the  
25 degree there were previous orders, those orders were

1 constantly and consistently on appeal or in negotiations.  
2 So we dispute the fact that there was a prior law of  
3 100 milligrams per liter, because we have tried to  
4 negotiate and change that over the entire period here, at  
5 least starting in 2002, and leading up to 2008, when the  
6 District, under the face -- or in the face of millions  
7 of dollars of fines from the Regional Board, relented,  
8 and moved forward with the 100-milligram-per-liter limit  
9 in conjunction with an alternative plan, which is talked  
10 about in the papers as AWRM, the Alternative Water  
11 Resources Management Plan. It's since been abandoned by  
12 the District.

13 Excuse me for a second.

14 Now, the District has, as I said, fought this  
15 for years. It appealed -- it made comments, it appealed  
16 to the State Board, it got remanded. The District, in  
17 fact, got special legislation in order to remove water  
18 softeners, because water softeners were contributing to  
19 the salt level in the effluent. It has removed something  
20 like a third of all the salt by taking out almost  
21 8,000 water softeners from its residents over the last  
22 ten years.

23 In the middle of this, the Board has reduced  
24 the timetables for compliance. And despite being able  
25 to take out a third of the chloride, it wasn't enough to

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1 get down to that 100-milligram-per-liter limit, which --  
2 and, again, I know you don't want us to talk about the  
3 science -- but the District has maintained from the  
4 beginning, it didn't have a basis and was a discretionary  
5 decision on the part of the Regional Board that  
6 assessed or that set the permit limit.

7 So we maintain that the prior law here is the  
8 current levels which are much, much higher, which are  
9 influent water plus a certain margin that accounts for  
10 all of the salt that goes in from families and businesses  
11 and all the salt that goes in from treatment.

12 The staff analysis also states that because the  
13 District was asked to do it faster, that that isn't a  
14 state mandate because doing things faster isn't  
15 necessarily a higher level of service. Now, we disagree  
16 with that in our papers. You reviewed them.

17 If you ask Fed Ex to deliver something in two  
18 days instead of four, that's a higher level of service.  
19 If you drive a car faster down the freeway at 60 than at  
20 45, that's a higher level of speed.

21 We believe that in demanding that the District  
22 come into compliance sooner, that itself is also a higher  
23 level of service.

24 Finally, the staff report says that even if  
25 this were a state mandate, that the District -- or if

1 this were a mandate, the District has fee authority  
2 and, therefore, it can't be a state mandate, to which  
3 we respond: We can't raise fees from the folks who  
4 primarily benefit from this \$130 million plant. It's a  
5 \$130 million plant, and the primary beneficiary is  
6 outside of the jurisdiction. It's across the Ventura  
7 County line. There is no way to recover those costs,  
8 which are significant for a small community like Santa  
9 Clarita. It's \$130 million to build a plant that's going  
10 to create desalinated water to go to a single ranch that  
11 can't prove that it's being harmed.

12 It also can't collect from the State water  
13 project, which is the source of two-thirds of the salt.  
14 So it's without a remedy from the sources of the  
15 beneficiaries of the program. And instead, the 65,000  
16 homes that live in Santa Clarita Valley are forced to pay  
17 the entire freight of the \$130 million project.

18 Really, this is a situation where one community  
19 is uniquely positioned based on geography to have to  
20 handle a very, very large capital project. And we don't  
21 see that there is a true benefit to that community, and  
22 the community has been frustrated by that, and that's why  
23 it's come to you.

24 I want to say one last thing, and it relates  
25 back to water pollution in general. Now, most people.

1 when they think about water pollution, they think about  
2 cleaning up real harms to real people or animals. And  
3 that's really the only thing we've got here is  
4 speculative harm to a crop that has never been proven.

5 This is not like the chemical spill in West  
6 Virginia earlier this month. There, noxious chemicals  
7 were poorly contained -- or contained. There were lax  
8 regulators. It got out, it got into a river, it smells  
9 disgusting, people can't drink the water, and it's real  
10 harm.

11 Now, somebody did something wrong there, right?  
12 Someone failed to contain pollutants. Someone failed to  
13 put in protective devices; and those people should be  
14 held accountable, and those people should pay to clean up  
15 their own mess.

16 MEMBER ALEX: Look, this is really not relevant  
17 to this mandate determination. We are not a regulatory  
18 body dealing with the issue of pollution.

19 MS. COLLINS: I understand.

20 MEMBER ALEX: And I'm sure you've had many  
21 discussions about this with the regulators.

22 MS. COLLINS: Yes.

23 MEMBER ALEX: So if we could kind of move to  
24 the mandate, we'd appreciate it.

25 MS. COLLINS: So the District maintains that

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1 the mandate is a discretionary number that was put in  
2 place over a period of time, that was not finalized until  
3 2010.

4 And we maintain that the prior-law argument is  
5 not what really happened in the real world. This was  
6 negotiated over a long period of time, and it's now put  
7 the District in place where it has to raise \$130 million,  
8 and doesn't have the ability to collect that money from  
9 the primary causes nor the primary beneficiaries.

10 MEMBER ALEX: Thank you.

11 MS. COLLINS: The other witnesses who we listed  
12 today are available for questions and for any other  
13 questions that the commissioners may have.

14 MEMBER RIVERA: Actually, I do. Just one  
15 question.

16 CHAIR ORTEGA: Okay.

17 MEMBER RIVERA: Regarding the fee authority,  
18 you're stating that you cannot charge the residents  
19 themselves.

20 Can you not charge that fee authority to the  
21 ranch? Can you do that?

22 MS. COLLINS: Commissioner, the ranch is  
23 outside of the jurisdiction of the sanitation district,  
24 which ends at the Los Angeles County line.

25 MEMBER RIVERA: Okay.



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1 CHAIR ORTEGA: Finance?

