

1

2

3

VOTING MODERNIZATION BOARD

4

MODERNIZING VOTING EQUIPMENT IN CALIFORNIA

5

6

7

BOARD MEETING

8

WEDNESDAY, AUGUST 15, 2007

9

12:10 P.M. - 12:49 P.M.

10

11

12

13

14

15

16

17

18

19

20 REPORTED BY ROSA I. GUZMAN, CSR NO. 12024

21

22

23

24

25

1 VOTING MODERNIZATION BOARD, BOARD MEETING,  
2 TAKEN ON BEHALF OF THE SECRETARY OF STATE'S  
3 OFFICE IN THE BOARDROOM AT 354 SOUTH SPRING  
4 STREET, LOS ANGELES, CALIFORNIA 90013,  
5 COMMENCING AT 12:10 P.M. AND ENDING AT  
6 12:49 P.M, ON WEDNESDAY, AUGUST 15, 2007,  
7 BEFORE ROSA I. GUZMAN, CSR NO. 12024.

8 \* \* \*

9 BOARD MEMBERS PRESENT

10 JOHN A. PEREZ, CHAIR

11 STEPHEN KAUFMAN, VICE CHAIR

12 MICHAEL BUSTAMANTE

13

14 ALSO PRESENT:

15 JANA M. LEAN

16 RYAN MACIAS

17 KATHERINE MONTGOMERY

18 BILL O'NEILL

19 SUSAN GERMAN

20 MICHAEL KANOTZ  
(Appearing Telephonically)

21

22

23

24

25

1	I N D E X	
2		PAGE
3	I. CALL TO ORDER	4
4	II. ROLL CALL AND DECLARATION OF QUORUM	4
5	III. PUBLIC COMMENT	4
6	IV. ADOPTION OF MAY 16, 2007, ACTIONS &	
7	MEETING MINUTES	4
8	V. PROJECT DOCUMENTATION PLAN REVIEW AND	
9	FUNDING AWARD APPROVAL: RECEIVE STAFF	
10	REPORT FOR APPROVAL OF FUNDING AWARDS	4
11	(A) NEVADA COUNTY	5
12	VI. VOTING MODERNIZATION BOARD STAFFING: RECEIVE	
13	STAFF REPORT ON THE FOLLOWING ISSUE:	28
14	(A) APPOINTMENT OF NEW EXECUTIVE OFFICER	28
15	VII. ADJOURNMENT	30
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 LOS ANGELES, CALIFORNIA; WEDNESDAY, AUGUST 15, 2007

2 12:10 P.M.

3

4 MR. PEREZ: I'd like to call to order the

5 August 15, 2007, Voting Modernization Board.

6 MR. KAUFMAN: Stephen Kaufman, Vice Chair.

7 MR. BUSTAMANTE: Michael Bustamante.

8 MS. MONTGOMERY: Tal Finney and Carl Guardino

9 are not here.

10 MR. PEREZ: Very good. We have a quorum.

11 The next item before us is "Public

12 Comments."

13 I don't see any for public comment. So

14 we'll move adoption of the May 16, 2007, actions and

15 meeting minutes.

16 MR. KAUFMAN: I will move adoption of the action

17 items and minute meetings.

18 MR. BUSTAMANTE: I'll second.

19 MR. PEREZ: Mr. Kaufman moves. Mr. Bustamante

20 seconds. Everyone in favor ayes?

21 MR. KAUFMAN: Aye.

22 MR. BUSTAMANTE: Aye.

23 MR. PEREZ: Project Documentation Plan Review

24 and Funding Reward Approval.

25 And Jana, if you would talk to us about

1 that.

2 MS. LEAN: Okay. So Nevada County is here today  
3 to submit a Project Documentation Plan. They  
4 submitted a plan to use their entire Modernization  
5 Board allocation of \$866,431.28. They are purchasing  
6 the Hart InterCivic System. They are purchasing 72  
7 of the eScan Optical Scan units and 74 of the eSlate  
8 Electric Voting Appliances. The Nevada County  
9 anticipates receiving its new voting equipment  
10 between late August of this year and mid-September of  
11 this year.

