APPEARANCES

BOARD MEMBERS

Mr. John A. Pérez, Chairperson (via teleconference)
Mr. Stephen Kaufman, Vice Chairperson (via teleconference)
Mr. Michael Bustamante (via teleconference)
Mr. Carl Guardino (via teleconference)

STAFF

Mr. John Mott-Smith, Chief, Elections Division
Ms. Jana Lean, MBA, Elections Information Program Manager
Ms. Debbie Parsons, Executive Assistant

ALSO PRESENT

Ms. Jill LaVine, Registrar of Voters, County of Sacramento

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PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
CHAIRPERSON PÉREZ: I'd like to call to order the Voting Modernization Board. We thank you all for being there, as we're all on by phone, and apologize -- and given that we have scheduling conflicts, we have to conduct the meeting in this manner. This is John Pérez. I'd like to call this meeting to order. Debbie, could you please start with the roll call of the members.

ELECTIONS INFORMATION PROGRAM MANAGER LEAN: Can you hold on just a moment, John. Let me get you a little louder, because it's hard to hear you.

ELECTIONS DIVISION CHIEF MOTT-SMITH: Okay. I guess I'll call the roll.

Chairman Pérez?

CHAIRPERSON PÉREZ: Here.

ELECTIONS DIVISION CHIEF MOTT-SMITH: Carl Guardino?

BOARD MEMBER GUARDINO: Present.

ELECTIONS DIVISION CHIEF MOTT-SMITH: Stephen Kaufman?

VICE CHAIRPERSON KAUFMAN: Present.

ELECTIONS DIVISION CHIEF MOTT-SMITH: Michael Bustamante?

I think's he's going to call in in a moment.

And who am I forgetting? Oh, I'm sorry Tal

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Okay. You're good to go Mr. Pérez.

CHAIRPERSON PÉREZ: Thank you very much. Again, thank you all for being there this morning. Now that we've established a quorum for purposes of this meeting, the first item before us is public comment for any issues not on the agenda.

Have any cards been turned in?

ELECTIONS INFORMATION PROGRAM MANAGER LEAN: No, sir.

CHAIRPERSON PÉREZ: Okay. The next item we have before us is adoption of our July 22nd meeting minutes. As we were looking through our packets, we see a transcript of the last meeting, but we don't see any summarized minutes.

Have any been produced that we're unaware of?

ELECTIONS INFORMATION PROGRAM MANAGER LEAN: No, we did actions of the meeting. We didn't actually do minutes. We can do that for this one if you'd like.

CHAIRPERSON PÉREZ: If we could. I know Mr. Kaufman has not had a chance to finalize reviewing the entire transcript. And because of that, what I'd like to do is get a motion to postpone approval of these minutes until our next meeting.

VICE CHAIRPERSON KAUFMAN: We should probably
wait till we have -- well people who were present at the
last meeting to approve them anyway.

CHAIRPERSON PÉREZ: So we've got a motion to
postpone this till the next meeting.

VICE CHAIRPERSON KAUFMAN: I'll so move.

CHAIRPERSON PÉREZ: Mr. Guardino?

BOARD MEMBER GUARDINO: Second.

VICE CHAIRPERSON KAUFMAN: And I'm sorry that was
Mr. Kaufman that made the motion.

CHAIRPERSON PÉREZ: Mr. Kaufman moves and Mr.
Guardino seconds.

All in favor?

(Ayes.)

CHAIRPERSON PÉREZ: That was a consensus. The
next item before us is Item V, Changes to Policies and
Procedures, specifically consideration of changes to check
distribution system.

Jana, are you there and can you briefly introduce
this item?

ELECTIONS INFORMATION PROGRAM MANAGER LEAN: Yes,
sir. As we discussed at the last meeting, the Chair and I
had a chance to have a little discussion on what the new
check distribution system would be. In the package you'll
see that there is a check distribution system outlined of
the current process and what the proposed new process is.
The proposed new process would be for the VMB staff to send notification to the Chair of the VMB an E-mail that a check has arrived from the State Controller's Office from the Voter Modernization Fund, and that the county's check will then be mailed at once to the county.

