

MEETING
STATE OF CALIFORNIA
SECRETARY OF STATE
VOTING MODERNIZATION BOARD

SECRETARY OF STATE
1500 11TH STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

MONDAY, OCTOBER 17, 2005
10:30 A.M.

Reported by: Michael Mac Iver
Shorthand Reporter

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

PANEL MEMBERS

Mr. John Perez, Chairperson (by telephone)

Mr. Stephen Kaufman

Mr. Tal Finney (by telephone)

STAFF

Ms. Jana Lean

Mr. Michael Kanotz

Mr. Bruce McDannold

Ms. Katherine Montgomery

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1 PROCEEDINGS

2 BOARD MEMBER KAUFMAN: Okay. Mr. Chair, if you
3 want to call the meeting to order, it looks like we're ready
4 to do that.

5 CHAIRPERSON PEREZ: Thank you. And thank you all
6 for being there this morning, and Mr. Kaufman in particular
7 for being able to make it. I apologize that Mr. Finney and
8 I couldn't be there in person. But I would like to now call
9 to order the meeting of the Voting Modernization Board on
10 October 17th, 2005.

11 If you would, please, call the roll.

12 MS. LEAN: John Perez.

13 CHAIRPERSON PEREZ: Here.

14 MS. LEAN: Stephen Kaufman.

15 BOARD MEMBER KAUFMAN: Here.

16 MS. LEAN: Michael Bustamante. Out.

17 Tal Finney. Tal?

18 BOARD MEMBER FINNEY: I'm sorry, I can hear the
19 people on the phone, but I have trouble hearing from the
20 audience there. Yes, I'm here.

21 MS. LEAN: Okay.

22 CHAIRPERSON PEREZ: And it is kind of hard to hear
23 you, so maybe if we can get a microphone by you.

24 MS. LEAN: Okay. I'll speak into the mike.

25 And Carl Guardino is not here.

1 CHAIRPERSON PEREZ: Okay, very good. So we do
2 have a quorum with the presence of two of us telephonically
3 and Mr. Kaufman there in person.

4 BOARD MEMBER KAUFMAN: And I'm going to move
5 closer to you so you can hear me.

6 CHAIRPERSON PEREZ: Very good.

7 The next item on our agenda is public comments for
8 items not specifically on our agenda.

9 Do we have any cards?

10 BOARD MEMBER KAUFMAN: We do not have any cards,
11 Mr. Chair.

12 CHAIRPERSON PEREZ: Very good, thank you.

13 The next item before us is adoption of the
14 September 23rd meeting minutes and action. Have we all had
15 a chance to review those?

16 BOARD MEMBER KAUFMAN: We have. And I will move
17 to adopt them.

18 BOARD MEMBER FINNEY: Second.

19 CHAIRPERSON PEREZ: Mr. Kaufman moves and Mr.
20 Finney seconds. All in favor.

21 (Ayes.)

22 CHAIRPERSON PEREZ: As a result there are no noes,
23 no abstentions. The item passes.

24 The next item before us, Item 5, is Project
25 Documentation Package Review and Funding Award Approval.

1 And we have few a counties to come before us today,
2 Monterey, Sacramento, and San Benito.

3 Jana, would you like to start us off with a
4 discussion of Monterey County?

5 MS. LEAN: Yes, sir.

6 Monterey County has brought their Project
7 Documentation forward.

8 CHAIRPERSON PEREZ: And, Jana, if I could just
9 interrupt you for a second, Tal and I aren't going to be
10 able to hear you.

11 MS. LEAN: Can you hear me now, sir?

12 CHAIRPERSON PEREZ: That's a little better.

13 MS. LEAN: Okay.

14 Monterey County has brought their Project
15 Documentation forward. The staff recommends funding their
16 full allocation of \$1,991,025. They're purchasing the AVC
17 Edge DRE, 430 units, with the VeriVote printers, 550 units,
18 and the Optech 400-C Ballot Counters, 3 units.

19 Monterey County began using their optical scan
20 voting equipment as a precinct-based system during the
21 November 2nd, 2004, Presidential General Election. Monterey
22 County anticipates receiving the new DRE voting equipment by
23 October 2005, this month.

24 The County plans to begin using the DRE voting
25 equipment as a precinct-based system at the November 8th,

1 2005, Special Statewide Election. The voter-verified paper
2 audit trail requirement is fulfilled through the VeriVote
3 printers with this system. Monterey County's Project
4 Documentation meets all the requirements for completeness.

5 The Sequoia AVC Edge DRE units for the VeriVote
6 printers and the Optech 400-C units are certified for use in
7 California.

8 Please note as has been in previous staff reports
9 with the purchase of the same equipment that the software
10 used to run the AVC Edge currently has conditions on
11 certification for its use as the software cannot be used in
12 a California Primary Election. This condition is expected
13 to be resolved by the end of the year.

14 Monterey County began upgrading their old Datavote
15 punch card system with optical scan technology and the new
16 optical scan equipment was used for the first time during
17 the November 2nd, 2004, General Election.

18 Monterey County is continuing to upgrade their
19 voting equipment by purchasing the Direct Recording
20 Electronic units for their polling places. The county will
21 continue to use optical scan equipment for absentee and vote
22 by mail ballots. The county's overall modernization plan is
23 to have a new voting system that will be more accessible to
24 voters with specific needs as well as to better serve the
25 voters who desire to vote in Spanish.

1 Monterey County believes that the deployment of
2 DRE units in all of their polling places will bring the
3 county into full compliance with the requirements of the
4 Help America Vote Act, as the DRE system provides access to
5 voters with disabilities and also will satisfy the second-
6 chance voting requirements by not allowing over votes and
7 identifying under votes for each voter.

8 Monterey County will only receive VMB payments
9 once they have submitted invoices for the purchase of the
10 new voting equipment.

11 Please note that the staff-proposed funding award
12 is based upon allowable reimbursement under Proposition 41
13 for voting equipment hardware and software only.

14 It is our recommendation that Monterey County's
15 Project Documentation be approved and a funding award letter
16 be issued in the amount of \$1,991,025.

17 Do you have any questions?

18 CHAIRPERSON PEREZ: Thank you, Jana.

19 I have one just logistical question for Mr.
20 Finney.

21 Were you able to hear her well or would it be
22 better served having her join Mr. Kaufman up at the main
23 table?

24 BOARD MEMBER FINNEY: Well, I would like to put
25 her up there just to make her uncomfortable.

1 (Laughter.)

2 CHAIRPERSON PEREZ: Actually, Jana, could you
3 please join Mr. Kaufman up at the main table, please.

4 MS. LEAN: No problem.

5 CHAIRPERSON PEREZ: It will just make it easier as
6 the meeting wears on.

7 BOARD MEMBER KAUFMAN: It also helps me not feel
8 as lonely up here.

9 CHAIRPERSON PEREZ: Very good.

10 Mr. Kaufman, any questions?

11 BOARD MEMBER KAUFMAN: Well, as Jana makes her way
12 up here, I guess I had one question. I'm presuming that
13 since Monterey County, and we should hear from Monterey
14 County in a minute, but I'm presuming since Monterey County
15 is implementing this in the Statewide Special Election, the
16 fact that the software isn't certified for use in a Primary
17 doesn't impact its use? Okay. She said that's correct.