2 MR. BYRNE: The Department of Finance concurs  
3 with the staff recommendation.

4 CHAIR ORTEGA: Are there any questions or  
5 comments?

6 Yes?

7 MEMBER RAMIREZ: I'd just like to ask staff to  
8 respond to the comments or the argument.

9 MR. JONES: Would you mind if I let the Water  
10 Board respond first?

11 MS. FORDYCE: Good morning. Jennifer Fordyce,  
12 attorney for the Los Angeles Regional Water Quality  
13 Control Board.

14 The Los Angeles Regional Board also concurs  
15 with the staff analysis and proposed statement of  
16 decision.

17 We really appreciate your staff's careful and  
18 thoughtful work in analyzing the specific facts of this  
19 case.

20 Your staff has drafted a well-reasoned and  
21 legally supportable decision which correctly concludes  
22 that the 2008 resolution that was adopted by the Regional  
23 Board does not constitute a reimbursable state-mandated  
24 program.

25 The claimant's comments concerning the

1     appropriateness of the 100-microgram-per-liter chloride  
2     limit and water-quality objective is not relevant to the  
3     test claim at issue today, as your counsel has advised  
4     you.

5             The 100-microgram-per-liter chloride water-  
6     quality objective was first established in 1978 and  
7     remains the water-quality objective today.

8             The issue today does not concern whether the  
9     100-microgram-per-liter limit is the correct limit, the  
10    wrong limit. The question today is whether it was a new  
11    limit as adopted by the Regional Board in 2008. And it  
12    wasn't.

13            At issue today is whether the 2008 resolution  
14    constitutes a reimbursable state mandate program. And  
15    we assert it does not, as it does not impose a new  
16    program or higher level of service.

17            We disagree with the characterization that  
18    there was somehow a continuous appeal between 2002 and  
19    2008. There were at least three separate actions. There  
20    wasn't an appeal, but in June 2002, adopting the TMDL,  
21    when it goes to the State Board, it's not necessarily an  
22    appeal; it's an approval process. For a TMDL to become  
23    effective, it has to be adopted -- it has to be approved  
24    by the State Water Board, Office of Administrative Law,  
25    and then US EPA.

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1           So it necessarily has to go through those  
2 steps, anyway. It's not necessarily an appeal.

3           And, as you know, from the facts, the 2002 TMDL  
4 was sent back to the Regional Board for reconsideration;  
5 and the Regional Board adopted a new resolution which  
6 then it was approved by US EPA in -- I'm sorry, I had the  
7 facts --

8           MS. SHELTON: 2008.

9           MS. FORDYCE: Thank you.

10          And so, here, as your staff noted in the  
11 proposed decision, the appropriate measure is to compare  
12 the test-claim statute, which is the 2008 resolution,  
13 with the law immediately prior to the alleged mandate.

14          As of here, the law that was in effect  
15 immediately prior to the alleged mandate was the 2006  
16 resolution, which became effective in 2008.

17          So we, therefore, encourage the Commission to  
18 adopt the proposed statement of decision. And we thank  
19 you for the opportunity to address you, and we're here  
20 for any questions.

21          CHAIR ORTEGA: Is there any other public  
22 comment on this item?

23          MS. COLLINS: There's three.

24          CHAIR ORTEGA: Please, come on up.

25          MR. WILK: I'll go first.

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1           Good morning. My name is Scott Wilk. I'm the  
2 State assemblyman for the 30<sup>th</sup> Assembly District, which  
3 comprises the Santa Clarita Valley and northwest  
4 San Fernando Valley in L.A. County, and then the  
5 wonderful City of Simi Valley in Ventura County.

6           Again, thank you for the opportunity to make  
7 some public comments here regarding the state mandate  
8 test claim.

9           You know, inscribed on the front wall of the  
10 State Assembly chamber is the statement, "It's the duty  
11 of the Legislature to pass just laws."

12           I believe it's also the duty of regulators to  
13 apply those laws justly; and this is a situation where  
14 I believe that the Los Angeles Regional Water Quality  
15 Board has not done that.

16           I'm not going to address sound science in  
17 deference to the chair, but that certainly is an issue.

18           The second issue is that federal law states  
19 that the water has to be discharged for the benefit of  
20 downstream users. And in the case of Santa Clarita  
21 Valley, that would be the avocado and strawberry farmers  
22 as well as nursery plants.

23           The City of Thousand Oaks, which is also under  
24 the authority of this same body and has the same  
25 downstream users, avocado and strawberry farmers and

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1 nursery plant farmers, have a setting of 150 parts per  
2 million for their chloride. If Santa Clarita Valley was  
3 held to the same standard as Thousand Oaks, we would not  
4 be here today, because our community would be in  
5 compliance.

6 And then finally, requiring 265,000 residents  
7 to carry the burden of \$130 million capital costs, as  
8 well as \$4.1 million in ongoing annual operating costs  
9 to discharge water in a better condition than they  
10 received it from the State Water Project, and not to even  
11 benefit themselves, just defies logic.

12 I believe that this unfunded mandate, if it's  
13 not mitigated, is going to choke economic growth in one  
14 of the few areas of the state that actually has a vibrant  
15 economy. We have a biotech hub, a growing biotech hub,  
16 established manufacturing center, a cutting-edge  
17 aerospace research and development sector, and we're a  
18 favored location for the film and television industry.

19 I understand you have a very small bandwidth  
20 today, but I hope you'll take our testimony seriously and  
21 render a just decision. And I really thank you for your  
22 time.

23 MS. WESTE: My name is Laurene Weste. I'm the  
24 mayor of the City of Santa Clarita.

25 As the mayor, in conformance with state law,

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1 I'm also director on the Santa Clarita Valley Sanitation  
2 District. And to be clear, I'm just speaking here to you  
3 today as mayor of the City of Santa Clarita.

4 I'd like to thank you for the opportunity to  
5 make public comment on the state mandate test claim for  
6 the Upper Santa Clara River TMDL Chloride Requirement.

7 The City of Santa Clarita has taken great pride  
8 in our community and places a premium on the protection  
9 of our environment.

10 Just one example of that commitment is our  
11 open space, in which we have placed over 8,000 acres that  
12 can never be developed and that will be enjoyed for  
13 generations to come.