I would like to ask that you do a motion to adopt this new policy?

BOARD MEMBER GUARDINO: So moved.

CHAIRPERSON PÉREZ: Mr. Guardino moves.

Mr. Kaufman?

VICE CHAIRPERSON KAUFMAN: I'll second. I did have a question about it.

CHAIRPERSON PÉREZ: Go ahead, Mr. Kaufman.

BOARD MEMBER GUARDINO: We just wanted to get the motion on the table.

VICE CHAIRPERSON KAUFMAN: Yes. I just want to be clear that essentially the paragraph that's listed under the new section would essentially then substitute for being in addition to -- I shouldn't say substitute for. But it would essentially be in addition to what is listed under paragraph 2 from the current process.

In other words, as I understand it now, the VMB staff will notify the Secretary of State executive staff once the accounting department issues a claim schedule.
But then when it comes back from the Controller's Office, an E-mail will go to the VMB Chair and then the checks will go out at that point.

CHAIRPERSON PÉREZ: That's correct.

VICE CHAIRPERSON KAUFMAN: Is that essentially the complete process as it will, you know, now be in place?

CHAIRPERSON PÉREZ: That's my understanding.

Jana, can you --

VICE CHAIRPERSON KAUFMAN: Jana, do you have any other understanding?

ELECTIONS INFORMATION PROGRAM MANAGER LEAN: Okay. So what we're substituting is the only difference would be the last sentence of the current process to the new process would take over that sentence?

VICE CHAIRPERSON KAUFMAN: I'm sorry, were you asking or were you conferring?

ELECTIONS INFORMATION PROGRAM MANAGER LEAN: I was asking.

VICE CHAIRPERSON KAUFMAN: I was trying to make sure that we understand the process. And I was trying to read back what I understood would be the change if in fact the new process is adopted. Once the check is issued by the Controller's Office, the only remaining step would be that the check ends up back with the VMB staff. VMB staff
notifies the VMB Chair that the check has been received
from the Controller's Office. And then the check is
thereupon mailed to the County Elections official.

ELECTIONS INFORMATION PROGRAM MANAGER LEAN:
Okay. I just want to be clear. Are we still allowing for
a 10-day lead time to set up press conferences by the
Secretary of State to present the checks?

VICE CHAIRPERSON KAUFMAN: Well, my understanding
is, based on what's here, is that you're notifying the
Secretary of State's office once the accounting department
in the Secretary of State's office issues a claim to the
Controller's Office. But there's nothing in here about
further notification to the Secretary of State, unless
you're still going to be delivering the check to the
Secretary of State's executive office staff. And that's,
I guess, the part of the process --

Mr. Bustamante has now joined.

So that's the part of the process I was trying to
clarify.

ELECTIONS DIVISION CHIEF MOTT-SMITH: Yeah.

Stephen, that is -- the way you described it is the way
that it is intended to be.

VICE CHAIRPERSON KAUFMAN: Okay. And on that
basis, I am okay with that process. And that's how I
understand the motion to be.
CHAIRPERSON PÉREZ: This is John Pérez. Let me just bring Michael Bustamante up to speed on where we're at. Michael, thank you for joining us.

We've gone through a very brief discussion of the changes to policies and procedures with respect to check distribution that's outlined. There's a motion by Mr. Guardino seconded by Mr. Kaufman to approve this new procedure. And we just had a brief clarifying conversation between Mr. Kaufman and Jana and John Mott-Smith. And we're ready to move forward with the vote unless you have issues with respect to a side of it you'd like to discuss.

BOARD MEMBER BUSTAMANTE: Well, my only questions, Mr. Chairman, that this is something that you had raised originally. And just to make sure that this new process is something that kind of addresses the concerns that you have.