18 CHAIRPERSON PEREZ: Very good.

19 Mr. Finney?

20 BOARD MEMBER FINNEY: It's the same situation
21 again where we don't have the approval yet but
22 conditionally, approving this on condition that the DRE
23 units will be certified?

24 MS. LEAN: The DRE system is certified.

25 BOARD MEMBER FINNEY: That's for the purpose of a

1 Primary Election?

2 BOARD MEMBER KAUFMAN: It's the software, not the
3 system itself.

4 BOARD MEMBER FINNEY: All right. Sorry, I meant
5 the software. That's the same thing that we dealt with at
6 the last meeting, right?

7 MS. LEAN: Yes. You have approved previous
8 documentation plans that have this condition on the
9 certification.

10 CHAIRPERSON PEREZ: But it does speak to the
11 frustration that we've voiced a few times.

12 MS. LEAN: Yes, sir.

13 CHAIRPERSON PEREZ: Okay. I have no questions on
14 this.

15 Is there anybody from Monterey seeking to be
16 recognized?

17 BOARD MEMBER KAUFMAN: Yes, there is.

18 Come on up.

19 MS. LEAN: We have Tony Anchundo from Monterey
20 County.

21 CHAIRPERSON PEREZ: Very good.

22 MR. ANCHUNDO: Good morning, can you hear me,
23 Chairman?

24 BOARD MEMBER KAUFMAN: Mr. Chair, can you hear?

25 CHAIRPERSON PEREZ: Yes.

1 MR. ANCHUNDO: Good morning, Tony Anchundo,
2 Monterey County Registrar of Voters.

3 I just want to thank Jana Lean and the VMB Board
4 for this consideration. We're looking forward to the
5 implementation for the upcoming Special Election and we
6 certainly believe that our choice of voting systems will be
7 the right choice for Monterey County. We used the DREs,
8 although in limited capacity, in 1999 with our early voting
9 system. The voters are comfortable, they have had the
10 opportunity to work with this voting system, and we
11 certainly have been going out the last several weeks and
12 introducing the DREs. And, again, we're convinced that in
13 Monterey County this is the best choice.

14 And, again, thanks for this opportunity to speak
15 to you.

16 CHAIRPERSON PEREZ: Thank you very much, Tony.

17 Is there anybody else seeking to be recognized?

18 BOARD MEMBER KAUFMAN: Actually, I had just one
19 question before you sit down. Well, two questions.

20 First of all, your contract was signed with
21 Sequoia --

22 MR. ANCHUNDO: In July of this year for the DREs.
23 We signed a contract for the optical scan ballots last year.

24 BOARD MEMBER KAUFMAN: Okay.

25 MR. ANCHUNDO: So it's the second phase of the

1 modernization plan.

2 BOARD MEMBER KAUFMAN: Okay. But the contract was
3 signed in July?

4 MR. ANCHUNDO: That's correct.

5 BOARD MEMBER KAUFMAN: And, secondly, just for my
6 own benefit, I guess you're anticipating receiving the
7 equipment this month or you have received the equipment?

8 MR. ANCHUNDO: We received it several weeks ago.
9 And in fact we're going through the logic and accuracy as we
10 speak right now. So we're ready to go forward with it.

11 BOARD MEMBER KAUFMAN: Yes, that was my question.
12 I guess it seems rather an ambitious plan to get this all in
13 place by November 8th.

14 MR. ANCHUNDO: Everything in Monterey County is
15 very ambitious. But that's the way we do things in Monterey
16 County. The golfing is great too.

17 BOARD MEMBER KAUFMAN: Okay. Thank you.

18 MR. ANCHUNDO: Thank you.

19 CHAIRPERSON PEREZ: Thank you.

20 Mr. Finney, anything else?

21 BOARD MEMBER FINNEY: I'm groovy.

22 CHAIRPERSON PEREZ: Okay. Do I understand groovy
23 to be a motion.

24 (Laughter.)

25 BOARD MEMBER FINNEY: I will move staff's

1 recommendation.

2 BOARD MEMBER KAUFMAN: I will second.

3 CHAIRPERSON PEREZ: Okay. Mr. Finney moves, Mr.
4 Kaufman seconds.

5 Katherine, would you call the roll?

6 MS. MONTGOMERY: John Perez?

7 CHAIRPERSON PEREZ: Aye.

8 MS. MONTGOMERY: Stephen Kaufman?

9 BOARD MEMBER KAUFMAN: Aye.

10 MS. MONTGOMERY: Tal Finney?

11 BOARD MEMBER FINNEY: Aye.

12 CHAIRPERSON PEREZ: Very good, thank you.

13 The next item before us is Item 5B, Sacramento
14 County.

15 Jana, if you'd please.

16 MS. LEAN: Sacramento County has brought forward
17 their Phase 2 Project Documentation Plan. Staff recommends
18 allocating their remaining allocation of \$3,798,314.82.

19 Sacramento County is purchasing the ES&S AutoMARK
20 Voter Assist Terminal optical scan, 1,000 units.

21 Sacramento County began securing their Phase 2
22 voting equipment after the Secretary of State certified the
23 use of the AutoMARK system in August of 2005. Sacramento
24 anticipates using the AutoMARK units for the first time in
25 the November 8th, 2005, Special Statewide Election.

1 The Accessible Voter Verified Paper Audit Trail
2 does not apply to Sacramento as it is a paper-based optical
3 scan system.

4 Sacramento County's Phase 2 Project Documentation
5 Plan meets the requirements for completeness. And the
6 AutoMARK Voter Assist Terminals are certified for use in
7 California.

8 The deployment of Sacramento County's Phase 2
9 AutoMARK voting equipment will bring the county into
10 compliance with the Help America Vote Act and the state
11 accessibility requirements.

12 One AutoMark unit will be placed in every polling
13 place in Sacramento County.

14 Sacramento County will use the same voter outreach
15 and poll worker training strategies used during their Phase
16 1 Plan. The county plans to conduct an extensive outreach
17 program to introduce the new AutoMARK unit to the county
18 voters through demonstrations at community events and
19 meetings, as well as to individuals and the local media.
20 The county plans to provide poll workers and voters with
21 surveys to evaluate the AutoMARK units.

22 The county will only receive VMB payments once
23 they have submitted detailed invoices for their Phase 2
24 voting equipment. Please note that the staff-proposed Phase
25 2 funding is based upon allowable reimbursable expenses

1 under Proposition 41 for voting equipment hardware and
2 software only.

3 It is our recommendation that Sacramento County's
4 Phase 2 Project Documentation Plan be approved and a funding
5 award letter be issued in the amount of \$3,798,314.82.

6 CHAIRPERSON PEREZ: Very good.

7 Any questions, Mr. Kaufman?

8 BOARD MEMBER KAUFMAN: Yes. The Phase 1 system
9 is?

10 MS. LEAN: It's the ES&S optical scan.

11 BOARD MEMBER KAUFMAN: The optical scan without
12 the AutoMARK?

13 MS. LEAN: Correct.

14 CHAIRPERSON PEREZ: Mr. Finney?

15 Hearing nothing from Mr. Finney, is there anybody
16 from Sacramento wishing to address us.

17 MS. LEAN: Jill Levine is here and she's moving
18 forward to the microphone.

19 BOARD MEMBER FINNEY: And I don't have any
20 questions until after I hear from the mike.

21 MS. LEVINE: Jill Levine, Sacramento County
22 Registrar.

23 Thank you very much, Jana, for your help with this
24 Documentation Plan and the VMB Board for their
25 consideration.