14 This issue before you today is about fairness.  
15 We understand the importance of water-quality laws and  
16 the implementation requirements by State agencies. These  
17 requirements, however, can create a substantial monetary  
18 burden on local government.

19 The cost of compliance with the Upper  
20 Santa Clara River chloride total maximum daily load is  
21 in the range, as you have heard, \$130 billion in capital  
22 costs with operation and maintenance at \$4.1 million per  
23 year. This cost is due to the unfunded mandate as a  
24 new requirement related to the claim, of the results of  
25 decisions by the State Water Resources Control Board and

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1 Los Angeles Regional Water Quality Control Board.

2 The residents of Santa Clarita and the  
3 surrounding unincorporated area within the Santa Clarita  
4 Valley Sanitation District will be paying 100 percent of  
5 the costs for this new treatment facility. Even though  
6 my city residents are not the majority contributor to the  
7 chloride level in the water which comes to the community  
8 high in salt from the State Water Project and will be  
9 receiving none of the benefits from the treatment plant  
10 they are paying for, Santa Clarita's residents will bear  
11 the entire financial burden.

12 In 2006, the City of Santa Clarita  
13 co-sponsored Senate Bill 475 with the sanitation  
14 districts of L.A. County, which created the first of  
15 its kind authority in California for local agencies to  
16 require removal of self-regenerating water softeners.  
17 It was a landmark in America.

18 After the sanitation district board enacted an  
19 ordinance requiring the removal of all self-regenerating  
20 water softeners, and the local electorate voted to  
21 support the ordinance through a referendum that was  
22 required under SB 475. My community voted to do that.

23 Our community has done its fair share by  
24 removing approximately 7,900 self-regenerating water  
25 softeners, lowering the chloride level by 30 percent.

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1 Government allows consumers to use salt  
2 products that are detrimental to the environment, and  
3 then turns around and taxes its citizens to fix the  
4 problems created by the very products that are legal.  
5 Government at all levels needs to look at the source  
6 control as a strategy for addressing environmental  
7 concerns.

8 My community, like others throughout  
9 California, is continually faced with new regulations to  
10 grapple with.

11 The economic well-being of Santa Clarita and  
12 communities throughout California is essential to  
13 sustaining an excellent quality of life and our ability  
14 to continue to protect the environment. That is why it's  
15 critical that compliance with these regulations be  
16 financially supported by our state.

17 I urge you to carefully consider the arguments  
18 made by the District. This unfunded mandate must be  
19 addressed by the State to maintain a fairness and create  
20 the incentive to protect the financial stability of local  
21 government.

22 My community is working hard to protect the  
23 Santa Clara River, to protect our downstream neighbors  
24 and the overall environment.

25 I want to thank you for allowing us to



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1 participate and for hearing us, and for consideration of  
2 our comments, and for the residents of Santa Clarita to  
3 be heard.

4 Ladies and gentlemen, what you're doing here  
5 is one of the most cruel things I've ever seen. And I am  
6 a born native Californian. I can't believe this is going  
7 on. We have tried and tried. You're putting something  
8 on us that does not belong.

9 I thank you for listening, and I appreciate  
10 your decision.

11 MR. BOYDSTON: Thank you, Chair and Members of  
12 this august body.

13 Please forgive me, I will be a little nervous,  
14 having never spoken to any group of people inside of our  
15 Capitol. And although I am a councilman, recently  
16 elected for the City of Santa Clarita, I'm just an  
17 ordinary guy who, for five years, has been trying to find  
18 the common sense of how this all came about. And, I  
19 don't know, maybe you will all help enlighten me to this.

20 Because every time that I've gone forward and  
21 said, "This doesn't make any sense. You say you have  
22 this range of chloride, but you won't give us any time to  
23 do the studies." And when I say that, I said that to  
24 the -- you know, the sanitation district; and they said,  
25 "Well, the Regional Board is telling us that we have to

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1 do this." And then the Regional Board says, "Well, you  
2 know, the State Board, it says we have to do this."

3 So here we are, this is the State. And I know  
4 you're not the State Board, but I guess you're the board  
5 that's put in place to see who is going to pay for it,  
6 who is going to pay over a hundred, maybe hundreds of  
7 millions of dollars.

8 And quite honestly, I was at the Regional Board  
9 just a little while back, and, Madam, one of the ladies  
10 on the board there was comparing the \$200,000 fine that  
11 they gave my community as parking tickets. She said,  
12 "This is just parking tickets." But \$200,000 is a lot of  
13 money.

14 As a councilman, one of the only things that  
15 was not in budget that we voted on last year was  
16 \$200,000: \$100,000 to feed seniors and \$100,000 to keep  
17 at-risk kids off the street.

18 So the money means a real thing to us. And  
19 I know you deal with hundreds of millions of dollars.  
20 But with this, there is no science; and they won't give  
21 us the time. They say the State will not give us the  
22 time to do actual studies. Put the avocados trees, go  
23 into the lab, make avocado trees and grow it, and find  
24 out what the actual damaging thing is because the range  
25 right now that has come up with the six scientists --

1 three of them who work for the agricultural interests  
2 downstream who want this chloride-free water to put it  
3 on their crops and put it on their land that is ruined  
4 because they overpumped their aquifer and brought in  
5 34,000 milligrams of salt out of the ocean and put it in  
6 there, they need that low-chloride water. They need it  
7 to refill their aquifer and they need it to leach out the  
8 salt.

9 And we're supposed to supply that?

10 We haven't put any damaging level in there, and  
11 they say, "Oh, this is what it is. This range of safety  
12 is between 100 and 270 milligrams."

13 When it takes hundreds of millions of dollars  
14 to take out 20 or 30 or 40 milligrams of salt, out of  
15 20 million gallons each day that goes out of the sewer  
16 plant, okay, that's a huge difference. And they can't  
17 specify it, they can't bring it down?

18 Well, how do you bring it down? You allow the  
19 people to do the test. You allow the people to grow the  
20 avocado trees and then see, is there damage?