CHAIRPERSON PÉREZ: Thank you, Mr. Bustamante.

It absolutely does address the issues that I raised some time ago. And I think it will be very helpful to both us and to the counties in terms of expediting the procedure.

Mr. Guardino, any questions or comments from you?

BOARD MEMBER GUARDINO: No, sir.

CHAIRPERSON PÉREZ: Then hearing no further discussion, I'd like to call a vote.
I'll do it by roll just to make it easier for our recorder.

CHAIRPERSON PÉREZ: Mr. Kaufman?

VICE CHAIRPERSON KAUFMAN: Yes.

CHAIRPERSON PÉREZ: Mr. Bustamante?

BOARD MEMBER BUSTAMANTE: Yes.

CHAIRPERSON PÉREZ: Mr. Guardino?

BOARD MEMBER GUARDINO: Aye.

CHAIRPERSON PÉREZ: And the Chairman also votes aye.

Okay. The next item before us is Item VI, Project Documentation Package Review and Funding Award Proposal with respect to Sacramento county.

And, Ms. Lean, will you walk us through this.

ELECTIONS INFORMATION PROGRAM MANAGER LEAN: Yes.

Sacramento County has submitted a project documentation plan for Phase 1 in order to purchase the ES&S Model 100 Precinct Ballot Counters, 1,000 units, and the ES&S Model 650 High Speed Central Count Ballot Counters, 3 units.

Their first allocation for their Phase 1 would be for $3,923,320.50. Their overall VMB allocation is $7,721,635.32.

They are buying the ES&S, which is the Election Systems and Software Incorporated System. They secured their Phase 1 equipment to be used in the November 2nd --
upcoming November 2nd, 2000 General Election -- 2004

General Election, sorry.

The Phase 1 has been fully implemented. They received their equipment in June of 2004. They anticipate to have their second phase voting system, the AutoMARK Voting System. But it has not completed federal testing nor has it been scheduled to go through State certification. I just wanted to clarify that.

The Voter Verified Paper Audit Trail, the AVVPAT, is not applicable to this system, because it's a paper based optical scan system.

Sacramento County began using or will begin using this new system, as I said, for the November 2004 election. I just want to let you know that they were -- their old system, the Pollstar Punch-Card Voting System, for Sacramento was required to be converted due to a court order and the decertification of that punch-card system.

They did have an interim system that they used, the Mark-a-Vote 312 Voting System for the March 2004 Primary Election. And while this system complied with all of the federal court orders, Sac County did not consider this voting system a long-term solution.

The ES&S Optical Scan Voting System will no longer require voters to use a sample ballot to determine the number that corresponds to each candidate or measure.
on the ballot. With the new system, the contests will be
printed directly on the ballot. That's the big deal here
in Sacramento County.

The new optical voting system will offer a second
chance voting option to voters who vote at the polling
sites. Each ballot will be scanned and the voter will be
notified if they have over-voted in any contests and be
given the opportunity to correct their ballot. Sac County
has conducted an extensive outreach program to introduce
the new optical scan voting system to the county voters.

I wanted to let you know that the optical scan
equipment does not fully address the new State and federal
accessibility requirements. However, they will comply
with the State and federal law accessibility requirements
as they incorporate their phase 2 into their overall plan.

I also wanted to note that it's -- that any money
given to this first phase -- allocated to this first phase
will reduce the amount of money that they will get for
their accessible equipment in their second phase. I also
wanted to say that Sac County will only receive VMB
payments once they've submitted invoices for their Phase 1
equipment.

Do we have any questions?

CHAIRPERSON PÉREZ: Go ahead, Mr. Kaufman.

VICE CHAIRPERSON KAUFMAN: Well, I guess I
floated out the question of the folks from Sacramento county.

ELECTIONS INFORMATION PROGRAM MANAGER LEAN:
Sacramento County is present.

VICE CHAIRPERSON KAUFMAN: And actually it was just a question more for my education and any questions about what you're doing there. But I was just curious about getting a little more information about the second chance voting function on the precinct ballot counters and exactly how that process is going to play out.