1 Yes, we're moving forward with the ES&S AutoMARK
2 and we are once again being ambitious like Monterey and
3 pulling it out for the November election.

4 Any questions?

5 CHAIRPERSON PEREZ: No questions. Thank you for
6 this and I apologize that now on two occasions that you've
7 appeared before us several of us have not been in the room
8 with you. But thank you very much.

9 MS. LEVINE: Thank you.

10 CHAIRPERSON PEREZ: Is there a motion?

11 BOARD MEMBER KAUFMAN: I will move to accept the
12 staff recommendation.

13 BOARD MEMBER FINNEY: I will second.

14 CHAIRPERSON PEREZ: Okay. Mr. Kaufman moves and
15 Mr. Finney seconds.

16 Katherine, would you call roll.

17 MS. MONTGOMERY: John Perez?

18 CHAIRPERSON PEREZ: Aye.

19 MS. MONTGOMERY: Stephen Kaufman?

20 BOARD MEMBER KAUFMAN: Aye.

21 MS. MONTGOMERY: Tal Finney?

22 BOARD MEMBER FINNEY: Aye.

23 CHAIRPERSON PEREZ: Very good.

24 Next is Item 5C, San Benito County.

25 MS. LEAN: San Benito County has brought forward

1 their Project Documentation Plan. Staff recommends awarding
2 \$303,222.05, their full allocation.

3 San Benito County is upgrading to the AVC Edge
4 Touchscreen, 50 units, and the VeriVote printers, 60. They
5 are also upgrading to the Optech 400-C Ballot Counters, 2
6 units.

7 San Benito County anticipates receiving their new
8 voting equipment in February 2006. The county plans to
9 begin using this equipment in the June 6, 2006, Primary.

10 The AVC Edge DRE units being purchased by San
11 Benito County includes the VeriVote printers which are
12 AVVPAT compliant.

13 San Benito County's Project Documentation meets
14 the requirements for completeness. The Sequoia AVC Edge DRE
15 units with the VeriVote printers, the Optech 400 Insight
16 equipment are certified for use in California. Please note
17 again that the software used to run the AVC Edge units
18 currently has a condition on the certification for its use
19 and the software cannot be used in a California Primary.
20 This condition is expected to be resolved before the end of
21 the year.

22 San Benito County currently uses the Datavote
23 punch card voting system. In order to meet the January 1,
24 2006, deadline for acceptable voting equipment as required
25 by the Help America Vote Act and the new state law, San

1 Benito County plans to replace the Datavote system with
2 direct recording of electronic DRE touch screen technology
3 in each of their polling sites and will use optical scan
4 technology for absentee voting.

5 San Benito County will not implement the new
6 voting equipment until the June 6, 2006, Primary to allow
7 the county time to test the new equipment and to train staff
8 and poll workers on the new system.

9 San Benito County will only receive VMB payments
10 once they have submitted invoices for the purchase of the
11 new voting equipment.

12 Please note that the staff-proposed funding award
13 is based on allowable reimbursements under Prop 41 for
14 voting equipment and hardware and software only.

15 I also want to point out that the contract
16 executed between San Benito County and Sequoia does not
17 conform to the Secretary of State's August 3rd, 2005,
18 directive regarding HAVA compliant voting systems. The
19 county has indicated that they will be amending the contract
20 with Sequoia Voting Systems to incorporate language to
21 address the SOS HAVA compliant voting system directive once
22 negotiations have been completed regarding the agreed-upon
23 language.

24 As such, it is our recommendation that upon
25 receipt of the amendment to the contract between San Benito

1 County and Sequoia Voting Systems that incorporates the HAVA
2 compliant voting system directive language that Voting
3 Modernization Board approve San Benito County's Project
4 Documentation Plan and issue a funding award letter in the
5 amount of \$303,222.05.

6 Any questions?

7 CHAIRPERSON PEREZ: Mr. Kaufman?

8 BOARD MEMBER KAUFMAN: No question. I will just
9 mention though that I had a chance to talk to Jana before
10 the meeting started and apparently I know she is going to
11 provide us with an update later, but the negotiations
12 between the Secretary of State's office and Sequoia and Del
13 Norte are continuing. So the issue has not been resolved in
14 terms of the contract language.

15 CHAIRPERSON PEREZ: Mr. Finney?

16 BOARD MEMBER FINNEY: I have no questions for now.

17 CHAIRPERSON PEREZ: Okay. Is Jan Hodges or
18 somebody else from the county there wishing to address us?

19 MS. LEAN: There is someone from the county.

20 BOARD MEMBER KAUFMAN: Would you please state your
21 name when you come up to the microphone, please?

22 MS. PEREIRA: I'm Lillian Pereira, Assistant
23 County Clerk.

24 BOARD MEMBER KAUFMAN: Welcome.

25 MS. PEREIRA: I just want to thank Jana for all

1 her help, all the phone calls, and I would like to thank the
2 Chairman and the Board for allowing us to be here today and
3 for the consideration of awarding this money to us that's
4 going to help San Benito County, small San Benito County,
5 tremendously with meeting all the requirements of HAVA.
6 And I just want to thank everyone.

7 BOARD MEMBER KAUFMAN: I had one question real
8 quick. Why is it that you're purchasing 50 units but 60
9 printers? Can you explain to me why the extra printers are
10 in here? I'm just curious.

11 MS. PEREIRA: Back up.

12 BOARD MEMBER KAUFMAN: Back up. Okay, that makes
13 sense.

14 CHAIRPERSON PEREZ: Very good. Do you have any
15 other questions, Mr. Kaufman?

16 BOARD MEMBER KAUFMAN: No, I don't.

17 CHAIRPERSON PEREZ: Mr. Finney?

18 BOARD MEMBER FINNEY: No. But I will have some in
19 the other report later on when we're talking about Del
20 Norte.

21 CHAIRPERSON PEREZ: As will I.

22 Okay. On Item 5C is there a motion?

23 BOARD MEMBER KAUFMAN: I guess my thought was that
24 we adopt the staff recommendation but perhaps we want to put
25 the same timeframe on this one that we have on Del Norte,

1 which I think is tied to our next meeting on November --

2 MS. LEAN: We put the timeframe as November 15.

3 BOARD MEMBER KAUFMAN: November --

4 BOARD MEMBER FINNEY: I do like that as well, Mr.
5 Chair, if we could maybe put a condition on the approval
6 based on the same timing as for Del Norte.

7 CHAIRPERSON PEREZ: Okay. If we could locate the
8 exact language that we used in Del Norte, because I too feel
9 comfortable with that concept.

10 BOARD MEMBER KAUFMAN: Here it is. Here's what's
11 in the minutes, "The approval is contingent upon amendment
12 of the contract between the county and the vendor to reflect
13 the Secretary of State's August 3, 2005, directive regarding
14 HAVA compliant voting systems. The amended language must
15 address the concerns of the Secretary of State," in this
16 case San Benito County, "and Sequoia Voting Systems, Inc.
17 Should this matter not be resolved by November 15, 2005, the
18 VMB approval of the plan would be rescinded and San Benito
19 County must reappear before the VMB for future
20 consideration."

