SECRETARY OF STATE
STATE OF CALIFORNIA
VOTING MODERNIZATION BOARD

BOARD MEETING

1500 11th STREET
1st FLOOR MP ROOM
SACRAMENTO, CALIFORNIA

WEDNESDAY, SEPTEMBER 25, 2019
10:31 A.M.

Reported by:

PETER PETTY, CER
APPEARANCES

VOTING MODERNIZATION BOARD:

Stephen Kaufman, Chair
June Awano Lagmay
Gabriel Sandoval

VOTING MODERNATION STAFF:

Jana Lean
Stacey Jarrett
Robbie Anderson
Rodney Rodriguez
Jordan Kaku
Joanna Southard

PRESENTER:

Tommy Gong, Clerk/Recorder, County of San Luis Obispo

PUBLIC COMMENTS:

Kim Alexander, California Voter Foundation
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CHAIR KAUFMAN: I am going to call the September 25th, 2019 meeting of the Voting Modernization Board to order. And ask -- who’s reading the roll?

MS. LEAN: That’d be Stacey.

MS. JARRETT: Me. Stephen Kaufman.


CHAIR KAUFMAN: Hi, Stacey.

MS. JARRETT: Hi.

CHAIR KAUFMAN: Yes, I am here.

MS. JARRETT: June Awano Lagmay.

MS. LAGMAY: I’m here, too.

MS. JARRETT: And Gabriel Sandoval.

MR. SANDOVAL: Present.

MS. JARRETT: And Teri Holoman, who is not here today.

CHAIR KAUFMAN: Is that annoying to everybody? There we go.

Okay, we’ve done our roll call.

Is there any public comment for items that are not on the agenda today? Okay. Seeing none, let us move to the adoption of the August 9, 2019 action items and meeting minutes. Do we have a motion to approve those items?
MR. SANDOVAL: So moved.

MS. LAGMAY: I second.

CHAIR KAUFMAN: Okay. All approved, say Aye.

MR. SANDOVAL: Aye.

MS. LAGMAY: Aye.

CHAIR KAUFMAN: Okay. We’ve adopted the motion -- the minutes from last meeting.

All right, let’s go to Item Number 5, which are the standing items. We have three standing items on our agenda as reports from staff. So why don’t we start with the staff report on the update on the Secretary of State’s Notice of Withdrawal of Certification and Conditional Approving -- Approval of Voting Systems. We -- since our last meeting we actually had a -- I guess a milestone date, right? Wasn’t August 29th supposed to be the start of the period, or such?

So who are we going to for this report?

MR. RODRIGUEZ: Hello, my name is Rodney Rodriguez. I’m with the California Secretary of State’s office.

CHAIR KAUFMAN: Hi, Rodney.

MR. RODRIGUEZ: Office of Voting System Technology Assessment.

Yes, it was August 27th through February 27th -- August 27, 2019 to February 27, 2020, which would be the grace period that was given. Currently, we have two systems that just completed testing. That would be the Dominion
Voting Systems Democracy Suite 5.10 and the Election Systems
and Software EVS 6.0.4.2 systems. Those two systems are
currently awaiting that decision from the secretary. A
public hearing was held for those two systems on
September 4th, 2019.

Currently, we are testing the County of Los Angeles’s
ing systems -- Voting Solutions for All People or VSAP
Tally Version 2.0. Volume and Accessibility testing is
scheduled to begin September 30th and conclude October 4th of
2019. Also, we have Hart InterCivic’s Verity 3.10 voting
system and functional testing for that is scheduled to begin
on October 7th of 2019.

Currently, regarding requests for conditional
approval for extension of use, we have 50 counties that have
or are in the process of implementing a CVS Certif -- CVSS
certified voting system. The remaining eight counties are in
various stages of procuring a CVSS certified voting system,
or have submitted a request for extension.

The key dates as discussed a few seconds ago,
August 27, 2019 to February 27, 2020 election scheduled six
months from August 27th shall not be affected by this action.
Therefore, federal, state, county, municipal, district or
school elections scheduled from August 27th, 2019 to
February 27th, 2020, may continue to use voting systems not
tested and certified to CVSS.
February 28th, 2020 voting system --

CHAIR KAUFMAN: I’m sorry to interrupt you. But again, is that only, then, the eight counties? Does that only affect those eight counties then?

MR. RODRIGUEZ: Yes, and at the moment, yes, until further action is taken by those eight counties which is expected.

CHAIR KAUFMAN: Okay.