21 I mean, I think that's what they're trying to  
22 do in Washington, when they passed the Federal Clean  
23 Water Act, they were just trying to protect people that  
24 were using the water.

25 And I get all of the legal ramifications, but

1 we have lost sight of the trees because the lawyers are  
2 busy planting the forests.

3 And I admire the skill-set and the skill level  
4 so the people that will tell you: No, you don't have to  
5 pay for it. No, here's the reason, no, no, no, no, no.  
6 Put it back on the little people down there. They'll pay  
7 for it.

8 And it's a tragedy. And I think it's a  
9 travesty.

10 And I pray, if there's any way you have any  
11 tools at your disposal to allow us the time to actually  
12 figure out what would damage avocado trees before we  
13 spend \$130 million that could be better spent on feeding  
14 hungry people and educating our children.

15 I thank you so much for your time.

16 CHAIR ORTEGA: Thank you. Before you leave,  
17 I might have missed it, but if you would identify  
18 yourself for the --

19 MR. BOYDSTON: I am so sorry. My name is  
20 TimBen Boydston, and I'm speaking as an individual, and  
21 for a lot of people back home that are super frustrated  
22 because they said: "The people at the state level are  
23 making the rules. There's nothing we can do about it.  
24 It's too far away, they're too big, they have too much  
25 money."

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1 CHAIR ORTEGA: Thank you.

2 MR. BOYDSTON: Thank you.

3 CHAIR ORTEGA: Ms. Olsen.

4 MEMBER OLSEN: So I'm somewhat affected by  
5 everybody's passion here this morning. And I would like  
6 to go back to the representative from the Regional Water  
7 Board. And I'd like you to address Assemblyman Wilk's  
8 comment that if this were happening downstream at  
9 Thousand Oaks, there would be a different standard that  
10 they would have to meet.

11 Why are there two standards?

12 You're the Water Board for both areas, correct?

13 MS. FORDYCE: I'm the attorney for the  
14 Los Angeles Regional Water Quality Control Board.

15 MEMBER OLSEN: And that would be for both of  
16 those areas?

17 MS. FORDYCE: And Santa Clarita and Thousand  
18 Oaks are both in the Los Angeles region, yes.

19 MEMBER OLSEN: Okay.

20 MS. FORDYCE: I mean, I can't answer the  
21 question about whether the limit would be different.  
22 And, I'm sorry, I can't answer whether its limit --  
23 whether the limit is different right now.

24 But why it could be different is because water  
25 bodies are different. The characteristics are different

1 water-body by water-body.

2 And so when the Water Board establishes  
3 water-quality objectives, they have to look at what is  
4 the natural concentration and what's the background, and  
5 what's the -- you know, what kind of point sources and  
6 non-point sources are being discharged to that water.  
7 They're just -- they're different, that's really the  
8 simple answer. So there's just not one uniform number  
9 that applies statewide.

10 MS. COLLINS: Sorry, Madam Chair?

11 CHAIR ORTEGA: Yes?

12 MS. COLLINS: Phillip Friess is the head of the  
13 technical services department of the Santa Clarita Valley  
14 Sanitation District. And I was hoping you would give him  
15 a couple of minutes.

16 CHAIR ORTEGA: Yes, I think this side has about  
17 seven, eight more minutes left, including your rebuttal  
18 time. So just keep that in mind.

19 MS. COLLINS: Thank you.

20 MR. FRIESS: Madam Chair, I'd like to just make  
21 a couple of comments with regard to the prior-law issue,  
22 the 2006 TMDL representing the prior law, to the 2008  
23 TMDL.

24 From the Sanitation District's perspective,  
25 we've been engaged in relatively continuous, intense

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1 negotiations with the Regional Board since about 1998 on  
2 the chloride issue, when the Santa Clara River was listed  
3 as being impaired for chloride.

4 We challenged the listing in the 1998-1999 time  
5 frame. We sought to have the water-quality objective  
6 that Ms. Fordyce referred to as having been established  
7 in 1975. We sought to have that changed in the 1998-to-  
8 2000 time frame unsuccessfully.

9 And then when the TMDL was adopted in 2002, we  
10 challenged that it was remanded by the State Board back  
11 to the Regional Board. And the implementation schedule  
12 for the TMDL was extended to give us time to do special  
13 studies which we performed. The remanded TMDL was  
14 readopted by the Regional Board in 2004, and certified by  
15 the State Board and EPA in the 2005 time frame.

16 That gave us time to do scientific studies that  
17 we hoped would allow substantial modification of the  
18 requirements of the TMDL. We did a threatened-and-  
19 endangered species study, a groundwater/surface-water  
20 interaction modeling study, an agricultural literature  
21 review, evaluation study, all in hopes of substantially  
22 modifying the requirements of the TMDL.

23 The 2006 TMDL was just a shortening of the  
24 implementation schedule of the TMDL, as we had completed  
25 some of those studies.

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1           The 2008 TMDL was the TMDL that was adopted  
2           after the culmination of our having completed all those  
3           studies, which informed the ability to modify somewhat  
4           the requirements of the TMDL in the end. But it was  
5           all in our mind, a continuous process conducted over an  
6           extended period of time. I just wanted to make that  
7           point.

8           CHAIR ORTEGA: Okay, thank you.

9           Assembly Member Wilk, did you --

10          MR. WILK: Yes, I'd love to make a comment  
11          because I think that question was an excellent question.

12          CHAIR ORTEGA: Please.

13          MR. WILK: This is why it's all arbitrary. So  
14          in 1978, they did the study. Santa Clarita came out at  
15          100, so they set it at 100. Thousand Oaks came out at  
16          150, so it was set at 150. They did a prior study in  
17          1975 where Santa Clarita Valley came out at 80, and then  
18          Thousand Oaks came out at 50.

19                 So in three years, Thousand Oaks went from  
20          50 to 150. We went from 80 to 100. And they just  
21          arbitrarily said that's now the level.

22                 So it's not based upon water, it's not -- they  
23          have this -- we have the same downstream beneficial  
24          users: avocado, strawberry, and nursery plants. That is  
25          what's so frustrating about this is that it's completely



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1 arbitrary.