21 That's the language from last time.

22 CHAIRPERSON PEREZ: And is that your motion?

23 BOARD MEMBER KAUFMAN: And let me add also to that
24 the first part of it I guess which would be that we move to
25 approve San Benito County's Project Documentation Plan and

1 issue a funding award in the amount of --

2 CHAIRPERSON PEREZ: \$303,222.05.

3 BOARD MEMBER KAUFMAN: Yes. Subject to the
4 contingency stated.

5 CHAIRPERSON PEREZ: That's Mr. Kaufman's motion.
6 Mr. Finney?

7 BOARD MEMBER FINNEY: Second.

8 CHAIRPERSON PEREZ: Mr. Kaufman moves, Mr. Finney
9 seconds.

10 Would you please call the roll, Katherine?

11 MS. MONTGOMERY: John Perez?

12 CHAIRPERSON PEREZ: Aye.

13 MS. MONTGOMERY: Stephen Kaufman?

14 BOARD MEMBER KAUFMAN: Aye.

15 MS. MONTGOMERY: Tal Finney?

16 BOARD MEMBER FINNEY: Aye.

17 CHAIRPERSON PEREZ: Very good.

18 We labored through this point at the last meeting,
19 so we were able to get through it much quicker.

20 The next item is Item 6, Staff Reports on Related
21 Issues.

22 The first item before us is Proposed Language for
23 County Quarterly Status Reports.

24 Jana, if you would like to --

25 MS. LEAN: I included a draft of what the county

1 quarterly status reports could be. I actually just wanted
2 to bring it forward. Michael Bustamante actually had
3 comments on this, so I would like to put this over to the
4 next meeting. I just wanted to present it to you and ask if
5 you had any questions of me to add any additional language
6 to the report?

7 CHAIRPERSON PEREZ: As I look at it, it satisfies
8 some of my basic needs. Can you share with us some of the
9 issues Mr. Bustamante raised with you?

10 MS. LEAN: One of the things he did ask about was
11 when the counties plan to go to the Board of Supervisors.
12 The only other thing that he asked was what type of system
13 was there going to be. But we kind of didn't go into it in
14 full discussion at the last meeting, so I wanted to actually
15 be able to speak with him to make sure that this addresses
16 all of his needs too.

17 CHAIRPERSON PEREZ: Very good.

18 BOARD MEMBER KAUFMAN: I had one comment. Would
19 it be appropriate to add in Section 3 whether or not the
20 county had actually selected the vendor or signed the
21 contract.

22 CHAIRPERSON PEREZ: Mr. Finney, anything?

23 BOARD MEMBER FINNEY: No, I'm fine.

24 CHAIRPERSON PEREZ: Okay. So then let's move this
25 over to our next meeting for final consideration.

1 MS. LEAN: Thank you.

2 CHAIRPERSON PEREZ: Okay. Item 6B, update on Del
3 Norte County's amendment to its vendor contract language.

4 MS. LEAN: We actually have a representative from
5 our Executive Office, Chris Reynolds. He's doing the
6 negotiation with Sequoia. He's here to address the Board.

7 CHAIRPERSON PEREZ: And, Chris, if you would, just
8 because we may have a series of questions for you after you
9 address us, maybe if you could join Jana and Steve just so
10 that we have a little better clarity on the sound when you
11 speak.

12 MR. REYNOLDS: Chris Reynolds, HAVA Coordinator
13 with the Secretary of State's Office.

14 We have not closed this issue with Sequoia who has
15 represented that they will carry the proxy of the umbrella
16 organization for the voting system vendors. We have traded,
17 if you will, drafts of language, but we haven't come to
18 closure on it, and that's the sum total of it. We will be
19 sitting down and meeting face to face this coming Wednesday
20 at noon to try to bring closure to this issue and we hope to
21 get it resolved on that day.

22 CHAIRPERSON PEREZ: Okay. So you haven't reached
23 closure, but how would you characterize the discussions to
24 this point?

25 MR. REYNOLDS: Friendly, professional. I think we

1 understand the viewpoint of the vendor community and I don't
2 want to misrepresent or put any words in their mouth, and
3 there may be a representative here, actually I don't see
4 them in the room. Alf Charles from Sequoia has been our
5 principal point of contact. So it's been friendly and
6 professional.

7 We appreciate their perspective, but at the same
8 time we want to make sure that what we do is definitive,
9 that there's no misunderstanding, there's not a lot of room
10 for interpretation so we can bring closure to this issue so
11 that every party understands what we're trying to achieve.
12 And from the Secretary of State's point of view, what we're
13 trying to achieve is to balance the -- to create an
14 equitable burden, if you will, of risk. It's our belief
15 that, A, the law requires that systems be HAVA compliant
16 and, B, that the counties are buying and being asked to buy
17 systems under that premise, if you will.

18 So we believe that it's appropriate to make it
19 clear to everyone, the counties and the vendors, and for
20 that matter the voters and the taxpayers, that what we
21 expect is to have a HAVA compliant system. And should there
22 be a discovery of some sort in the future that a system is
23 not HAVA compliant that it would be the responsibility of
24 the vendor to pay for the costs to bring the system into
25 compliance.

1 CHAIRPERSON PEREZ: Speaking as the only
2 nonattorney on the Board today, let me try to state this
3 hopefully in a way consistent with what I said at our last
4 meeting, that I see a very large distinction between
5 compliance with HAVA and state laws at the time of the
6 transaction and new laws and expectations of vendors that
7 are generated after the execution of the agreement. And
8 that was one area where I understood and quite frankly
9 tended to agree with the vendor community that it is
10 absolutely appropriate to expect that they comply with all
11 laws that are in effect at the time of the transaction, but
12 there is a distinction between that and a change in law. So
13 I want to make sure that I'm very clear on where I'm going
14 on that.

15 MR. REYNOLDS: And this is Chris Reynolds again.
16 Frankly, we would agree with that. We are not
17 trying to bind the vendors to some future change in law,
18 however, part of the disagreement, if you will, or one of
19 the issues to be resolved is whether that would include an
20 interpretation. We believe that interpretations by a court
21 are inclusive of what we're talking about here. In other
22 words, if there was a lawsuit brought for the purposes of
23 clarification of HAVA and the court were to find that this
24 is what HAVA compliance means, that it's appropriate to say
25 that the vendors were and are supposed to meet that

1 compliance requirement.

2 CHAIRPERSON PEREZ: And I share your view on that.
3 My concern was the original directed language I think went a
4 little further than what you and I have just stated and
5 that's what motivated me as an individual to want to have
6 the three parties further engage in this discussion and see
7 what kind of resolution we can get. So I appreciate that.

8 Mr. Kaufman, any questions or statements?

9 BOARD MEMBER KAUFMAN: Just one question. Has Del
10 Norte been involved in the process or any representatives of
11 the county thus far?

12 MR. REYNOLDS: No, Del Norte has not requested to
13 be a party to the discussions and we have not reached out to
14 them I think principally because we see this as an issue
15 that is broader than a specific contract with Del Norte.
16 But we're certainly going to keep them informed about
17 progress on the discussions, we just haven't made much to
18 date.