MR. RODRIGUEZ: Yeah. So on February 28th, 2020 voting systems not tested and certified to CVSS may no longer be used except for those eight jurisdictions that have received a conditional approval of extension for use by the SOS.

CHAIR KAUFMAN: Okay. Fellow Commissioners, do you have any questions for Rodney?

MS. LAGMAY: I have no questions, but -- but have loved to have had this before the meeting started to have a chance to process it, if at all possible.

MR. RODRIGUEZ: Okay.

MS. LAGMAY: If it -- if it is all possible. Thank you.

MS. LEAN: So for the next meeting we’ll try to do that. So we want to give you the most up to date information.

MS. LAGMAY: I understand this, yeah.
MS. LEAN: So we were really anticipating the Secretary’s announcement on those other two voting systems. We were hoping that we could give you that information, but yes, we’ll take that back.

MS. LAGMAY: Or even a draft.

MS. LEAN: Okay.

MS. LAGMAY: Okay, thanks.

CHAIR KAUFMAN: Yeah, I mean, these are supposed to be informational reports, not action items, so I think they’re a little more free flowing. But --

MS. LEAN: We’ll take it back.

CHAIR KAUFMAN: If there’s something you can do to at least maybe provide an outline to satisfy those concerns,

MR. SANDOVAL: I -- I just think that questions can be more fully informed, if we have time to look at it irrespective of whether or not it’s a draft. And even though it’s not an action item, I do think it’s important for us to receive information like this because we want to make sure that we ask intelligent questions based on information we have been able to think about. But we appreciate your work on this.

MR. RODRIGUEZ: Thank you.

MR. SANDOVAL: Do you have any concerns about the timelines, any counties not coming in, some falling through
the cracks given the time limits you’ve identified?

MR. RODRIGUEZ: I do not, typically. NaKesha Robinson would be the one delivering this update.

MR. SANDOVAL: Okay.

MR. RODRIGUEZ: I was asked yesterday to step in in her unexpected absence.

MR. SANDOVAL: We appreciate that.

MR. RODRIGUEZ: I will -- I will definitely let her know if there’s any questions she could reach out to the group.

MR. SANDOVAL: Thank you so much.

MR. RODRIGUEZ: Yeah, no problem.

CHAIR KAUFMAN: So if there’s any question in NaKesha’s value, it’s taking two people here to replace her today for her different roles. So.

MR. RODRIGUEZ: True, this is true.

CHAIR KAUFMAN: Just for the record.

Okay. Do we have an update on LA County? Joanna.

MS. KAKU: Yes, we do have an update, Joanna Southard will provide the update on Los Angeles County.

CHAIR KAUFMAN: Hello, Joanna.

MS. SOUTHARD: Good morning.

CHAIR KAUFMAN: Good morning.

MS. LAGMAY: Good morning.

MS. SOUTHARD: I’m Joanna Southard, the assistant
chief of elections for the Secretary of State’s office. As Rodney reported, testing continues on LA’s Voting Solutions for All People, the VSAP, Tally Version 2.0 through October 4th. The first mobile voting unit arrived on September 16th. They have been traveling around the county demonstrating at community meetings. Is it buzzing again?

CHAIR KAUFMAN: Is it?

MS. SOUTHARD: Such as the Los Angeles Chamber of Commerce board of directors meeting, and to Supervisor Janice Hahn at the Hall of Administration, and at other events such as the LA County Fair to highlight the new voting experience and upcoming mock election. Their two-day mock election will be this Saturday and Sunday, September 28th and 29th. Members of the Secretary of State’s Office, as well as other county elections officials, will be observing multiple vote center locations. They’ll have 50 vote center sites around the county with the new equipment to familiarize the public as well as the poll workers with the new process and the voting experience, and they hope to engage over 100,000 people.

And they are still on track for a limited pilot to educate the public on the new solution model in order to test the hardware and the e-Poll book components in a live election on November 5th of this year, with approximately 15 jurisdictions participating.

CHAIR KAUFMAN: Thank you. I encourage everyone to
check it out at the mock election this weekend. I’m planning
to be there myself, at least at some --

MS. SOUTHARD: Jana and I are both --

CHAIR KAUFMAN: -- some location.

MS. SOUTHARD: -- attending.

CHAIR KAUFMAN: You will be there?

MS. SOUTHARD: Yeah.

CHIEF KAUFMAN: Okay. We’ll talk about that
afterwards.

Any questions of Joanna regarding the LA update?

MS. LAGMAY: No questions.

CHAIR KAUFMAN: Thank you.