12 The County plans to begin using this  
13 equipment at the February 5th, 2008, Presidential  
14 Primary Election, and they expect their completion  
15 date of this project to be upon certification of the  
16 February 5th, 2008, Presidential Primary Election.

17 The eSlate units purchased by Nevada County  
18 include a Voter Verifiable Paper Audit Trail  
19 component. Nevada County's Project Documentation  
20 Plan meets requirements for completeness, and eScans  
21 and eSlates with the corresponding components were  
22 certified for use in California.

23 Nevada County began comprehensively  
24 researching the replacement of their voting system in  
25 June of 2004. Nevada County made several attempts to

1 upgrade their voting system to become HAVA compliant  
2 through the Request for Proposal, RFP, Process. The  
3 County issued RFP's in October of 2004, October of  
4 2005, and October of 2006.

5 They finally entered into agreement on  
6 June 12, 2007, with Hart InterCivic for their new  
7 voting system. Nevada County will be implementing a  
8 blended optical scan and touchscreen voting system.  
9 The County believes that the deployment of one eScan  
10 Optical Scan unit and one eSlate touchscreen unit in  
11 all the voting places will bring the County into full  
12 compliance with the Help America Vote Act. The  
13 eSlate units will provide access to those voters with  
14 disabilities and will also satisfy the second-chance  
15 voting requirements by not allowing over-votes and  
16 identifying under-votes to each voter.

17 Nevada County plans to use the paper-based  
18 optical scan unit as its primary voting system, thus  
19 allowing the majority of their voters to vote on a  
20 paper ballot. The County believes that this approach  
21 will assist in avoiding some of the controversy  
22 surrounding the current touchscreech technology while  
23 still adhering to state and federal accessibility  
24 requirements.

25 Nevada County is currently developing an

1 extensive voter outreach program to introduce the new  
2 voting system to its voters.

3 I wanted to bring to your attention that  
4 the InFusion and Fusion voting software listed in  
5 Nevada County's contract with Hart InterCivic has not  
6 gained certification in California and is, therefore,  
7 not eligible for reimbursement under Proposition 41.  
8 Furthermore, at this time the Secretary of State's  
9 Office has not received any technical specifications  
10 nor other relevant information on the TAG and SCORE  
11 software components listed in Nevada County's  
12 contract with Hart. This software has not been  
13 provided to the Secretary of State's Office to gain  
14 certification to be used with this voting system, and  
15 therefore, it's also not eligible for reimbursement  
16 under Prop 41.

17 Nevada County will only receive VMB  
18 payments once it has submitted detailed invoices for  
19 its certified voting equipment. Please note that the  
20 staff-proposed funding award is based upon allowable  
21 reimbursement under Proposition 41 only for voting  
22 equipment hardware and software. The professional  
23 services, optional extended warranty line items, and  
24 the identified non-certified software listed in the  
25 Nevada County contract with Hart InterCivic would not

1 be covered as reimbursable claims under

2 Proposition 41.

3 It is our recommendation that the Nevada  
4 County's Project Documentation Plan be approved and  
5 that a funding award letter be issued in the amount  
6 of \$866,431.28.

7 We do have representatives here from Nevada  
8 County, if you have any questions of them, and we  
9 also have Ryan Macias from the Office of Voting Systems  
10 Technologies to explain the actions that were taken  
11 on August 3rd by Secretary of State Bowen and related  
12 to this voting system decertification and withdrawal  
13 approval and recertification.

14 MR. PEREZ: Why don't we do this if it meets  
15 with everyone's approval. Ryan, if you would, walk  
16 us through that first so we all have consistent  
17 understanding of where we stand with respect to the  
18 Secretary of State's actions and specifically as they  
19 relate to the Hart InterCivic products that we are  
20 talking about today.

21 And then if we could have the  
22 representatives of that County come up, make any  
23 statements they want. I have a couple of questions  
24 for them. I'm sure my colleagues do as well.

25 MR. MACIAS: All right. The Secretary on

1 August 3rd decertified and recertified Hart  
2 InterCivic's System 6.2.1. The eScan, the only  
3 changes to that are the auditing conditions and the  
4 new security procedures that have been implemented  
5 prior to use on February 5th, 2008.