19 CHAIRPERSON PEREZ: Mr. Finney?

20 BOARD MEMBER FINNEY: I'm just interested to see
21 how it continues with the Secretary of State's office.

22 CHAIRPERSON PEREZ: I just want to make sure that
23 Del Norte is aware that the conversations are ongoing and is
24 afforded the opportunity to opt into the conversations if
25 they choose to. Even though the content of what's being

1 addressed here is broader than that, it was their
2 contractual language that precipitated our interest in
3 having this.

4 MR. REYNOLDS: This is Chris Reynolds again.

5 Absolutely we will see whether they have an
6 interest in participating directly in Wednesday's discussion
7 and I do want to express the appreciation of the Secretary
8 of State's Office to the Board for its assistance in this.
9 So thank you.

10 CHAIRPERSON PEREZ: Very good. Thank you.

11 Anything else on this item.

12 BOARD MEMBER FINNEY: One thing, Mr. Chair.

13 When do you think this might be resolved, do we
14 have any idea?

15 MR. REYNOLDS: It's my hope that we may be able to
16 have something by the end of this week. I see this meeting
17 on Wednesday as a critical time to try to resolve this.

18 CHAIRPERSON PEREZ: Very good. So you feel
19 confident that we're on track to be able to resolve this
20 well before our November meeting?

21 MR. REYNOLDS: That's my hope, yes.

22 CHAIRPERSON PEREZ: Okay. Very good.

23 Mr. Kaufman, anything else on this?

24 BOARD MEMBER KAUFMAN: No, that's it.

25 CHAIRPERSON PEREZ: Mr. Finney?

1 Okay, then let's move to Item 6C, additional staff
2 report on the legal interpretation of Election Code Section
3 19234(c)(3).

4 Jana.

5 MS. LEAN: Actually you asked that this additional
6 staff report be conducted and we do have our staff attorney,
7 Michael, here who is going to go over his legal
8 interpretation as provided in your binders. We do have one
9 comment card on this topic, and as soon as Michael is done,
10 he's going to come up to the stage and address you, but as
11 soon as he's done, I will give you that one.

12 CHAIRPERSON PEREZ: Thank you.

13 MR. KANOTZ: Good morning, this is Michael Kanotz.
14 And perhaps rather than read the report that I included, I
15 will go ahead and just summarize its contents and if there
16 are any questions I can go through those.

17 In general, the statutory language that we were
18 discussing last time that limits the Board's ability to
19 grant funds from the Voting Modernization Act states that
20 the -- one of the conditions that is stated that the county
21 has not previously requested fund money for the purchase of
22 a new voting system period. And then the second sentence
23 states applications for expansions of an existing system or
24 components related to a previously approved application
25 shall be accepted.

1 And because rather than stating a general rule and
2 providing language of exception, because the statute
3 contains two somewhat contradictory rules and also because
4 the term new voting system is imprecise in some respects,
5 it's my opinion that the statute is ambiguous to an extent
6 on this case and under the rules of statutory construction
7 that it would be appropriate to look to the intent of the
8 voters with regard to whether or not a second or a phase 2
9 interpretation could be granted.

10 And in this instance, the intent of the voters was
11 to assist counties in the purchase of new voting equipment
12 that is certified by the Secretary or State. And certainly
13 if equipment was purchased with Proposition 41 funds and
14 then subsequently it becomes decertified for some reason, I
15 don't think that it would contradict the intent of the
16 voters to approve Prop 41 funds to be used to replace that
17 equipment.

18 CHAIRPERSON PEREZ: Okay.

19 BOARD MEMBER FINNEY: So you're suggesting that we
20 look to the intent of the voters behind the proposition
21 which was where there is an obsolete system, which one could
22 argue a system becomes obsolete when decertified by the
23 Secretary of State's Office, we then through Prop 41 could
24 help replace that obsolete system?

25 MR. KANOTZ: That's correct.

1 BOARD MEMBER FINNEY: I actually am pretty
2 comfortable with your interpretation.

3 BOARD MEMBER KAUFMAN: Well, I guess I was a
4 little confused by the premise that these are contradictory
5 terms. I thought that the second sentence kind of amplifies
6 the first. And I guess my question was with respect to a
7 new voting system. I see, you know, voting system is
8 defined here, I guess it's Section 19232.

9 MR. KANOTZ: Correct.

10 BOARD MEMBER KAUFMAN: And the language says any
11 voting machine, voting device, or vote tabulating device
12 that does not utilize prescored punch card ballots. And I
13 guess I'm just wondering whether a new voting system has to
14 necessarily be interpreted as focused on a single method of
15 voting versus a system which may be an optical scan system
16 layered with a DRE machine to, you know, provide HAVA
17 compliance and whether those would all be viewed as a voting
18 system. And I think there's a good argument to be made that
19 that would be a voting system.

20 CHAIRPERSON PEREZ: That's what I'm reading in
21 your second to the last paragraph on page 1 where you say a
22 more appropriate reading of the term voting system in the
23 context would refer to an overall modality of voting
24 systems, whether that system is punch card, optical scan or
25 DRE system.

1 BOARD MEMBER FINNEY: Mr. Perez just took the
2 words right out of my mouth. I was about restate that.

3 MR. KANOTZ: Yeah, I think that is correct, but
4 Mr. Kaufman makes a good point in that there could be a
5 combination of those systems too. So that would --

6 CHAIRPERSON PEREZ: If we would get Assemblywoman
7 Pat Lee to author a bill on hybrid voting systems?

8 (Laughter.)

9 BOARD MEMBER KAUFMAN: I don't know, but am I
10 right your sentence here meant that it could be any of
11 these, and I guess what I'm saying is it could be a
12 combination of those which to me may eliminate some of the
13 issue that you go through on page 2 I guess.

14 BOARD MEMBER FINNEY: I kind of like a stricter
15 interpretation, but I am open to what you're getting at,
16 Steve. I'm just suggesting that -- I think the grounding of
17 what we need for what I think our purposes are is this
18 referral to the intent of the voter and the act of
19 decertification that the Secretary of State might engage in
20 by some act causing a system to become obsolete. And I
21 think that what we need to work with really goes to the
22 heart of what was the voters' intent in passing the
23 proposition. So I think your interpretation of this could
24 even cast the net more broadly as to what could or couldn't
25 qualify, but ultimately I think, you know, the real target,

1 the decision we have to make, is this a system that either
2 is still in play or is it something that has been made
3 obsolete that needs replacing.

4 BOARD MEMBER KAUFMAN: You know, I have the same
5 -- I think we all have the same goals in mind and that is to
6 help the counties get to where they need to go to have
7 compliant systems to allow their voters to have confidence
8 of what they are voting on is going to record their votes.
9 I don't think there is any question about that. My only
10 concern is in kind of parsing language here and trying to
11 come up with interpretations. And I'm just trying to
12 understanding, I'm not suggesting that the interpretation
13 that you've given it is incorrect, imprecise or otherwise,
14 I'm just really trying to get a handle on it and understand
15 it. And are you suggesting that if a system becomes
16 decertified, I mean then it seems to me that it's almost
17 suggesting that the county kind of never applied for it in
18 the first place in some ways?

19 MR. KANOTZ: Well, it's difficult in regard to the
20 statutory language because then I think what we're talking
21 about could be viewed as an expansion of an existing system
22 or components related to a previously approved application.
23 Because in general if the system -- I mean it strikes me
24 that it would conform to the intent of the voters if we
25 provided funds to a county to replace a system that has been

1 decertified, even if it used funds from Prop 41 to purchase
2 the system.