MS. SOUTHARD: Thank you.

MR. SANDOVAL: Good luck.

CHAIR KAUFMAN: All right. Our next status report
will be on the status of counties with remaining VMB funds.

I don’t know if we have any change or update from our last
report on that.

MS. KAKU: So the only update that we do have is that
we anticipated about five counties to be here today, and four
of those five have pushed off until the next meeting. So
that -- so we only have San Luis Obispo here today. That’s
all the update.

CHAIR KAUFMAN: So we think we’ll see more folks in
November?
MS. KAKU: That’s what the counties are saying is they’ll come before the board in November.

MR. SANDOVAL: Okay. Do you have any sense of how many counties will be requesting time to have us approve certain fund requests in December or January, do you have a sense?

MS. KAKU: Not at the moment, no one has said --

MR. SANDOVAL: Okay.


MR. SANDOVAL: Do you have a sense, Jana Lean?

MS. LEAN: I would anticipate they would not, if it’s for the process of we’re 161 days --

MR. SANDOVAL: Correct.

MS. LEAN: -- away from the election -- or 60 days.

MR. SANDOVAL: Is it 160 days?

CHAIR KAUFMAN: Not that you’re counting.

MS. LEAN: No, I am counting every day. I have a little calendar at home, even. So I do know as it gets closer and closer and note that --

MR. SANDOVAL: Right.

MS. LEAN: -- December it said the end of candidate filing period. The certified list goes out the day after Christmas, so people will be quite busy during Thanksgiving and Christmas and then right into securing their voting
locations and training their poll workers. We might get one or two, but I wouldn’t anticipate a lot. But we’ll keep you informed.

MR. SANDOVAL: So the bulk of presentations or requests will come in November, you think?

MS. LEAN: I think there’ll be some in November and then I think you will probably have a little bit of a break until after the March election. But if I’m wrong, I will let you know.

MR. SANDOVAL: All right. Thank you.

CHAIR KAUFMAN: Okay. Did we cover C? I guess we covered report C.

All right, then we have Item Number 6, which is a staff report on the issue that came up a couple meetings ago regarding the interpretation of Elections Code Section 19254(c)(3).

As you will recall, there was a -- Robbie issued a memo addressing the application of those provisions to new requests that were coming in for funding. We raised a couple of issues that we had requested some further review on. I know Robbie has given some thought to those issues; he and I have had a couple of conversations on the issues.

So, Robbie, if you kind of like to bring us up to speed on that, it would be appreciated.

MR. ANDERSON: Yes, sir. Good morning, everybody.
MR. SANDOVAL: Good morning.

MS. LAGMAY: Good morning.

MR. ANDERSON: So the initial memorandum that was presented to the board on the May 31st, 2019 meeting that didn’t fully address the language provided in Section 19254(c)(3) relating to a county who had previously submitted a project documentation package for reimbursement for the purchase of an entire new voting system. The analysis in that memo focused on a county being reimbursed for a new voting system, however, the language in Section 19254(c)(3) refers to a county who has previously requested fund monies for the purchase of a new voting system.

The meaning of this language is unclear and while the language specifically refers to a county who has requested fund monies, the actual language appears to penalize a county who previously submitted a project documentation package or reimbursement for a new voting, but never actually received full reimbursement for a new voting system.

So on its face, the language appears to preclude a county who has requested fund money for a new voting system from doing so again. However, the application in this language and the lack of any legislative history on the issue does not provide the board with clear guidance. This is particular -- particularly true given the voting equipment
has gone through an evolution since the law was enacted, and many counties have had to replace earlier systems that were decertified with newly certified voting equipment.

So in the absence of clear direction, we feel it would be wise to stay with conservative approach toward counties who have previously requested fund monies for a new voting system, yet may not have been fully reimbursed for that system. Reading Section 19254(c)(3) in the strictest sense, the VMB should not consider awarding counties who previously requested fund monies for a new voting system reimbursement for an entirely new voting system.

And at this point, it appears that the situation theoretically could apply to only three counties; Alameda, Modoc, and San Diego. And after conversations with the representatives of each of those counties, it appears that Alameda and San Diego counties will only be seeking reimbursement for equipment to expand their overall voting system. And then also with Modoc, they may not be seeking reimbursement for any additional voting equipment. Therefore, this issue does not appear to be a continuing concern for any of the counties coming before the board.

MS. LAGMAY: So it sounds that we’ve reached resolution on this.