6 The eSlate DRE System was also decertified  
7 and recertified for use. It can be used full-fledged  
8 as well as before. It also has new security and  
9 auditing conditions added to it, as the eScan has, to  
10 be implemented prior to the February 5th, 2008,  
11 election.

12 At this time other than those auditing and  
13 security procedures that have to be implemented,  
14 there has been no other changes to Hart InterCivic  
15 System 6.2.1. Now, the system 6.1 was decertified  
16 completely.

17 MR. BUSTAMANTE: Which system is this?

18 MR. MACIAS: This one. The way the contract is  
19 written, it's only going to be used with the  
20 certified system.

21 MR. BUSTAMANTE: So the hardware is the  
22 certified system and the software decertified; is  
23 that right?

24 MR. MACIAS: No. There are two different  
25 systems. There was 6.1 that was only being used by

1 (inaudible) County at the time, and that was  
2 decertified completely. Hart did not bring further  
3 the review, and they removed certification  
4 themselves.

5 MR. PEREZ: Let me ask you this because I've got  
6 a similar concern to Mr. Bustamante.

7 So both the eSlate and the eScan were  
8 decertified and recertified, the ones that we are  
9 talking about today, with respect to that accounting?

10 MR. MACIAS: Right.

11 MR. PEREZ: But the recertification was  
12 conditional on a change in auditing and security? Or  
13 did that auditing and security requirement -- was it  
14 met immediately on the date of decertification and  
15 recertification?

16 MR. MACIAS: It is -- it will --

17 MR. PEREZ: While you are looking for that, let  
18 me ask you another question. This is why it's better  
19 for Ryan to go first.

20 MS. LEAN: I can answer one question.

21 MR. BUSTAMANTE: I just have one, out of  
22 curiosity. Were you involved in any of this stuff,  
23 or are you just here to read from this text?

24 MR. MACIAS: No, I was involved in reviewing the  
25 Secretary's decision before it went out.

1 MR. BUSTAMANTE: What do you for the Secretary?

2 MR. MACIAS: I work for the Office of Voting  
3 Technologies Assessment, which pretty much we do all  
4 the certification for the State of California. And  
5 yeah, that's our main --

6 MR. BUSTAMANTE: I didn't have that.

7 MR. PEREZ: Let me tag on one other question.

8 Go ahead. Ask the question.

9 MR. KAUFMAN: Actually, let me tag on a  
10 question. Maybe what we are getting to is why was it  
11 necessary to decertify the system before recertifying  
12 it again on the same day, and was there anything that  
13 happened in the interim that led to the  
14 recertification?

15 Isn't that basically the heart of what we  
16 are getting at?

17 MR. PEREZ: But much too simply put.

18 MR. KAUFMAN: Whoever can answer that question.

19 MS. LEAN: I think a certification itself is  
20 certification. You can't add conditions to it. The  
21 only way you can add conditions is to withdraw that  
22 certification, recertify it with conditions. So they  
23 would have to withdraw the certification in order to  
24 add new security conditions to it.

25 MR. PEREZ: So then that gets me to my question

1 which is, so is it certified, or is it conditionally  
2 certified?

3 MS. LEAN: That's the question we asked the  
4 attorneys, and according to Michael Kanotz and  
5 Pam Giarrizzo, who is our chief counsel, it is currently  
6 certified. It's a currently certified system, and  
7 these conditions have to be met, these certifications  
8 have to be met, before the February 5th, 2008,  
9 Election. But it's not decertified.

10 MR. PEREZ: Right. But here's my problem. And  
11 maybe you can try our cell phone to get ahold of  
12 Mr. Kanotz so we can get him on the phone because,  
13 really, for my own sense of comfort, before I vote on  
14 this, I want to be clear on the distinction between  
15 certification that exists on these systems today and  
16 conditional certification.

17 The problem I have is when we looked at --  
18 I think it was the Diebold TSx.

19 MS. LEAN: It hadn't been certified to be used  
20 in the primary software.

21 MR. PEREZ: There was a system -- I thought it  
22 was Diebold TSx -- that was conditionally certified  
23 in San Diego, and then it was decertified. So it had  
24 a conditional certification, and then it was  
25 decertified right before a major municipal election.