3 BOARD MEMBER KAUFMAN: Still within its allocated
4 amount.

5 MR. KANOTZ: Right.

6 MS. LEAN: Can I interrupt for just a moment?

7 CHAIRPERSON PEREZ: Certainly, Jana.

8 MS. LEAN: Carl Guardino is trying to call in. He
9 was unavailable at the beginning of the meeting. I just
10 want to ask the Chair and the Vice Chair what they would
11 like to do.

12 CHAIRPERSON PEREZ: My sense of it, Steve, tell me
13 what you think, let's take a few seconds pause. Let's allow
14 for Katherine to plug him into the system and let's move on,
15 if that's okay with everybody else.

16 MS. LEAN: Okay. Can you hold on just a moment.
17 Katherine just left the room so we're going to have to just
18 put us all on hold for a moment. Sorry.

19 BOARD MEMBER KAUFMAN: Why don't we take a five-
20 minute break to continue this issue.

21 CHAIRPERSON PEREZ: Thank you.

22 (Thereupon a short recess was taken.)

23 BOARD MEMBER KAUFMAN: Fellow members, Mr.
24 Guardino is not going to join us after all, so I guess we
25 can probably go back on the record if it's okay with the

1 Chair, because everybody is still here.

2 CHAIRPERSON PEREZ: Very good. Let's continue on
3 in our discussion regarding this interpretation.

4 Would you like to pick us up from where we left
5 off, Michael.

6 BOARD MEMBER KAUFMAN: Go ahead, Michael.

7 MR. KANOTZ: Well --

8 CHAIRPERSON PEREZ: You notice I didn't pick on my
9 two colleagues to try to figure out where we were when we
10 left off.

11 MR. KANOTZ: I would like to say we were
12 ruminating over what the language means.

13 CHAIRPERSON PEREZ: Right.

14 MR. KANOTZ: And because we are doing so, what was
15 meant by the overall point of the analysis, although it may
16 have been lost somewhat in a couple pages of legal writing,
17 is that because there are so many sort of questions and
18 issues with regards to what this paragraph means that it
19 necessarily because we are doing that exercise that there is
20 some ambiguity in the language and that we should look to
21 the intent of the voters. We should look beyond the plain
22 text of the section to the intent of the voters to inform us
23 of the meaning of this paragraph.

24 CHAIRPERSON PEREZ: Forgive me for asking a naive
25 question. But then what is the construction of what legally

1 binds us at that point?

2 MR. KANOTZ: At that point it is still the
3 language of the statute, however we look to the intent of
4 the voters to understand its meaning. Because the statute
5 doesn't specifically address a situation, for example, where
6 a county has purchased optical scan equipment and another
7 type of voting machine for accessibility issues and then,
8 for example, the optical scan equipment is decertified.

9 CHAIRPERSON PEREZ: Let me ask the question a
10 different way. Because of the ambiguity, because we can't
11 look at the plain -- what was your term the plain --

12 MR. KANOTZ: The plain meaning of the statute.

13 CHAIRPERSON PEREZ: The plain meaning because of
14 questions about what that meaning is. If we're now then to
15 look to voter intent, are we then bound by nothing more, not
16 that this is something small, but are we then bound by
17 nothing other than a good faith interpretation on our part
18 of acting consistent with what we believe the voters' intent
19 was?

20 MR. KANOTZ: I believe that's correct, but we also
21 need to keep in mind the language of the section.

22 CHAIRPERSON PEREZ: Right. Where the language is
23 ambiguous or potentially contradictory, when we have those
24 questions and where it cannot be resolved, as is the case
25 here, because of some of the overlap and some of the --

1 BOARD MEMBER KAUFMAN: How about some of the
2 changes in the law since it passed.

3 CHAIRPERSON PEREZ: Right, some of the changes in
4 the law. Are we then bound -- I guess the better question
5 is, are we then acting appropriately to be informed by the
6 change in the law to be informed by the meaning of Prop 41
7 as it was written and then act based on our interpretation
8 of the voters' intent in that conflict?

9 BOARD MEMBER FINNEY: Mr. Chairman, I think you
10 asked the very question that I have been trying to wrestle
11 with here that makes me uncomfortable taking action today
12 based on the analysis we have so far, because I think the
13 questions you asked require additional analysis. And here
14 you have a situation that goes to the heart of why we
15 continue to even be on this Board and why this Board still
16 exists, the changing dynamic that we're wrestling with here.
17 It's not your typical proposition where you take property
18 taxes away from the local government and that kind of basic
19 stuff. This is something that is an evolving thing because
20 of the nature of the technology with which we're dealing.

21 So I would like to know, I would like to have some
22 research done on if there is any precedent that relates to
23 the authority of a public Board created by proposition to
24 act upon interpretation of that proposition based on, and
25 this is the tricky part, all the technology associated

1 therewith. Do you know what I'm trying to get at here?

2 CHAIRPERSON PEREZ: Well, it's not just the
3 evolving technology, but it's the fact that as all the
4 county officials in the room could speak to, the fact that
5 the ball keeps getting moved or the goalposts keep getting
6 moved in terms of what meets the standard.

7 BOARD MEMBER FINNEY: But I think we kind of need
8 to know from a legal perspective, not just an interpretation
9 of the statute as it stands, but legal research on the role
10 of the public Board created by the proposition itself.

11 CHAIRPERSON PEREZ: Mr. Finney, I absolutely agree
12 with you. I mean I feel very comfortable saying what I
13 think is consistent with the voters' intent based on kind of
14 a reasonable person test, based on all that's happened, but
15 I'm not sure that we have the authority to do that and I
16 share your interest in getting that level of analysis.

17 Mr. Kaufman?

18 BOARD MEMBER KAUFMAN: Well, I agree that I don't
19 think we're in a position to make a snap judgment yet
20 without looking at this more closely.

21 BOARD MEMBER FINNEY: Because we're talking about
22 going beyond the interpretation of the statute with respect
23 to the content of the decision, now we're looking at the
24 process and the Board involvement in that decision, what
25 authority does the Board have. You know what I mean, maybe

1 there is a precedent out there that wrestles with this, but
2 I wouldn't want to broaden the scope of the Board's decision
3 to dole out public funds without at least some legal
4 research to back up our decision in that regard.

5 BOARD MEMBER KAUFMAN: Well, because, I mean the
6 downside of this and I don't sense that it's going to
7 happen, but if we make some interpretation issue which gives
8 some county a second bite of the apple and another county
9 comes down the road and says --

10 BOARD MEMBER FINNEY: The money's not there
11 anymore.

12 BOARD MEMBER KAUFMAN: Yes, what about me, I was
13 hoping for a second round.

14 BOARD MEMBER FINNEY: And what happens to that
15 county hit by a fact or situation is in a much more
16 precarious situation with respect to voters and its ability
17 to carry out an election than the ones we did help, you know
18 what I'm saying, when there was still money there. I think
19 this is touchy stuff, I do really think we have got to flush
20 out the role of the Board in making this decision now.

21 CHAIRPERSON PEREZ: I agree. Here's what I would
22 like to do. You said we had cards on this item?

23 BOARD MEMBER KAUFMAN: Yes. We have one card and
24 I think maybe it would benefit us by hearing from Joan
25 Quinn. If Ms. Quinn wants to come up, maybe she can shed

1 some light on the situation.