2 If we were at 150, we would not be in front  
3 of you today because we had done all the steps that was  
4 laid out by the mayor to show that we in good faith have  
5 done everything we can to clean the water to benefit  
6 downstream users. So I really appreciate that question.

7 Thank you.

8 CHAIR ORTEGA: Yes. And thank you so much  
9 for -- you know, we certainly respect your point of view  
10 on that. But, again, of course, the issue before the  
11 Commission is certainly not the levels, so..

12 MR. WILK: I understand.

13 CHAIR ORTEGA: Thank you.

14 I think I'm going to close the presentation  
15 period now.

16 If there are any more comments or questions  
17 from the commissioners, please.

18 Ms. Ramirez?

19 MEMBER RAMIREZ: I did want to hear from  
20 Mr. Jones, the staff response.

21 Can we do that? Thank you.

22 MR. JONES: Member Ramirez, is there any  
23 particular point you'd like me to address? Because that  
24 was quite a lot.

25 MEMBER RAMIREZ: Just in terms of the mandate

1 and what earlier, in another matter, Commissioner Alex  
2 mentioned equity.

3 MR. JONES: Right.

4 MEMBER RAMIREZ: And what our charter is in  
5 regards to equity.

6 MR. JONES: Sure, well, as the members know,  
7 but maybe we'll state it again for the benefit of the  
8 public and the parties.

9 Certainly the Commission's jurisdiction and  
10 charter does not include consideration of what's fair.  
11 And as the members all have made clear, neither does it  
12 include considering what the Water Board has done, what  
13 the Regional Board has done, and whether there is any  
14 science to back it up.

15 But more importantly here, the mandate finding  
16 in the proposed statement of decision that you have  
17 before you really just turns on two issues. Chiefly,  
18 that only the 2008 order was pled. The 2002, 2004, 2006  
19 orders, the remand orders in between, none of those  
20 orders are before you today. And all of those orders  
21 were effective prior to the 2008 order. All of those  
22 orders having been signed off on by the State Water  
23 Board, the director of -- or excuse me, the OAL and the  
24 Administrator of the US EPA. So all of those orders were  
25 effective.

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1           And we don't generally engage in sort of a  
2    *"but for"* analysis when we're writing these analyses for  
3    you and when we're writing these proposed decisions.  
4    But here, it's appropriate to just realize that if the  
5    2008 order had not come about, but for that order, the  
6    District would still be required to meet the 100-  
7    milligram-per-liter chloride standard and would  
8    presumably incur all of the costs that they're alleging  
9    before you today as arising from the 2008 order.

10           So clearly, those orders that would require  
11    that same thing have to be analyzed as prior law.

12           You know, there are a lot of machinations and  
13    claims about costs. And I apologize if that sounds like  
14    we're minimizing it; but we just -- the Commission is not  
15    empowered to consider costs to the local government. The  
16    Commission is only empowered to consider mandates.

17           And I don't know if you have any other specific  
18    questions on the record, but the staff recommends the  
19    proposed decision in front of you.

20           CHAIR ORTEGA: Anyone else?

21           Mr. Alex?

22           MEMBER ALEX: I have a question either for Matt  
23    or Camille, just for my own edification.

24           Obviously, the TMDL requirements are from  
25    federal law, and then the State Water Board is -- or the

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1 Regional Board, and followed by the State Board, set the  
2 TMDL levels for a particular basin.

3 Is the mandate derivative of the federal law,  
4 and does the federal law impact the concept of a mandate?

5 MR. JONES: That issue is still --

6 MEMBER ALEX: Still being litigated?

7 MR. JONES: -- perhaps up in the air.

8 MEMBER ALEX: Okay.

9 MS. HALSEY: If I could answer, we did not  
10 address that issue in this test claim because it wasn't  
11 necessary, because prior law already required this. We  
12 did not delve into the federal issue.

13 MEMBER ALEX: I understand that you didn't --  
14 hadn't read it --

15 MS. HALSEY: Right.

16 MEMBER ALEX: -- but I'm asking --

17 MS. HALSEY: And we did that because it wasn't  
18 necessary; and it would have been a much bigger analysis,  
19 yes.

20 But, yes, you're right. It does come -- and we  
21 do have it, though, in the background. And, of course,  
22 it does come from the Clean Water Act. And it's just, we  
23 didn't do a full analysis of whether the whole thing is a  
24 federal mandate.

25 MEMBER ALEX: Okay.

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1 MS. SHELTON: Can I just clarify, for mandates  
2 reasons, you have to satisfy each element. And in order  
3 to be approved as a reimbursable state-mandated program,  
4 every element has to be proved. So if you have a failure  
5 of one of those elements, then it automatically is not a  
6 reimbursable state-mandated program.

7 CHAIR ORTEGA: Mr. Saylor?

8 MEMBER SAYLOR: I will support this staff  
9 recommendation in this case. I think that the issues  
10 are narrowly defined for the Commission's review; and  
11 I think the analysis that we've got before us is clear  
12 and accurate, as far as I can tell, as a dummy that comes  
13 in here every couple months.

14 But I will say that the presentations from the  
15 representatives of Santa Clarita have been very powerful;  
16 and the residents and citizens in that neighborhood truly  
17 owe their representatives a "thank you" for their active,  
18 ardent advocacy on behalf of the community.

19 And this issue will not go away with the action  
20 that happens here today. It's going to be ongoing, and  
21 your community is not the only one in the state that  
22 faces this kind of a challenge, too; and we're all going  
23 to be seeing much more of these issues in the time to  
24 come.

25 So to the Assembly Member and the Council

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1 Member and Mayor, thank you so much for being here today.  
2 And we did hear you. This is not the arena that your  
3 issues can be addressed, it appears.