1 And quite frankly, the inability to use the DRE, in  
2 my opinion, was determinative of the outcome of the  
3 election because the whole question in that election  
4 became a question of voter intent and how it was  
5 recorded based on the voting system that was used  
6 versus the DRE that previously had conditionally been  
7 certified.

8       So there are serious implications with  
9 these switches, and I just want to be sure that we're  
10 not voting to fund a program, spend out 100 percent  
11 of the money that has been reserved for Nevada  
12 County, have something fall short in terms of the  
13 condition, have Nevada County out all of their  
14 Prop 41 money and left holding the bag to find a  
15 system that works for voters and comply as with both  
16 state and federal law.

17       MS. LEAN: Michael can address that because that  
18 was a question that was addressed before this meeting  
19 happening. Once these decertification and  
20 recertification orders came out -- and this was on  
21 the agenda -- he was asked to review the  
22 certification orders and determine whether or not we  
23 should move forward and how we should approach you.

24       The response was it is currently certified;  
25 we can move forward to you. And he felt -- and so

1 did our chief counsel -- comfortable with -- as it's  
2 written now, it's still certified. I understand  
3 where you are going.

4 MR. PEREZ: Let me ask two other questions.

5 MR. BUSTAMANTE: It's all about voter  
6 confidence. When you talk about -- or at least the  
7 Secretary made a comment about lack of voting  
8 confidence. These types of actions and then redo  
9 actions and re-redo actions are exactly what is  
10 exacerbating this, quote, "lack of voter confidence."

11 MR. PEREZ: So let me ask you a couple of other  
12 questions. So Fusion and InFusion -- maybe it was in  
13 the previous packet which I don't have today, but  
14 explain to me what Fusion and InFusion do. And I'm  
15 trying to figure out where we're at in the  
16 certification process for Fusion and InFusion.

17 MR. KAUFMAN: In other words, are we approving a  
18 system that is certified that basically can't operate  
19 because we've got software that isn't certified and,  
20 therefore, makes the whole thing moot?

21 MR. PEREZ: If I want to buy a car and you tell  
22 me the engine is great but the transmission doesn't  
23 work, I'm not driving off the lot with it.

24 MR. MACIAS: As I understand, the InFusion and  
25 Fusion is a utility that they use. It's not required

1 for the DRE or optimal scan to work. But we do have  
2 Nevada County here that can answer more questions.

3 MR. PEREZ: The gentleman from Nevada County,  
4 feel free to jump in, if you want. We just want to  
5 clear up some of these issues that are really before  
6 the Secretary before we -- because they impact you,  
7 but they're not caused by you.

8 MR. O'NEILL: I appreciate that. Members of the  
9 Board, my name is Bill O'Neill with Shamrock  
10 Associates. I am a consultant that was hired by the  
11 County to help them select and implement a system.  
12 And then with me is Susan German. She's the  
13 Assistant Registrar of that County.

14 The questions that you are asking are the  
15 exact, same questions that Nevada County attorneys  
16 and Hart attorneys are going to be talking about. As  
17 we speak, they are on a conference call, trying to  
18 determine the best course of action. They're  
19 concerned about the same things that you guys are  
20 raising.

21 So as far as Fusion and InFusion, they are  
22 a utility program that handles the import of election  
23 data from the system. The County doesn't need them  
24 to move forward with the election. They can enter it  
25 by hand. It just automates the process rather than

1 make a process whereby somebody sits down and enters  
2 by hand the information. That information is stored  
3 in the store system and can be imported into the  
4 system.

5 MR. KAUFMAN: That applies to both the optical  
6 scan and the DRE system?

7 MR. O'NEILL: Yes. That imports it -- and Ryan,  
8 correct me if I say anything incorrectly -- but it  
9 imports it into the Tally program which handles the  
10 jurisdictions and the reporting, et cetera, as well  
11 as the ballot layout and design.

12 MR. PEREZ: But is this tally system TAG or  
13 SCORE? The tally system?

14 MR. O'NEILL: No. TAG is --

15 MS. LEAN: The tally system is called "Tally."  
16 So it is part of the election management system.

17 MR. PEREZ: What is TAG and SCORE then.

18 MS. LEAN: TAG and SCORE are two other utilities  
19 that have not been brought forward to the Secretary  
20 of State's Office. We did get a minimal amount of  
21 specifications of what they are, but it was not  
22 enough for us to make a determination.