MR. ANDERSON: Yes, I believe so. I think it’s --
the safest route is to be conservative with this. And, you
know, two of the counties have indicated they’re going to
come forward for equipment that will expand their system,
which is something the board contemplated and approved back
in May.

MS. LAGMAY: Go ahead, keep going.

MR. SANDOVAL: Who makes the decision whether or not
particular counties expanding as opposed to acquiring a new
system, who’s responsible for making that determination?

MR. ANDERSON: Well that would be that staff, we
would receive the report from the counties and then determine
what it is that they purchased and what they’re seeking
reimbursement for.

MR. SANDOVAL: And at this time, do you believe you
have clear guidance as to what in fact is expansion as
opposed to what is new systems?

MR. ANDERSON: Yes, sir.

MR. SANDOVAL: Okay.

CHAIR KAUFMAN: Yeah, I mean, that -- that’s been the
tricky part of it, but I think, you know, the bottom line for
us is, you know, trying not to veer too far from the language
of the -- of the statute. We may not agree with it at this
point, and may wish that it said something different, but I
think, you know, not getting too far afield from what’s
presented by the statute will serve this board the, you know,
best under the circumstances.

And I’m comfortable with that evaluation but it also
seems like most of the counties have spent money on a lot of
things, so there are a lot of different pieces to their
puzzles that can be submitted and — and, you know, they may
not get reimbursement for this piece of their program but
they’ll get reimbursed for another piece of their program.
In — in a manner that’s — that we’ve deemed to be
permissible.

MR. ANDERSON: And then this just a reminder that for
the pieces that VMB can’t reimburse for, there’s other funds
available for those items.

CHAIR KAUFMAN: Some additions.

MS. LAGMAY: So I’m just wondering, you gave us your
original opinion in writing at our May 31st meeting, you’re
now supplementing it verbally. I’m wondering if you’re going
to commit it to writing as a supplement to your original
report so, you know, it will all hang together and not be
half written and half oral.

MR. ANDERSON: Yes.

CHAIR KAUFMAN: Yeah.

MS. LAGMAY: Okay.

CHAIR KAUFMAN: Yeah, I’ve requested and Robbie will
prepare a supplemental memo so that we have a record —

MS. LAGMAY: Got it.
MR. SANDOVAL: Thanks, Robbie.

CHAIR KAUFMAN: -- based on our original request.

We’ll have a record of the modification of the prior memo and we’ll have that at our next meeting to approve. In November?

MR. ANDERSON: Yes, sir.

MS. LAGMAY: And the other thing in -- I’m depending on my fellow commissioners to help me remember, you named three counties that this might possibly affect, which is why it’s important, I think, to have it all in writing in one piece in case there’s an unknown county that comes forward. But, didn’t we have an issue with LA County Dean coming forward and saying something about a differing action until clarity on that issue -- on your issue was made? Or am I -- am I thinking of something else?

MR. ANDERSON: I believe that was something different.

MS. LAGMAY: That was something different?

MR. ANDERSON: It was possibly related to research and development.

MS. ALEXANDER: Those are certification costs, I think.

MS. LAGMAY: Okay. So that’s separate and apart from --

MR. ANDERSON: From -- from --

MS. LAGMAY: -- our discussion on this issue. Okay.
MR. ANDERSON: Yes.

MS. LAGMAY: All right. Thank you.

MS. LEAN: Can I -- can I --

CHAIR KAUFMAN: Jana?

MS. LEAN: So to Gabriel, you had a question about who’s authority -- I don’t know if it was -- I’m seeing it correctly, but ultimately we’re the staff to the board and we’ll make recommendation, you are an independent board, but you have weighed heavily upon what the staff has recommended. So -- but ultimately we don’t make the decisions, that would be the board would make the decision. So I just want to --

MR. SANDOVAL: Right, I was not -- my question is more nuanced in that, it was whether or not you felt as staff that you had the necessary guidance to make the determination as to whether or not what has been requested by the county is an expansion as opposed to a new system and then, as a result, prohibited by your new interpretation.

So it -- that was what I was trying to see if you, as staff, had the necessary guidance to make those determinations so that -- and I guess in response that you provided was that yes, you do.

MS. LEAN: Yes. Thank you for the clarity.

MR. SANDOVAL: Yeah, you’re welcome.

CHAIR KAUFMAN: And I don’t want to jump the gun on this, but it seemed like some of those issues were wrapped up
in the evaluation of San Luis Obispo request today that we’re
going to be dealing with in a minute. But there are some
cost items that were not approved, because they are
essentially paying for something that was already --

MS. LAGMAY: Correct. Yeah.