4 CHAIR ORTEGA: Anything else from the  
5 commissioners?

6 *(No response)*

7 CHAIR ORTEGA: Do we have a motion?

8 MEMBER OLSEN: I'll move adoption of the staff  
9 recommendation.

10 MEMBER SAYLOR: Second.

11 CHAIR ORTEGA: Second by Mr. Saylor.

12 Roll call.

13 MS. HALSEY: Mr. Alex?

14 MEMBER ALEX: Aye.

15 MS. HALSEY: Mr. Chivaro?

16 MEMBER CHIVARO: Aye.

17 MS. HALSEY: Ms. Olsen?

18 MEMBER OLSEN: Aye.

19 MS. HALSEY: Ms. Ortega?

20 CHAIR ORTEGA: Aye.

21 MS. HALSEY: Ms. Ramirez?

22 MEMBER RAMIREZ: I'm going to abstain. Thank  
23 you.

24 MS. HALSEY: Mr. Rivera?

25 MEMBER RIVERA: Aye.

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1 MS. HALSEY: Mr. Saylor?

2 MEMBER SAYLOR: Aye.

3 MS. COLLINS: Thank you.

4 CHAIR ORTEGA: The staff recommendation is  
5 adopted.

6 Thank you, everyone.

7 Item 7?

8 MS. HALSEY: Item 7, Commission Counsel Matt  
9 Jones will present a mandate redetermination on *Local*  
10 *Recreational Areas: Background Screenings*.

11 CHAIR ORTEGA: Go ahead, Matt.

12 MR. JONES: Item 7. At the first hearing on  
13 this mandate redetermination on December 6<sup>th</sup>, 2013,  
14 the Commission held that the requestor, the Department  
15 of Finance, made an adequate showing that the State's  
16 liability under the test-claim statute had been modified  
17 by a subsequent change in law as defined in the  
18 Government Code providing fee authority to cover the  
19 costs of the program.

20 At this hearing, the Commission is required  
21 to consider whether to adopt a new test-claim decision to  
22 supersede the previously adopted test-claim decision and  
23 to reflect the State's modified liability under the  
24 test-claim statute.

25 Staff recommends that the Commission adopt the

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1 proposed statement of decision as its new test-claim  
2 decision, ending reimbursement for the activities under  
3 the test-claim statute, beginning July 1, 2011.

4 If the Commission adopts the proposed statement  
5 of decision, staff will present the next agenda item,  
6 Item 8, proposed parameters and guidelines, reflecting  
7 the end of reimbursement for the test-claim statutes.

8 Will the parties and witnesses please state  
9 your name for the record?

10 MR. SCOTT: Department of Finance, Lee Scott.

11 MR. BYRNE: Michael Byrne, Department of  
12 Finance.

13 MS. GEANACOU: Susan Geanacou, Department of  
14 Finance.

15 CHAIR ORTEGA: Okay. Mr. Scott?

16 MR. SCOTT: The Department of Finance concurs  
17 with staff.

18 CHAIR ORTEGA: Is there any public comment on  
19 this item?

20 *(No response)*

21 CHAIR ORTEGA: Anything from the Commissioners?

22 *(No response)*

23 CHAIR ORTEGA: Do we have a motion?

24 MEMBER ALEX: Move staff recommendation.

25 CHAIR ORTEGA: Moved by Mr. Alex.



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1 MEMBER CHIVARO: Second.  
2 MEMBER RIVERA: Second.  
3 CHAIR ORTEGA: Second by Mr. Chivaro.  
4 Call the roll.  
5 MS. HALSEY: Mr. Alex?  
6 MEMBER ALEX: Aye.  
7 MS. HALSEY: Mr. Chivaro?  
8 MEMBER CHIVARO: Aye.  
9 MS. HALSEY: Ms. Olsen?  
10 MEMBER OLSEN: Aye.  
11 MS. HALSEY: Ms. Ramirez?  
12 MEMBER RAMIREZ: Aye.  
13 MS. HALSEY: Mr. Rivera?  
14 MEMBER RIVERA: Aye.  
15 MS. HALSEY: Mr. Saylor?  
16 MEMBER SAYLOR: Aye.  
17 CHAIR ORTEGA: I think you missed me.  
18 Aye.  
19 MS. HALSEY: Did I miss you?  
20 CHAIR ORTEGA: Yes.  
21 MS. HALSEY: Sorry.  
22 CHAIR ORTEGA: That's okay.  
23 MS. HALSEY: Commission Counsel Matt Jones will  
24 now present parameters and guidelines amendment on *Local*  
25 *Recreational Areas: Background Screenings.*

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1 MR. JONES: Item 8. These parameters and  
2 guidelines pertain to the new test-claim decision adopted  
3 for the *Local Recreational Areas: Background Screenings*  
4 mandate, reflecting the end of reimbursement for the  
5 program.

6 The proposed parameters and guidelines provide  
7 that reimbursement for the program is ended July 1, 2011,  
8 pursuant to the filing date of the redetermination  
9 request.

10 Staff recommends that the Commission adopt the  
11 proposed parameters and guidelines reflecting the end of  
12 reimbursement based on fee authority provided to local  
13 government in the amended statutes.

14 Will the parties and witnesses please state  
15 your names for the record?

16 MR. SCOTT: Department of Finance, Lee Scott.

17 MR. BYRNE: Michael Byrne, Department of  
18 Finance.

19 MS. GEANACOU: Susan Geanacou, Department of  
20 Finance.

21 CHAIR ORTEGA: Mr. Scott?

22 MR. SCOTT: The Department of Finance concurs  
23 with staff.

24 CHAIR ORTEGA: Is there any public comment on  
25 this item?

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(No response)

CHAIR ORTEGA: Any questions or comments from  
the Commission?

(No response)

CHAIR ORTEGA: Okay, do we have a motion?

MEMBER OLSEN: I'll move the adoption.

CHAIR ORTEGA: Moved by Ms. Olsen.

MEMBER RIVERA: I'll second.

MEMBER RAMIREZ: Second.

CHAIR ORTEGA: Second by Mr. Rivera.

Please call the roll.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Aye.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Ms. Ortega?

CHAIR ORTEGA: Aye.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Aye.

MS. HALSEY: Mr. Rivera?

MEMBER RIVERA: Aye.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Aye.

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1 MS. HALSEY: Thank you.