23 MR. PEREZ: What function do they serve?

24 MS. LEAN: You can jump in on this one better.

25 MR. O'NEILL: TAG is asset-tracking system. So

1 you enter the serial numbers and the polling place,  
2 et cetera, and you check the equipment out, and then  
3 you check it back in. It doesn't have anything to do  
4 with --

5 MR. PEREZ: And SCORE?

6 MR. O'NEILL: I can't remember exactly which. I  
7 keep getting TAG and SCORE confused.

8 MR. BUSTAMANTE: These are all security issues;  
9 right? I mean, it sounds like TAG is where things  
10 are located, who is voting where. The other one that  
11 you talked about was, you know, uploading -- I mean,  
12 inputting, downloading of the actual ballot  
13 proposition names and all of that.

14 I mean, are all of these things consistent  
15 with the Secretary's new approach to security? I  
16 mean, this is all of her new ideas about the security  
17 measures?

18 MS. LEAN: I can't --

19 MR. PEREZ: Let me -- look, I understand, but  
20 here's my problem. As I sat at the Secretary of  
21 State's Office a couple weeks ago for a public  
22 hearing Top to Bottom Review and as the principal  
23 investigator was discussing some of the issues that  
24 came up -- some of which required mitigation that he  
25 felt were simple, some of which required more

1 detailed mitigation -- one of the issues was a  
2 question of sleep-over equipment. The question of  
3 security on equipment. The question of seals.

4       So if TAG is tracking where equipment is  
5 yet it hasn't been certified, I don't know about  
6 anybody else, but it doesn't give me the confidence  
7 that we're actually addressing some of the issues  
8 that even the principal investigators raised.

9       So while I don't want to put Nevada County  
10 in a difficult position of financing this system, I  
11 also don't want to finance a system only to have you  
12 come back and not have a system that works.

13       And maybe if you can speak to the tone of  
14 where we're coming from, and the conversation is  
15 going to continue from there.

16       MS. GERMAN: Thank you, Chairman Perez and  
17 Members. I actually have just been appointed as the  
18 assistant; so I haven't gotten to that; and this bill  
19 is to keep on this project right now. So although I  
20 will be involved in the future --

21       MR. KAUFMAN: Let me ask this. It sounds to me,  
22 though, that what we're talking about are systems  
23 that could be add on and could be used to make life  
24 easier, but they're not systems that are a necessary  
25 part of that system operating. And as I read this,

1 we're not being asked to fund those particular  
2 software systems. So these are ways to potentially  
3 improve the system, but they are not necessary  
4 functions of the system. I think that's the  
5 distinction. And perhaps you can confirm that and  
6 address that.

7 MR. O'NEILL: That's exactly right. The TAG  
8 system which tracks where the equipment is -- there's  
9 a lot of these systems out there and available that  
10 the County has used. There is one called Tiger Eye  
11 and one called Asset Shadow. It's a bar code reading  
12 system that tracks where the system is and --

13 MR. PEREZ: But why did the County then choose  
14 this system as opposed to one of the systems -- I  
15 mean, look, I understand that we have a narrow area  
16 of what we can find, but I view systems as being  
17 integrated with all of the moving parts -- some of  
18 which we fund, some of which we don't, but all of  
19 which have an impact on the integrity of the election  
20 process and all of which have an impact in voter  
21 confidence.

22 So if you were to sit here and tell me TAG  
23 isn't certified and, therefore, we are using system  
24 "X," which is certified, I'd be okay with that. But  
25 I'm a little concerned that I don't see, you know, a

1 full system. Especially because I have this  
2 underlying concern about whether the certification is  
3 a real certification or a conditional certification.

4 Are you with us, Mr. Kanotz? Michael?

5 MR. KANOTZ: I am, Mr. Chair. Forgive my  
6 tardiness.

7 MR. PEREZ: If you can hear me okay, one of our  
8 first and kind of fundamental questions we're talking  
9 about is the Hart InterCivic products, both their  
10 eSlate and eScan. And so it's our understanding that  
11 6.2.1 was decertified and recertified the same day.  
12 The purpose for that was to enumerate certain  
13 conditions prior to it being able to be used in the  
14 February election.