CHAIR KAUFMAN: -- paid for.

MS. LEAN: There is a -- as we get to the staff
report, there is a portion of that, yes. But there is also a
portion of what we recommending not to authorize that has
never been authorized under the Act.

CHAIR KAUFMAN: Right.

MS. LEAN: So there’s certain portions.

CHAIR KAUFMAN: Right, there’s different pieces of
it.

MS. LEAN: Correct, sir.

MR. ANDERSON: Thank you.

CHAIR KAUFMAN: Any more comment on this issue?

MS. LAGMAY: No, no further questions.

CHAIR KAUFMAN: Okay. Robbie, we’ll look forward to
seeing the formalization of that last piece in writing.

MR. ANDERSON: Will do.

CHAIR KAUFMAN: Thank you.

Okay. Now we will go on to Item 7 and that is the
Project Documentation Plan review and funding award request
of San Luis Obispo County.
So, Jordan, do you want to provide us with the staff report on that?

MS. KAKU: Absolutely. So San Luis Obispo County was originally allocated $1,690,000 when this board was enacted. And in their Phase 1 funding, the board awarded San Luis Obispo $399,000, 180 -- or $399,188.25. And in this Phase 2 project for San Luis Obispo, the staff is recommending an award of $561,938.36. For this Phase 2, San Luis Obispo has purchased from Dominion Voting Systems as well as Election Systems and Software. In the mail ballot printers, Central Tabulation System and Mail Ballot Verifier, as well as some software through Dominion Voting Systems in the Systems Remote 5.2, ImageCast adjudication application that Democracy Suite Voting System and Mail Ballot Printing System.

And so there -- San Luis Obispo has gone through this entire phase in two parts. Part 1 where they focused more on the central in-office, which was -- which took part during February and March of 2018. And the county successfully implemented their Part 1 equipment for the June 5th, 2018 California Statewide Primary Election.

And then San Luis Obispo is in the process of, they have received their Part 2 equipment in early August and they have since completed training and testing in preparation for the March primary election.

So San Luis Obispo County anticipates their Phase 2
project completion date will be on the certification of the
March 2020 Presidential Primary Election. So San Luis Obispo
County Phase 2 Project Documentation Plan does meet the
requirements for completeness. The ImageCast Voting System
is certified for use in California. So Phase 1 for the
county began in 2006 when they purchased the AutoMARK ballot
marking devices as supplemental voting equipment to the --
the Election Systems and Software equipment they had
purchased to help reach the HAVA requirements.

The equipment was used to supplement their ES -- or
their EMS system that they purchased in 1999, the Global
Election Management System. At the March 27, 2006 meeting,
the board approved their Phase 1 funding award in the amount
of the $399,000, and the county submitted all of the
necessary invoices and received the approved amount resulting
in the remaining $1,291,000.19.

And after completing several successful elections
from 1999 through 2016 with the GEMS and the AutoMARK ballot
marking devices, they decided that this blended system would
no longer effectively serve the county to meet new
accessibility requirements and their business needs. So in
the fall of 2017, San Luis Obispo began to search for a new
system and they determined Dominion Voting Systems’ ImageCast
Voting System would serve the county best in this new phase
of modernizing their elections.
So this system has several capabilities that will serve the county’s needs using this one system to perform ballot layout and printing, tabulation, scanning and reporting. And additionally, in order to meet the needs of the business, the county’s increased vote-by-mail ballots, San Luis Obispo has contracted with ESS and purchased the -- a mail ballot verifier machine to help keep up with the increasing amount of vote-by-mail ballots.

So while the new system is not intended for immediate implementation of the Voter’s Choice Act, San Luis Obispo is preparing to model the VCA System should the County Board of Supervisors approve a switch to the Voter’s Choice Act model.

So for Phase 2, San Luis Obispo has implemented the new system in two parts, as I mentioned earlier. For Part 1, the county focused on the internal components of the system and executed the ballot layout, Central Tabulation System, Mobile Ballot Printing, and the Onsite ImageCast ICX ballot marking devices to duplicate ballots when required, all from this ImageCast voting system. So the first part included the installment of the ESS mail ballot verifier machines at the county headquarters, and the first part was successfully implemented in time for the 2018 primary.