2 Items 9 through 15 are all on the Consent  
3 Calendar. So we're moving on to Item 16.

4 Item 16 is reserved for county applications for  
5 finding of significant financial distress or SB-1033  
6 applications. No SB-1033 applications have been filed.

7 Item 17 is the legislative update, which will  
8 be presented by Commission Staff Member Kerry Ortman.

9 MS. ORTMAN: Commission staff continues to  
10 monitor legislation for bills that might affect the  
11 mandate process. There are no new bills to report on at  
12 this time, but it's still early in the session.

13 On December 10<sup>th</sup>, 2013, the Assembly Local  
14 Government Committee held an informational hearing on  
15 state mandates with the participation of the LAO,  
16 Department of Finance, California League of Cities,  
17 California Special District Associations, CSAC, the State  
18 Controller's Office, and Commission staff.

19 The presentations included an overview and  
20 history of mandates, a review of the mandates process,  
21 and an update on the Commission's backlog reduction plan,  
22 the local-government perspective on mandates, and an  
23 overview of the State Controller's role in the mandate  
24 redetermination process.

25 CHAIR ORTEGA: Thank you.

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1 Any questions?

2 (No response)

3 CHAIR ORTEGA: Okay.

4 MS. HALSEY: Item 18 is the Chief Legal  
5 Counsel's report which will be presented by Chief Legal  
6 Counsel Camille Shelton.

7 MS. SHELTON: As indicated in the report, the  
8 County of Los Angeles and the surrounding cities have  
9 filed a petition for review with the California Supreme  
10 Court in the *Municipal Stormwater and Urban Runoff*  
11 *Discharge* claim.

12 I did receive notice this week that the Supreme  
13 Court is giving themselves an extra month to decide  
14 whether to accept jurisdiction on that petition. So we  
15 should know something on or before February 24<sup>th</sup>.

16 CHAIR ORTEGA: Thank you.

17 Any questions from Members?

18 (No response)

19 CHAIR ORTEGA: Okay, Heather?

20 MS. HALSEY: Item 19, it's the Executive  
21 Director's report. And today, I'm giving the mid-year  
22 workload update.

23 After today's hearing, the Commission has  
24 completed ten test claims, six parameters and guidelines,  
25 seven parameters-and-guidelines amendments, 13 incorrect

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1 reduction claims, ten statewide cost estimates, and two  
2 mandate redeterminations in this fiscal year.

3 This represents a major accomplishment for  
4 Commission staff and is a significant increase in matters  
5 completed over the first half of the last several fiscal  
6 years for each type of matter, except for the IRCs.

7 And with regard to the IRCs, most of the  
8 low-hanging fruit has been eliminated, and the Commission  
9 will be hearing and deciding on some of the more  
10 contentious issues pending over the next several  
11 hearings.

12 And it is hoped that the resolution of some of  
13 those contentious issues will then spur additional  
14 informal resolution of pending IRCs between the parties.  
15 And Commission staff will take steps to facilitate that  
16 type of informal resolution as well.

17 And regarding remaining caseload, we have  
18 18 test claims, four parameters and guidelines,  
19 five parameters-and-guidelines amendments, five statewide  
20 cost estimates, 76 incorrect-reduction claims, and two  
21 mandate redetermination claims remaining to be heard.

22 Commission staff expects to present all of the  
23 remaining test claims, with the exception of the *NPDES*  
24 *Permit* claims which are pending in court, to the  
25 Commission by the May hearing. And we also expect to

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1 present all the currently pending parameters and  
2 guidelines, parameters-and-guidelines amendments, and  
3 mandate-redetermination claims within this calendar year.

4 On the proposed budget, the Governor's proposed  
5 budget includes essentially no change from current year  
6 for the Commission's operations budget.

7 With regard to mandate funding, the Governor  
8 proposes \$36,204,000 different local agency mandates, and  
9 \$293,452,000 to fund the cost of K-12 and community  
10 college mandates.

11 The administration proposes the following  
12 changes from the current fiscal year, in the 2014-15  
13 budget. For local agencies, there is a reduction in the  
14 current-year appropriation for the *Sexually Violent*  
15 *Predators* program, in the wake of the recently adopted  
16 new test-claim decision that reduced the number of  
17 reimbursable activities.

18 The proposed budget also includes suspension  
19 of two programs with recently adopted statewide cost  
20 estimates; and those programs are *Local Agency Ethics* and  
21 *Tuberculosis Control*.

22 For the K-12 budget, it is primarily block  
23 grant funding. And the budget also proposes to fund  
24 additional mandate programs with recently adopted  
25 statewide cost estimates by adding them to the list of

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1 mandated programs subject to block grant funding. And  
2 those new programs include: *Charter Schools IV, Public*  
3 *Contracts, and Uniform Complaint Procedures.*

4 And for the community-college budget, the  
5 proposed changes include the following: Elimination of  
6 the *Community College Construction* mandate, funding of  
7 the *Public Contracts* mandate by adding the -- and adding  
8 the program to the block grant, and then reducing the  
9 block grant funding by \$512,000 as an adjustment.

10 For more detailed information on the budget,  
11 I do have attached appendices to the Executive Director's  
12 report.

13 And then finally, tentative agenda items.

14 For all the parties, if you check the Executive  
15 Director's report to see if your item is coming up in the  
16 next couple of hearings, if you do have any test claims  
17 that you're staffing, they should be scheduled for either  
18 March or May. So expect those draft staff's analyses to  
19 be coming out shortly.

20 And that's all I have, unless you have  
21 questions.

22 CHAIR ORTEGA: Thank you.

23 Questions?

24 MEMBER ALEX: I just wanted to thank you and  
25 staff for dealing with a huge amount of backlog and for



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1 continuing very professional work on all of the test  
2 claims.