15 And so what I, for one -- and I think my  
16 colleagues are asking similar questions -- want to  
17 know is what's the distinction between that  
18 certification and a conditional certification like  
19 we've seen previously?

20 MR. KANOTZ: Mr. Chair, I believe that the  
21 recertification is very similar in most respects to  
22 the conditional certification that we've seen before.  
23 According to conditions, here are a little -- if what  
24 you are thinking about the conditional certification,  
25 the previous conditional certification of Sequoia,

1 that the system could not be used in a California

2 primary --

3 MR. PEREZ: I was thinking -- although I do

4 remember the Sequoia issue, I was thinking of the

5 Diebold TSx and that conditional certification which

6 then was revoked, and the system was decertified

7 prior to the San Diego Municipal Election two or

8 three years ago.

9 MR. KANOTZ: Okay. I'm not quite familiar with

10 that one. That was before my time at the Secretary

11 of State's Office. But I do believe, if I know the

12 facts of that situation right, that this is a similar

13 situation to those, and it is our view -- my view and

14 I think the view of the Secretary of State's

15 Office -- that this remains a certified voting

16 preferred for purposes of the Voter Modernization Act.

17 MR. KAUFMAN: Semantics between --

18 MR. PEREZ: I understand there could be --

19 MR. KAUFMAN: -- certified or certified subject

20 to conditions.

21 MR. PEREZ: Right. And here's the problem. The

22 TSx was conditionally certified and satisfied

23 Prop 41; and a much younger, more optimistic Board at

24 that time, you know, decided to approve the funding

25 for the TSx in San Diego; and I think we approved the

1 Sequoia system in a couple counties.

2 MS. LEAN: With conditions.

3 MR. PEREZ: Yes, but they spent their money --

4 if not all, a significant portion of their Prop 41

5 money -- and then they were left with a system that

6 wasn't certified for use in California. They

7 weren't --

8 MS. LEAN: That's actually incorrect. Until the

9 TSx was recertified, they did not draw any money.

10 MR. PEREZ: We approved it, but they didn't draw

11 it down?

12 MS. LEAN: That's correct. And then it was

13 decertified, and we couldn't pay them out any money

14 until it was recertified.

15 MR. PEREZ: But that was because of the timing

16 of the decertification, not because --

17 MS. LEAN: That's correct.

18 MR. PEREZ: What I'm trying to avoid is us

19 getting into a situation where, you know, the County

20 is left in a lurch.

21 Convince us, Michael.

22 MR. KANOTZ: Well, I think at this point it's

23 something that's in the Board's discretion as to

24 whether or not to approve the application. Certainly

25 I don't have the certification orders in front of me,

1 but I believe that they are milestones up to 60 days.  
2 Certainly in 60 days there will be a little more  
3 certainty, with regard to the certification, as to  
4 whether they will be able to use this. But as it  
5 stands, I believe it's a certified system.

6 MR. PEREZ: I'm also drawn to another section of  
7 the Bond Act. I don't have it before me, but it  
8 basically gives us the weasel clause to not fund  
9 something, even if it is consistent with purposes of  
10 the act, if we have other concerns.

11 And you can help me find that weasel clause  
12 in the Bond Act. I understand this is your first  
13 week. I don't want your first week to be a bad week.  
14 But quite frankly, I'd rather not give you money  
15 today, have you have a system that's more dependable  
16 that you can count on, and have you have money then.

17 What are the moving pieces with respect to  
18 your contract with Hart InterCivic? And is there a  
19 downside if we don't act or don't approve today? Can  
20 you still move forward in preparing? It's not that  
21 we are opposed to the concept; it's that we want to  
22 make sure we don't get in a situation where they  
23 don't meet the conditions and you don't have a  
24 certified system.

25 MS. LEAN: I have one suggestion.

1 MR. PEREZ: Sure.

2 MS. LEAN: There are some milestones they have  
3 to meet, and there's a 30-day or 45-day, and the  
4 vendor has to meet with the County in order to come  
5 up with all the security plans. What the Board could  
6 do is hold off on voting on this, and we can re-meet  
7 on this plan itself once those conditions have been  
8 approved by the Secretary of State's Office. Would  
9 that be more in your comfort zone?