Part 2 of Phase 2 involves implementing the ICX ballot marking devices in all polling places to allow voters with auditory, visual, and physical limitations to use a
customizable touch screen interphase to both understand their 
ballet and cast their vote privately and independently. The 
county has also undertaken the need to meet the requirements 
for the RV -- RAVBM ballots for voters that need a more 
accessible vote-by-mail option. So under the Dominion 
System’s voting contract, the county has purchased the 
ImageCast Remote 5.2 system in order to meet those 
requirements and provide an accessible option to voters.

The Part 2 equipment has been delivered and installed 
as of August 2019, and they’ve also conducted their training 
and the county is ready to prepare for the March 2020 
Presidential Primary Election.

So although the ICX units are accessible and 
certified by the California Secretary of State’s office and 
they are technically reimbursable under the provisions of the 
board, the county has been previously reimbursed for these 
ballet -- for ballot marking devices back in 2006. 
Therefore, it’s our interpretation that the county is not 
eligible for another reimbursement through the board for the 
same type of equipment. However, under the new voting 
systems replacement contract they may be in for reimbursed 
for the ICX devices under the same match requirements as the 
BMD.

So San Luis Obispo County will not only -- or will 
only receive the board payments once it has submitted all
detailed invoices for its certified voting equipment and additional voting technology components. Please note that the staff proposed funding award is based upon allowable reimbursement under Proposition 41. Election support, maintenance, project management, and warranties listed in the San Luis Obispo County contracts with Dominion Voting Systems and ESS would not be covered as a reimbursable claim under Prop 41. A chart of nonallowable expenses is attached detailing all ineligible expenses from San Luis Obispo’s Phase 2 voting modernization. Therefore, it is our recommendation that San Luis Obispo County’s Phase 2 Project Documentation Plan be approved and a funding award letter issued in $561,938.36.

CHAIR KAUFMAN: So, Jordan, I had a question just to clarify.

MS. KAKU: Sure.

CHAIR KAUFMAN: With respect to the chart on the back, the nonreimbursable, nonallowable expenses. Getting back to the issue we talked about earlier, tell me if I’m correct about this.

It seemed to me that most of the stuff on here are items that we have historically dealt with and are outside of the purview of the VMB but that the, I guess there looks like two expenditures maybe for second one listed the DVS ImageCast, X Ballot marking device units for 8,250 and the
ImageCast the X BMD accessible units for 317,500. Those are -- those two seem to fall into the category of the issue we just discussed which is previously reimbursed for this -- for a system.

Is that correct? That those are kind of -- those are the two expenses that fall out of the usual?

MS. KAKU: Yes. Those are both the ballot marking devices. Yeah.

CHAIR KAUFMAN: Okay. And it’s again an issue of replacing, I guess what used to be an optical scan system with a new ballot and marking system, and therefore, paying for another system that had already been reimbursed for or received funding for or in this case, applied for funding for.

MS. KAKU: Yes.

MS. ALEXANDER: Can I ask you a question?

CHAIR KAUFMAN: Let’s -- let’s wait on them.

Okay. I just wanted to be clear on what’s in and what’s out and why. Okay.

Fellow Commissioners, question of staff?

MR. SANDOVAL: Not at this time.

MS. LAGMAY: No.

CHAIR KAUFMAN: Okay. We want to let representative from San Luis Obispo County speak. I also want to take public comment, if there is some and if Kim your comments are
directed to staff, why don’t we --

MS. ALEXANDER: Sure.

CHAIR KAUFMAN: -- if you had some public comment, feel free to do it right now.

MS. ALEXANDER: Right now?

CHAIR KAUFMAN: Yeah.

MS. ALEXANDER: Yeah, just a point of clarification.

UNKNOWN SPEAKER: Can you go to the microphone.

MS. ALEXANDER: Oh, sure. Yeah.

UNKNOWN SPEAKER: Thank you.

MS. ALEXANDER: Hi, Kim Alexander with the California Voter Foundation.

Regarding this chart of the nonallowable expenses, it looks like, at least the mail ballot verifier maybe is on here because it’s not subject to certification, and I just wanted to seek clarification about that.

I think, it’s my understanding that Prop 41 funds can only be spent on equipment that is certified. So the county’s voting system may include components that aren’t subject to certification and therefore would not be subject to reimbursement from the state.

MS. LEAN: So the first item, I believe, what you’re looking at is ES&S Mail Ballot Verifier Hardware and Software maintenance.

MS. ALEXANDER: Oh, I’m sorry, yeah.
MS. LEAN: It’s the maintenance.

MS. ALEXANDER: Okay.

MS. LEAN: Yeah.

MS. ALEXANDER: But that would -- that, too, meaning the equipment itself on the front shows the -- shows the verifier is an item of hardware.