As I understand it from the description, it's not something that's in the booth per se, but it's something that is in the precinct once the voter leaves the booth, they put it into a scanner; is that correct?

MS. LaVINE: This is Jill LaVine, Registrar of Voters of Sacramento county. The second chance voting takes -- basically the voter votes the ballot, takes it to the scanner. At that point when they feed it through the scanner, the scanner reads that there has been an over-vote, indicates which contest. And at that point, allows the voter either to accept the ballot, it drops in the ballot box, or return it to the voter, then the voter takes it back to the precinct officer for a new ballot.

VICE CHAIRPERSON KAUFMAN: So the voter has to get a new ballot at that point?
MS. LaVINE: Yes.

CHAIRPERSON PÉREZ: This is John Pérez. May I ask a follow-up question. And I appreciate the effort to deal with the over voting. One of the things that I've enjoyed on certain of the machines that I've used is quite frankly that they have caught under-voting on my part.

In November of 2002, I failed to vote in the Lieutenant Governor's race. And the machine flagged me to the fact that I had under voted in that race. Had you considered also flagging under voting, and is there a reason why you're only flagging over voting?

MS. LaVINE: We are only going to flag the over voting. To flag the under voting is not a requirement in HAVA. And it would take an awful long time with this long ballot. I'm afraid that we would have very long lines at this point.

CHAIRPERSON PÉREZ: Okay. Any other questions for Ms. Lean or for Sacramento County?

VICE CHAIRPERSON KAUFMAN: This is Stephen Kaufman. I'm ready to move that we accept the project documentation package and award funding requests for Sacramento County that's stated in the packet.

CHAIRPERSON PÉREZ: Very good. Mr. Kaufman moves. Is there a second?

BOARD MEMBER GUARDINO: Second.
BOARD MEMBER BUSTAMANTE: Second.

CHAIRPERSON PÉREZ: I heard 2 seconds.

Mr. Bustamante, you did second as well?

BOARD MEMBER BUSTAMANTE: Yes, sir.

CHAIRPERSON PÉREZ: Since you live in Sacramento, we'll give you the second. So Kaufman moves, Mr. Bustamante seconds.

All in favor, Mr. Kaufman?

VICE CHAIRPERSON KAUFMAN: Aye.

CHAIRPERSON PÉREZ: Mr. Kaufman aye.

Mr. Bustamante?

BOARD MEMBER BUSTAMANTE: Aye.

CHAIRPERSON PÉREZ: Mr. Guardino?

BOARD MEMBER GUARDINO: Aye.

CHAIRPERSON PÉREZ: And the Chair also votes aye.

So congratulations, Sacramento.

MS. LaVINE: Thank you.

CHAIRPERSON PÉREZ: The next item before us is adoption of the Voting Modernization Board Conflict of Interest Code.

ELECTIONS INFORMATION PROGRAM MANAGER LEAN: I'd like to go back for just a second, Chairman Pérez. I will fax you over their funding award letter so you can sign that and I can give it to Sac County.

CHAIRPERSON PÉREZ: Very good. I'll fax it back.
to you and sign it this morning.

ELECTIONS INFORMATION PROGRAM MANAGER LEAN:

Thank you, sir.

The next thing on the agenda is the adoption of the Conflict of Interest Code. It went out for public display or public comment. We had no public comments. What we need for you to do is just to formally adopt it, then we will submit it to the FPPC to get it in the formal register.

CHAIRPERSON PÉREZ: Very good. I have reviewed it. Before we move forward, I'd like to ask Mr. Kaufman if he's had a chance to review it and if he has any comments.

VICE CHAIRPERSON KAUFMAN: Yes, I did have a chance to review it. And I was satisfied with it. I didn't have any changes to the code provisions.

CHAIRPERSON PÉREZ: Mr. Bustamante or Mr. Guardino, any comments?