10 MR. BUSTAMANTE: Mr. Chair, I was going to  
11 suggest we continue this for 30 days or 60 days or a  
12 period of time that makes more sense to you. And I  
13 apologize. I wish -- well, I'm not going to get into  
14 it.

15 MR. KAUFMAN: But I'd like to hear the answer to  
16 the question that the Chair proposed. I mean, is  
17 there any harm to the County if we do wait 30 days or  
18 60 days?

19 MR. O'NEILL: My answer would be "maybe." And  
20 that's -- the County has the exact, same concerns you  
21 do. We had lengthy discussions with Hart on, What  
22 does this mean? Is it conditional or nonconditional?  
23 What happens in February if it's decertified?

24 The County is very concerned. One of the  
25 options is they're meeting this afternoon, as I

1 mentioned, as we speak, for the attorneys to put  
2 language into the contract, whether that be an agenda  
3 or otherwise, to say if this system isn't  
4 decertified, then they can go forward with using it,  
5 and the vendor will get paid. If it's decertified,  
6 the vendor won't get paid.

7       Because their concern is the exact, same  
8 one you have, is that, what happens if there's a 60  
9 days? The 60-day is the farthest deadline, and they  
10 have 30 days to respond. That puts us 90 days from  
11 August 3rd before the County knows they have a system  
12 they can use in February.

13       They are very concerned in implementing the  
14 25-day. They will make everything they can to make  
15 that happen. But honestly, the registrar couldn't be  
16 here today because of these talks with the attorneys,  
17 because they have the exact, same concerns that you  
18 guys have. They are very concerned.

19       MR. BUSTAMANTE: But our action or lack of  
20 action today doesn't inhibit your time line?

21       MR. O'NEILL: It really doesn't. The only thing  
22 the County will do is if the money is in jeopardy,  
23 then we also have to back off.

24       MR. PEREZ: Here's the situation. Even if we  
25 act today and we approve, you don't get any money

1 from us until you've already spent it. What I want  
2 to avoid is the situation where you actually spend  
3 the money, your system is decertified, and then we  
4 can't reimburse you. So then you're really out the  
5 money.

6 MR. O'NEILL: The County has that exact, same  
7 concern. So if the Board takes the action to not  
8 fund today, I don't think the County is going to  
9 be -- I don't think that's going to bother them.

10 MR. BUSTAMANTE: Not postpone. Not actually not  
11 fund.

12 MR. PEREZ: I think we are all comfortable with  
13 continuing this matter in hope that this stuff gets  
14 clarified.

15 MR. O'NEILL: Because the County doesn't want to  
16 spend --

17 MR. PEREZ: It's hard to say, "We're not giving  
18 you money, but it's in your best interest," but I  
19 think that's really what we're doing.

20 MR. O'NEILL: They have a full understanding of  
21 that.

22 MR. BUSTAMANTE: From my part -- and I think we  
23 all agree -- we certainly don't want to send a  
24 negative message back to anyone about the question of  
25 funding because I think we all want to do it. We

1 just want to do it once and do it right.

2 MR. O'NEILL: They don't want to have a \$1.3  
3 million voting thing either.

4 MR. PEREZ: Sure.

5 With that, we are going to continue this  
6 item.

7 MR. KAUFMAN: Should we give the staff  
8 discretion as to the timing consideration whether 30  
9 days or 60 days?

10 MR. PEREZ: Look, if the County is able to  
11 resolve these issues more quickly than we're normally  
12 scheduled to meet, I think we're open to scheduling a  
13 meeting specifically to clear this up.

14 MS. LEAN: Okay. Our next scheduled meeting is  
15 in October. I think it's October 17. I think by  
16 that date this will all be pretty well understood.

17 MR. PEREZ: If you think it'll be cleared up  
18 more quickly than that and if there's value to the  
19 County of Nevada for us to act more quickly than  
20 that, I think, you know, we would make our best  
21 efforts to put together a meeting before October 17.

22 MS. LEAN: Okay. Staff will work with Nevada  
23 County.

24 MR. PEREZ: If it really doesn't have an impact  
25 but you just have a desire for us to meet quicker,

1 that's different. But if us meeting more quickly

2 does have an impact, we will make our best efforts to

3 meet more quickly to expedite this for the County.