2 CHAIRPERSON PEREZ: That would be wonderful.

3 MS. QUINN: My name is Joan Quinn, I'm a retired
4 attorney and citizen of Sacramento county. Would you like
5 my address?

6 I'm sorry, I'm not here to shed light, I'm here to
7 ask a question.

8 BOARD MEMBER FINNEY: Is there any way we can have
9 her speak into one of the mikes so we can hear more clearly?

10 BOARD MEMBER KAUFMAN: She is speaking into the
11 mike.

12 MS. QUINN: I am speaking into a mike.

13 BOARD MEMBER FINNEY: It's kind of echoing.

14 BOARD MEMBER KAUFMAN: Then you should be here.

15 MS. QUINN: Do I get to come up on stage too?

16 MS. LEAN: Is that any better, Tal?

17 BOARD MEMBER FINNEY: All right. I can hear.

18 MS. LEAN: You can hear, okay.

19 MS. QUINN: I just had a question, I would like a
20 copy of the staff report. I haven't read it, so my question
21 is, I demand or request, I want a copy of the staff report,
22 your staff report on the legal interpretation.

23 CHAIRPERSON PEREZ: Steve, she is asking for a
24 copy of the staff report, correct?

25 BOARD MEMBER KAUFMAN: Yes, she is.

1 CHAIRPERSON PEREZ: Okay. There is one way, when
2 you walk in the auditorium there is a table with a notebook.

3 MS. QUINN: No, it's not there.

4 CHAIRPERSON PEREZ: It has all of our staff
5 reports in it. The absolute last item in the notebook.

6 MS. LEAN: Actually, sir, it was not provided to
7 the public, this was a legal interpretation from the
8 attorney.

9 CHAIRPERSON PEREZ: Oh, I apologize.

10 MS. LEAN: Between our staff attorney and the
11 Board. But it can be made public if you choose so.

12 MS. QUINN: I would like to make a comment on
13 that. It not only can be made public if you choose, it must
14 be made public. Attorney/client privilege is waived when it
15 is discussed, and I might add that the Proposition 59
16 initiative regarding open hearings is the statute in
17 California requiring public access. So we have Proposition
18 59 binding you and the long settled -- are you listening.

19 CHAIRPERSON PEREZ: Yes.

20 MS. QUINN: The long settled issue of waiver of
21 attorney/client privilege. This is the State of California,
22 this is a public function. There is coined in Proposition
23 59, there is no privilege. And if there was a privilege, it
24 is waived, I sat here and heard you discussing it in detail.
25 I can't write that fast, I don't have a recorder, I don't

1 want to wait two weeks until maybe two weeks it will be
2 released. We don't know how soon it's going to be on the
3 Secretary of State's website. It's written right now and
4 Proposition 59 and all legal precedent requires you to give
5 it to me. But if you decide --

6 BOARD MEMBER FINNEY: The real reason behind it
7 would be that raising that issue outside of executive
8 committee one could argue that the information should be
9 available.

10 CHAIRPERSON PEREZ: Look, I actually assumed it
11 was available, and, Jana, if I could ask you to make it
12 available.

13 MS. LEAN: No problem, sir. It will be on the
14 website.

15 CHAIRPERSON PEREZ: Because I didn't presume this
16 could be an executive session item of ours.

17 So thank you, Ms. Quinn.

18 MS. QUINN: I appreciate that.

19 BOARD MEMBER FINNEY: The person at the mike and
20 the tenor of her comments are exactly why I think we need
21 more research.

22 CHAIRPERSON PEREZ: Correct.

23 MS. QUINN: Thank you, I appreciate that attitude.

24 BOARD MEMBER FINNEY: Absolutely. This is public
25 money and we're here to serve the public.

1 CHAIRPERSON PEREZ: And just for the record, we
2 have never gone into executive session.

3 BOARD MEMBER FINNEY: We try to do everything
4 above board and, Ms. Quinn, the very reason why I am sitting
5 here having this discussion is simply for your concerns.
6 You know, when we make a decision, we want it to be the
7 right decision. My concern is that everything that we do is
8 contemplated within the law of the people as expressed
9 through Prop 41.

10 MS. QUINN: Thank you, I applaud your attitude.
11 That's precisely what public servants -- what we in the
12 public like to hear.

13 Might I ask just one question. Might I not have a
14 physical copy of it today rather than waiting to have it put
15 on the website?

16 MS. LEAN: I will definitely give you a copy,
17 ma'am.

18 MS. QUINN: Thank you.

19 BOARD MEMBER KAUFMAN: Thank you.

20 CHAIRPERSON PEREZ: Okay. Well, let's do this. I
21 don't think we're going to get the resolution right here and
22 right now.

23 Michael, do you feel comfortable understanding the
24 additional questions that Mr. Kaufman and Mr. Finney and I
25 have raised in this discussion that we would like to have

1 reported back on?

2 MR. KANOTZ: I believe I do, and maybe I can try
3 to state my understanding of it and if I can then I've
4 gotten it. And the question I have is what is the authority
5 of a public Board created by proposition, I don't know if
6 that is going to be pertinent or not, but created by
7 proposition to interpret statutes that it is charged with
8 enforcing.

9 BOARD MEMBER KAUFMAN: Yes, and I would say
10 interpret provisions not necessarily related to enforcement,
11 but charged with -- in this particular case we're charged
12 with giving out public monies essentially. I think that's
13 probably an important criteria. So I think you had it right
14 up until the last part which is not necessarily statutes we
15 have been charged with enforcing, but statutes that are kind
16 of our authority for performing our functions, and that is
17 giving out public money. Because, I mean just thinking of
18 it in a vacuum, I'm sure there are plenty of -- the Fair
19 Political Practices Commission, for example, was created by
20 a proposition and they certainly have the authority to
21 create regulations and interpret the laws, but they are
22 charged with a different function and that is, you know,
23 enforcing those laws as opposed to this Board which is
24 charged with providing public funds as set forth in
25 proposition. Maybe there is a distinction there, maybe

1 there isn't.

2 MR. KANOTZ: Okay.

3 BOARD MEMBER KAUFMAN: This may be a really
4 obvious answer when you start looking at the issue, but I
5 think we're all just a little bit leery. The answer may be
6 we can adopt regulations and do whatever we want to do.

7 MR. KANOTZ: But the other thing that I thought
8 Mr. Finney's question was going to was what is this
9 authority in light of all the technologies or --

10 CHAIRPERSON PEREZ: Or changing law.

11 BOARD MEMBER FINNEY: Yes, changing law. Yes,
12 that's exactly the thing there. It's not just the changing
13 technology, it's the changing nature of the certification
14 process itself and where we go about making decisions about
15 certification.

16 CHAIRPERSON PEREZ: Let me just state in very
17 simple terms, you know, the assumptions I came to when I was
18 named to this Board, and I don't think I was alone in this.
19 Quite frankly based on the discussion at the time that this
20 initiative was before the public, much of the discussion was
21 about moving to DRE. So I came to this Board with an
22 assumption that we were going to have a very short timeframe
23 to figure out, and the biggest question we would ever deal
24 with was the allocation formula. And we took an extensive
25 amount of time to figure out an allocation formula that we

1 thought was equitable, and quite frankly it was pretty
2 warmly received by most counties.