BOARD MEMBER BUSTAMANTE: No.

BOARD MEMBER GUARDINO: None for me.

CHAIRPERSON PÉREZ: Okay. Would somebody like to move adoption.

VICE CHAIRPERSON KAUFMAN: This is Mr. Kaufman again. I'll move adoption of the Conflict of Interest Code.
CHAIRPERSON PÉREZ: Is there a second?

BOARD MEMBER GUARDINO: Second.

CHAIRPERSON PÉREZ: Mr. Kaufman moves, Mr. Guardino seconds.

Mr. Kaufman?

VICE CHAIRPERSON KAUFMAN: Aye.

CHAIRPERSON PÉREZ: Mr. Bustamante?

BOARD MEMBER BUSTAMANTE: Aye.

CHAIRPERSON PÉREZ: Mr. Guardino?

BOARD MEMBER GUARDINO: Aye.

CHAIRPERSON PÉREZ: And the Chair votes aye.

Okay.

VICE CHAIRPERSON KAUFMAN: Mr. Chair, I did have one question before we move off that topic.

CHAIRPERSON PÉREZ: Yes.

VICE CHAIRPERSON KAUFMAN: And it's to the staff.

Do we actually have, at this point, any consultants that have been retained by the Board that fall into that third category of designated positions?

ELECTIONS DIVISION CHIEF MOTT-SMITH: The only possible person that would fall into that category is we do have one contract employee from the Legislature who does participate in reviewing voting systems.

STAFF COUNSEL STUART: And he's filed a Form 700.

ELECTIONS DIVISION CHIEF MOTT-SMITH: And he has
filed a Form 700.

VICE CHAIRPERSON KAUFMAN: Okay. Nothing we need to do about that at this point.

CHAIRPERSON PÉREZ: Very good.

VICE CHAIRPERSON KAUFMAN: And as I understand it, I have been filing my own Form 700 since I became a member of this board. But as I understand it, the filing requirement now we will receive notification, Board members and employees who need to file under this code provision will receive notification from the staff; is that correct?

ELECTIONS INFORMATION PROGRAM MANAGER LEAN: That's correct.

VICE CHAIRPERSON KAUFMAN: Okay. Thank you, Mr. Chairman.

CHAIRPERSON PÉREZ: Thank you, Mr. Kaufman.

Anything else on this item before we move to Item VIII?

Okay, then Item VIII, Legislation of Interest.

And, Jana, you are walking us through this?

ELECTIONS INFORMATION PROGRAM MANAGER LEAN: Yes.

I'll just give you a brief overview. I just wanted to let you know that a couple of bills did pass that do impact or have potential impact on the Voting Modernization Board.

The first one is Senate Bill 1376. This bill
relates directly to voting systems. It relates to the Voting Modernization Board in that it amends the Election Code Section 19201 to prohibit any jurisdiction from purchasing or contracting for a voting system unless it's received approval from the Secretary of State's Office.

This really won't impact the Voting Modernization Board directly because only certified systems could be moved forward for purchasing and being funded. I just wanted to make you aware of that.

CHAIRPERSON PÉREZ: Thank you.

ELECTIONS INFORMATION PROGRAM MANAGER LEAN:

Also, Senate Bill 1438, this bill will, "Prohibit the Secretary of State from certifying any Direct Recording Electronic Equipment, DRE systems, effective January 1, 2005, unless the voting system receives federal qualification and includes an Accessible Voter Verified Paper Audit Trail."

This bill also prohibits, "Any city or county from purchasing any DRE voting system, unless the voting system has received federal qualification and includes an AVVPAT after January 1, 2006." However, this bill further states that, "On January 1, 2006 all DREs used in California must present an AVVPAT."