4 MS. LEAN: So can we formally say we are going

5 to hold this over to the October 17th meeting?

6 MR. BUSTAMANTE: I move we move this to our next

7 meeting.

8 MR. PEREZ: Yes, to our next meeting. By saying

9 "next meeting," we create that flexibility to do it

10 sooner.

11 MR. KAUFMAN: Okay.

12 MR. PEREZ: There's been a motion and a second.

13 Mr. Bustamante moves. Mr. Kaufman seconds. To put

14 this item over to our next meeting, all in favor?

15 MR. BUSTAMANTE: Aye.

16 MR. KAUFMAN: Aye.

17 MR. PEREZ: All ayes, no nays.

18 The next item is "Appointment of New

19 Executive Officer."

20 MS. LEAN: That should be a little easier, I hope.

21 MR. PEREZ: We all want to vote for this one because in

22 the interim I'm the executive officer, too.

23 MR. BUSTAMANTE: So you have to abstain. I'm

24 voting no and -- no.

25 MS. LEAN: At the first meeting of the Voting

1 Modernization Board way back in June of 2002, the  
2 Board approved its operating structure, policies and  
3 procedures, and a Memorandum of Understanding with  
4 the Secretary of State's Office. We entered into it  
5 with the Board for administrative support services.  
6 The MOU provided for the Secretary of State to  
7 designate a staff member to serve as the executive  
8 officer to the Board to assist the VMB in carrying  
9 out its duties.

10 At the December 17, 2002, meeting of the  
11 VMB, the Board appointed former Chief of Elections  
12 John Mott-Smith as the executive officer to the  
13 Board. As the executive officer to the Board,  
14 Mr. Smith acted as -- Mr. Mott-Smith -- sorry --  
15 acted as the SOS policy advisor to the Board and was  
16 responsible for executing any and all documentation,  
17 on behalf of the Board, necessary to accomplish the  
18 loan application process, bond programs, and the  
19 process of payment requests from the counties.

20 On July 5, 2007, Mr. John Mott-Smith  
21 retired from the Secretary of State's Election  
22 Division, and his retirement necessitates the  
23 appointment of a new executive officer to fulfill all  
24 the duties.

25 This is staff recommendation that we

1 appoint the new Chief of Elections Cathy Mitchell as  
2 the new Voting Modernization Board Executive Officer.

3 Do you have any questions?

4 MR. KAUFMAN: I would move to accept the staff  
5 recommendation.

6 MR. BUSTAMANTE: Second.

7 MR. PEREZ: Mr. Kaufman moves. Mr. Bustamante  
8 seconds. All in favor?

9 MR. KAUFMAN: Aye.

10 MR. BUSTAMANTE: Aye.

11 MR. PEREZ: No one opposed. Very good. The  
12 action carries.

13 No other business before us, we are  
14 adjourned.

15 (End Time: 12:49 P.M.)

16 \* \* \*

17

18

19

20

21

22

23

24

25

1 STATE OF CALIFORNIA )  
 )  
2 COUNTY OF LOS ANGELES )

3

4

5 I, ROSA I. GUZMAN, CERTIFIED SHORTHAND

6 REPORTER NO. 12024, DECLARE:

7 THAT THE FOREGOING PROCEEDINGS WERE TAKEN

8 BEFORE ME AT THE TIME AND PLACE THEREIN SET FORTH AND

9 WERE TAKEN DOWN BY ME IN SHORTHAND AND THEREAFTER

10 TRANSCRIBED UNDER MY DIRECTION AND SUPERVISION, AND I

11 HEREBY DECLARE THAT THE FOREGOING TRANSCRIPT IS A

12 TRUE AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES SO

13 TAKEN.

14 I DECLARE UNDER PENALTY OF PERJURY UNDER

15 THE LAWS OF THE STATE OF CALIFORNIA THAT THE

16 FOREGOING IS TRUE AND CORRECT.

17 IN WITNESS WHEREOF, I HAVE HEREUNTO

18 SUBSCRIBED MY NAME THIS 6TH DAY OF SEPTEMBER, 2007.

19

20

21 \_\_\_\_\_  
ROSA I. GUZMAN, CSR NO. 12024

22

23

24

25