MS. LEAN: Yes.

MS. ALEXANDER: So is that something that’s eligible for reimbursement?

MS. LEAN: Yes.

MS. ALEXANDER: Even though it’s not certified?

MS. LEAN: Yes.

MS. ALEXANDER: Okay. Thanks for clarifying.

CHAIR KAUFMAN: Thank you, Kim.

Gentleman from San Luis Obispo, please come up to the podium and state your name. Thank you for completing the (indiscernible) we’ll take you as is.

MR. GONG: Good morning, Tommy Gong, County Clerk/Recorder for San Luis Obispo County.

CHAIR KAUFMAN: Good morning.

MR. GONG: Good morning. Thank you very much for having me here today. It’s not an all or nothing, right? So I’m guaranteed what’s being recommended first?

Okay. So I guess I just wanted to kind of clarify some of, I guess, you know, there’s obviously different ways
of looking at things. And, you know, we -- yeah, my predecessor actually, you know, it goes many years ago. But I was here at the time we did purchase the AutoMARK ballot marking devices in 2006, when we obtained those.

At the time, my predecessor had already gone on to optical system in 1999. So after 2000 when all of the, you know, concentration went towards counties of updating their voting systems, San Luis Obispo was already ahead of the game and therefore, only had to adhere to the ADA requirements at the polling place.

And at the time where the discussion was, was did we want to go with touch screens, which could have been blended with -- or not blended, but currently existed with the GEMS system or -- and it was actually Santa Barbara, you know, we work very closely with Santa Barbara County that suggested well why don’t we get the AutoMARKS and just have the AutoMARKS for the ADA component only, and that we’ll maintain our GEMS Optical Scan System. We liked that system so much better than ES&S’s base counting tabulation system that we decided to go forward on that.

And so, therefore, we had to work with ES&S to program a second set of ballots at the polling place, specifically for use with the AutoMARK. You know, we had to -- but yet we maintained the system that we had already purchased. And when we upgraded in twenty -- well, 2017 when
we obtained the Dominion System, we -- we kept to a blended system, we kept the AutoMARKS, we did not replace with the ICXs at the time.

And my belief at that time I was in office was that I wanted to have as least amount as impact on the voters at the polling place, and for my poll workers to implement something new. And in fact, that was what my plan was going to be going into twenty eight -- to -- into 2020 was to maintain using the AutoMARKS. We know what the cycle is going to be next year, it’s going to be record setting again. And so I wanted to keep it status quo at the polling place. And that was my initial plan, until such time that the Secretary of State Padilla decertified, you know, all -- basically all existing equipment except for a few systems.

So it was at that point, then, that I had to really decide was I going to ask for an extension or was I going to go ahead and bite the bullet and go with the new system, go with the new components for accessibility. And when all was said and done, and because of what was going on the legislature with conditional voter registration at the polling place, then it just made sense to go ahead and go forward with the ICXs. And so that’s where we are today, in terms of my application.

So I guess where I’m having a hard time with this is, I get the point of that the AutoMARK is deemed a ballot
marking device, and so therefore the ICXs designated a ballot
marking device that therefore is a new technol -- a
replacement technology, right. But at the same time, I
would, you know, venture to say that in the case of those
counties that obtained DREs, we -- that those were all
accessibility devices to comply with their requirements at
the polling place. So it was purpose driven in the sense of,
what was going to be offered to the voters. Basically, the
accessibility, the ability to be able to vote independently
and confidentially for voters with disabilities.

Whether it’s a DRE or a ballot marking device,
technol -- technology doesn’t matter, it’s offering the same
level of service to the voters at the polling place. And so
whereas because of, whereas we selected a ballot marking
device, you know, designated such as though -- and others
obtained the DREs, then we’re not able to get reimbursement
for our ICXs, whereas everyone else is getting replace --
reimbursed for their ICXs because they got DREs, because they
got Direct Reporting Electronic touchscreen devices. Whereas
we went, you know, with the ballot marking device technology
to comply with our -- for all of us to comply with our
accessibility requirement.

So I just wanted to go on record with that. I
understand that there are other avenues for us to go and all
of that, but in a way, I don’t know if there are going to be
other counties that are in the same boat. But it does seem
to be penalizing the counties that, you know, that we decided
to go with this particular model, we weren’t really thinking
about a technology, per se, as much as avoiding the
touchscreens, and all of the things that happened with
touchscreens after the fact. So we were actually in pretty
good company in that way with being able to continue on for
all of these years.