3 MS. HALSEY: Thank you.

4 CHAIR ORTEGA: Go ahead.

5 MEMBER RAMIREZ: I'd like to echo those  
6 comments. But also, I'd like to congratulate staff on  
7 their achievements. But I also think that from -- you  
8 know, I still consider myself relatively a newcomer here,  
9 but continue to feel that some of our claimants and  
10 members of the public, even, are not quite clear in the  
11 concept of what we're doing here. And I'm concerned  
12 about it, that the interest and energy that is displayed  
13 here seems misplaced; and that perhaps some of it should  
14 be more directed at getting programs properly funded and  
15 authorized, so that we sometimes feel like a villain, and  
16 I don't think it's really fair to staff, especially.

17 And I don't know what the appropriate way to  
18 proceed would be; but I actually feel that it would take  
19 some sort of discussion with our legislators about the  
20 whole process. Because I do sense a frustration, I'm  
21 sure, that folks go back home and say, "They wouldn't  
22 listen to us." And I sense their frustration. I feel  
23 it, too; but I know we have to follow the law.

24 It seems that people don't quite catch the  
25 subtleties here.

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1           So just a comment for the record.

2           CHAIR ORTEGA: Thank you.

3           MEMBER SAYLOR: I second both comments, of both  
4 Commissioner Alex and Commissioner Ramirez.

5           You guys, this staff have done an incredible  
6 job here. There's a massive amount of workload, and it's  
7 really good to see it all come through.

8           I continue to wonder on some of the claims  
9 that come before us, where the issue from a mandates'  
10 perspective seems pretty clear -- it's a fee or it's a  
11 court ruling or -- it's just clear on the face that it's  
12 not a mandate; and yet such investment has gone into the  
13 preparation of the claim, and the response and the  
14 expense involved following that for all parties seems  
15 extreme.

16           And it does seem that some clarity of what can  
17 be done and what the rules are would help all parties.

18           And some of these issues, it seems like we  
19 ought to be able to figure out early resolution on the  
20 ones where it's really just -- it's not a question of the  
21 substance or the facts -- or of the policy topic or  
22 whatever; it's just it isn't a mandate that can be  
23 reimbursed through this process. So can't we just move  
24 on to the ones that are really at issue and find a way --  
25 we can't solve all the problems that I'd like to have us

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1 be dealing with, frankly. But the ones we can, that are  
2 relevant to us, I wish we could have greater clarity for  
3 the claimants as well as for the process.

4 MS. HALSEY: Commission staff -- what I didn't  
5 report on is Commission staff did participate in the  
6 statewide county conference that the State Controller  
7 puts on this year. And that was really good, where we  
8 were able to present our mandates and how our process  
9 works, and what the Commission can and cannot do, and how  
10 we go through our legal analyses. And I do think things  
11 like that are helpful.

12 I don't think anyone was thrilled with our  
13 presentation, but they did understand -- well, that's not  
14 what they wanted to hear. But they did understand it,  
15 and we did give them handouts and showed them literally,  
16 how do we do the analysis and how do we determine whether  
17 this is a mandate. And I think it would be good to  
18 continue to do that with more groups of parties,  
19 including cities, special districts, schools.

20 MEMBER SAYLOR: I guess -- one last comment on  
21 this. I attended the annual conference of the California  
22 State Association of Counties. And they have a committee  
23 that is a -- I think it's called something like  
24 Government Operations or General Government, or something  
25 like that. And there was quite a bit of discussion about

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1 the mandates process at that meeting, and that led up to  
2 the hearing that happened in December. So there's a  
3 growing dismay and concern in "Local Government Land"  
4 around "Does this work?" and "What can be done?"

5 CHAIR ORTEGA: Anything else?

6 *(No response)*

7 CHAIR ORTEGA: Okay, I think with that, we will  
8 recess into closed session.

9 The Commission will meet in closed executive  
10 session pursuant to Government Code section 11126(e) to  
11 confer with and receive advice from legal counsel for  
12 consideration and action, as necessary and appropriate,  
13 upon the pending litigation listed on the published  
14 notice and agenda; and to confer with and receive advice  
15 from legal counsel regarding potential litigation.

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

18 We will reconvene in open session in  
19 approximately 15 minutes.

20 Thank you, everyone, for vacating the room.

21 *(The Commission met in closed executive  
22 session from 11:45 a.m. to 12:05 p.m.)*

23 CHAIR ORTEGA: So we're going to reconvene the  
24 open session. No action was taken in the closed session.  
25 And we have two items to take up now.

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1           The first item will be consideration of the  
2 Chief Counsel's compensation.

3           MEMBER OLSEN: So consistent with prior  
4 conversations, I'd like to make a motion that consistent  
5 with treatment of state employees, generally, the chief  
6 counsel's salary be adjusted for merit by 5 percent as  
7 soon as allowed by Cal HR rules.

8           CHAIR ORTEGA: Is there a second?

9           MEMBER RAMIREZ: Second.

10          CHAIR ORTEGA: All those in favor?

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

12          CHAIR ORTEGA: Any opposed or abstentions?

13          *(No response)*

14          CHAIR ORTEGA: Seeing none, that motion is  
15 approved.

16          And the second item will be consideration of  
17 compensation of the Executive Director.

18          Heather, do you want to...?

19          MR. HONE: Item 21 is the salary adjustment for  
20 the Executive Director to the Commission. This exempt  
21 position is pursuant to Government Code section 17530.

22          MEMBER OLSEN: And I'd like to make motion that  
23 the Executive Director's salary be adjusted by 5 percent  
24 on the anniversary date of her appointment.

25          CHAIR ORTEGA: Is there a second?

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MEMBER RIVERA: Second.

CHAIR ORTEGA: Okay, all those in favor?

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

CHAIR ORTEGA: Any opposition or abstentions?

*(No response)*

CHAIR ORTEGA: That motion is approved.

I think, with nothing further before the  
Commission, we will stand adjourned.

*(The meeting concluded at 12:06 p.m.)*

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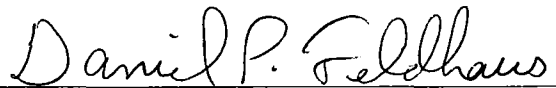
**REPORTER'S CERTIFICATE**

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 7<sup>th</sup> of February 2014.



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