3 But that was our drive, we thought that was the
4 big decision for us, and then the question would be, okay,
5 how quickly can folks move to the DRE system that they want
6 to have. And so even in the discussion of DREs, that formed
7 the allocation formula because we came up with caps on what
8 we would reimburse on DREs.

9 So the assumption for me and I don't think I was
10 alone in this and I think many in the public were also in a
11 similar place, let's move from paper ballots to DREs. Then
12 the bar changed or moved when folks started expressing
13 concerns about voter verifiable paper trails. So there was
14 a discussion for a period of time about AVVPAT. And so now
15 where we've come to a place where the various systems aren't
16 the various systems we thought we were going to be dealing
17 with are not certified and counties in group A move forward
18 with similar sets of assumptions.

19 And so I don't think any of those things were
20 anticipated by the voters and I think for us to expect that
21 they were anticipated by the voters gives -- I think it
22 assumes a lot that the voters would have the time to have
23 looked into the details of all those various possibilities,
24 so that's a very different thing than was written, and I
25 think it just -- it concerns me to make sure that we're

1 acting appropriately given the structure of Prop 41 and in
2 how we move forward.

3 Mr. Finney, help me here.

4 BOARD MEMBER FINNEY: I think you very cogently
5 stated everything that we've done right from the day you
6 were appointed, Mr. Chairman, and it now leads to the point
7 of how far does the net go. And I can see very reasonably
8 why we would consider moving forward with this new policy,
9 but I want to make sure all the T's are crossed and all the
10 I's are dotted, and at some point the money runs out and
11 it's after that point that things could potentially become
12 contentious.

13 BOARD MEMBER KAUFMAN: I think you've stated it,
14 Mr. Chair.

15 CHAIRPERSON PEREZ: Thank you.

16 BOARD MEMBER KAUFMAN: This is the constitutional
17 debate, the Supreme Court debate, is it a living document or
18 is it frozen in time.

19 CHAIRPERSON PEREZ: Okay.

20 BOARD MEMBER FINNEY: And you have the question,
21 Mr. Counsel.

22 CHAIRPERSON PEREZ: And so if you would work on
23 that and then perhaps if you could check in with me between
24 now and the next meeting just because I think I can help you
25 make sure you're asking all the subquestions that I think

1 the three of us think we're asking here.

2 MR. KANOTZ: I will do that, Mr. Chair.

3 CHAIRPERSON PEREZ: Okay. And with that, does
4 everybody feel comfortable moving on to Item 6D?

5 BOARD MEMBER FINNEY: I'm fine with it, sir.

6 CHAIRPERSON PEREZ: Very good.

7 Item 6D, Jana, Voting Modernization Finance
8 Committee meeting discussion.

9 MS. LEAN: I wanted to make you aware that the
10 notice has been put out on our website and everyone was
11 informed who is part of our interested party list, but I
12 wanted to make you aware that the Voting Modernization
13 Finance Committee will be held on October 19th at 10:00 a.m.
14 It's been three years since we have been approved to have
15 bonds sold for this bond act. So that's what this next
16 meeting will be on the 19th, on Wednesday.

17 BOARD MEMBER FINNEY: Who is on that?

18 MS. LEAN: It's the Treasurer, the Controller, and
19 the Department of Finance.

20 BOARD MEMBER FINNEY: Right, okay.

21 MS. LEAN: I just wanted to make you aware of it.

22 BOARD MEMBER FINNEY: What's the agenda item?

23 MS. LEAN: The agenda item is just authorization
24 to sell the bonds.

25 BOARD MEMBER FINNEY: How much?

1 MS. LEAN: Well, actually we have still
2 \$137,337,000 worth of bonds to sell.

3 BOARD MEMBER FINNEY: They put that total amount
4 on the agenda?

5 MS. LEAN: That's correct.

6 BOARD MEMBER FINNEY: Okay. I used to sit on all
7 these financing authority, so it's pretty, all right, bring
8 it up and unless there is some question it gets whizzed
9 right through. It's pretty simple stuff.

10 CHAIRPERSON PEREZ: Very good. The next item,
11 Item 7, just other business. Is there any other business to
12 come before us, Jana?

13 MS. LEAN: I wanted to just inform you that the
14 next meeting will be on November 16th at 10:30 a.m. We do
15 have one Project Documentation Plan in for that meeting so
16 far. Los Angeles County has submitted their Phase 2 Plan
17 for the Ink-A-Vote system. There are still some questions
18 out, but I'm sure we will have those resolved by the next
19 meeting.

20 CHAIRPERSON PEREZ: Great.

21 MS. LEAN: I also wanted to point out that the
22 December 5th meeting has been scheduled. It was to be
23 determined. We have found a location for the meeting to be
24 held in Los Angeles on December 5th at 10:00 a.m.

25 CHAIRPERSON PEREZ: Is that 10:00 a.m. or 10:30

1 a.m.?

2 MS. LEAN: I think we said 10:30. The next Voting
3 Modernization Board meeting will be here in Sacramento, the
4 November one, but the December meeting will be in Los
5 Angeles.

6 CHAIRPERSON PEREZ: Right. And that's December
7 5th, 10:30 a.m. at the Ronald Reagan State Office Building
8 on Spring Street?

9 MS. LEAN: That's correct, sir.

10 BOARD MEMBER FINNEY: Okay. When was the other
11 one, the one in November?

12 MS. LEAN: November 16th, Wednesday the 16th.

13 CHAIRPERSON PEREZ: At the Secretary of State
14 Building.

15 MS. LEAN: At the next meeting, can you please
16 bring your calendars, we're going to have to schedule the
17 next year's calendar of meetings.

18 BOARD MEMBER FINNEY: What time is the meeting on
19 Wednesday, 1:00 p.m.?

20 CHAIRPERSON PEREZ: 10:30.

21 MS. LEAN: 10:30.

22 BOARD MEMBER FINNEY: The 16th of November?

23 MS. LEAN: That's correct.

24 CHAIRPERSON PEREZ: That's correct, Mr. Finney. I
25 want to correct myself. The meeting is called for 10:30

1 a.m. for Mr. Kaufman and myself, 10:00 a.m. for you.

2 (Laughter.)

3 CHAIRPERSON PEREZ: Okay. If there is no other
4 items to come before us, is there a motion to adjourn?

5 BOARD MEMBER FINNEY: I will move it.

6 BOARD MEMBER KAUFMAN: Second.

7 CHAIRPERSON PEREZ: Okay. All in favor aye.

8 (Ayes.)

9 CHAIRPERSON PEREZ: Any opposed? None. No
10 abstentions.

11 We stand adjourned. Thank you all very much.

12 (Thereupon the meeting of the Voting
13 Modernization Board was concluded at
14 11:38 a.m. on October 17, 2005.)

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1 CERTIFICATE OF SHORTHAND REPORTER

2 I, MICHAEL J. MAC IVER, a Shorthand Reporter, do
3 hereby certify that I am a disinterested person herein; that
4 I reported the foregoing Voting Modernization Board
5 proceedings in shorthand writing; that I thereafter caused
6 my shorthand writing to be transcribed into typewriting.

7 I further certify that I am not of counsel or
8 attorney for any of the parties to said Voting Modernization
9 Board proceedings, or in any way interested in the outcome
10 of said Voting Modernization Board proceedings.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 1st day of November 2005.

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18 Michael J. Mac Iver
19 Shorthand Reporter
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