Specifically related to the Voting Modernization Board, this bill states that, "To the extent that they are
available for expenditure, federal funds or monies from
the Voting Modernization Board Fund shall be used to
comply with this bill's AVVPAT requirement."
This is something that you've had discussions on.
I just wanted to make you aware that this is now in State
law, that if money is available, it shall go to this
purpose.
Senate Bill 1730 has to do with Primary
Elections. It moves the California statewide Primary
Election date from March to June in 2006. Notwithstanding
any of the HAVA, January 1, 2006 requirements for voting
system accessibility deadline, the move of the Primary
Election could allow counties more time to fully convert
to new modernized voting systems. I just wanted to make
you aware of that.
Are there any questions?
CHAIRPERSON PÉREZ: Any questions from any
members?
VICE CHAIRPERSON KAUFMAN: No.
BOARD MEMBER GUARDINO: No.
BOARD MEMBER BUSTAMANTE: No.
CHAIRPERSON PÉREZ: None here.
Okay. Thank you very much.
Item IX, Other Business. Is there any other
business before us?
ELECTIONS INFORMATION PROGRAM MANAGER LEAN: The only other business is to remind you that the next scheduled meeting is November 18th. And I'll have you all look at your calendars to see if you're available for that date.

CHAIRPERSON PÉREZ: I will be out of the country.

VICE CHAIRPERSON KAUFMAN: Unless, I am in Florida or other parts unknown, I should be available.

ELECTIONS INFORMATION PROGRAM MANAGER LEAN: We do not have any project documentation plans, at this time. I do know one county who could potentially come in between now and November, but I seriously doubt it given the election. So we might want to consider canceling the November meeting and holding the next one in December.

CHAIRPERSON PÉREZ: I personally would feel comfortable with that. How do other people feel about canceling the November meeting and consolidating it in December?

VICE CHAIRPERSON KAUFMAN: I'm fine with that, unless there are counties who are rushing in to get funding. But short of that, that makes sense.

BOARD MEMBER BUSTAMANTE: Yeah, I'd agree with Steve.

BOARD MEMBER GUARDINO: I'm fine with that, but I just need to let everyone know that after November 29th,
my wife is expecting our first baby on November 29th, so I'm going to be going on personal leave for about 6 weeks. So depending on when the baby actually comes will be contingent on my ability to participate in the December meeting.

CHAIRPERSON PÉREZ: Very good. Congratulations. So why don't we go ahead and cancel the November meeting and consolidate it to December.

ELECTIONS INFORMATION PROGRAM MANAGER LEAN:

Okay. So then the next Voting Modernization Board Meeting would be held December 16th, Thursday, 2004?

CHAIRPERSON PÉREZ: Very good. Anything else before we adjourn?

ELECTIONS INFORMATION PROGRAM MANAGER LEAN: No, sir.

CHAIRPERSON PÉREZ: And is there a motion to adjourn?

BOARD MEMBER GUARDINO: So moved.

CHAIRPERSON PÉREZ: Second.

All in favor of adjourning please signify by saying aye?

(Ayes.)

CHAIRPERSON PÉREZ: Any opposed?

Hearing none, we stand adjourned?

ELECTIONS INFORMATION PROGRAM MANAGER LEAN: Can

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we get motions again. We didn't get who motioned for the
adjournment?

CHAIRPERSON PÉREZ: Carl made the motion for the
adjournment.

EXECUTIVE ASSISTANT PARSONS: And who seconded?

CHAIRPERSON PÉREZ: I did, the Chair.

ELECTIONS INFORMATION PROGRAM MANAGER LEAN:

Thank you, gentlemen. That was the quickest meeting we've
ever had.

CHAIRPERSON PÉREZ: Yes, pretty nice. When we're
not all in the same room, we can actually get through
quickly.

VICE CHAIRPERSON KAUFMAN: How about that.

Whoever is still there, thank you all for your
patience in accommodating us today.

CHAIRPERSON PÉREZ: Thank you very much.

(Thereupon the California Secretary of State's
Office, Voting Modernization Board meeting
adjourned at 10:30 a.m.)
CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California Secretary of State's Office, Voting Modernization Board meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of October, 2004.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063

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