So anyways I just wanted to be sure that we -- that I
state my case on this and, you know, for consideration or
whatever.

CHAIR KAUFMAN: Mr. Gong, we appreciate your comments
and appreciate you being here today. And, you know, it
sounds to me like you’ve done everything right and for all
the right reasons throughout the years.

MR. GONG: I would say two -- if you just. The
earlier conversation about voting systems, I don’t think
that’s exactly the situation of -- this situation here.
That’s replacing a voting system. And unless I’m like
totally wrong on this, but that’s replacing a system that’s
already been in a new tabulation system, we’re actually
submitting for a new tabulation system.

So our GEM system was our base tabulation system.

So, this is -- if -- I -- it’s a different replacement
technology, but not that we, you know, we adhere to our
initial application in 2006 for the ADA devices, not for
replacing a tabulation system. Hence, that’s why they’re
approving making a recommendation for the base tabulation
system. But we’re talking about essentially for the
accessible equipment that were provided to the voters.

CHAIR KAUFMAN: Well, again, let me -- that’s a
nuance that I may or may not have a full grasp of. But what
I wanted to say is, I mean, we appreciate, you know, that you
guys have tried to do everything you can to meet all the
requirements that have been thrown at you for the last 18
years, and been taken away from you.

You know, the unfortunate thing for us is, we’d all
love to be able to give you all your money, but there is
language in the statute that we have to adhere to. And at
the time that this measure was passed in 2001, I don’t think
anybody contemplated that we’d be sitting here 18 years
later, you know, confronting these issues. I mean, I think,
you know, it was contemplated, money would be awarded within
a few years and we’d be done with it, and now we’re going on
new generations and voting equipment and we have language
that’s there, that we have to live with, unless it somehow
gets changed at some point.

But I don’t -- I don’t think that we as a board, can
stray, you know, uncomfortably into territory where we’re,
you know, potentially running up against those restrictions.
So, that’s -- that’s what we’re left with. We would like nothing more than to be able to award you your full allocation. And I hope that you find as you move through this election cycle additional items that you can come before this board and seek additional funding for, you know, perhaps some others enhancements that you might decide to pursue.

And fortunately, there is other money that has been made available through the legislature that you should be able to capture these costs from. But I just want you to understand and appreciate, you know, that these are some of the issues that we as a board have to contend with.

MR. GONG: Yeah, I understand. And I -- and I do respect, you know, what -- you know, what you’re up against as well. You know, we’re still sitting on 43 percent of our -- of our awarded amount.

CHAIR KAUFMAN: Right.

MR. GONG: So certainly beyond 18 -- you know, you’re talking about 18 years of work -- certainly talking about 20 years, then, because in, you know, 2022, you know, we’re seriously looking at vote centers and again, this is where it gets us halfway there with the replacement equipment that we’re getting right now. And the other pieces would be for, you know, additional ballot on demand printers at our vote centers and the e-Poll books or all the communication that would have to occur at those locations.
So, yeah, I’ll be back for that then.

CHAIR KAUFMAN: Well and, you know, again, we’re not trying to prolong our service any more than it has to be. But you heard the conversation earlier about how, you know, I find it unlikely that we’ll even have all the counties come before us, you know, before the November 2018 election. So there’s, you know, going to be continuing lingering issues beyond. And money that will probably be reallocated back into the pot, that might indeed be able to capture those additional expenses as you move towards the vote center model.

Fellow Commissioners, do you have any questions or comments for Mr. Gong?

MS. LAGMAY: Mr. Gong, so you are aware of the additional monies available in the Governor’s budget, was it your intent to recoup some of that through there?

MR. GONG: Certainly is now.

MS. LAGMAY: Okay, okay, okay.

MR. GONG: Thank you.

MS. LAGMAY: And for the record, how much, then, are you foreseeing that you will have to eat or absorb in dollars because of this -- this action?

MR. GONG: In terms of, you know, looking at the chart here and what we submitted, you know, we certainly anticipate that in terms of the accessible voting devices
would be approved through the state funding, and then work will see what else is -- would be deemed as reimbursable by the state funding. But those will be -- those are obviously the largest costs.

MS. LAGMAY: So give me a dollar figure, please.

MR. GONG: Oh, 325,000 at least.

MS. LAGMAY: Okay, thank you.

MR. GONG: Yes.

MS. LAGMAY: Shortfall, at this point? Okay.

MR. GONG: Yes.

MS. LAGMAY: Gabriel.

MR. SANDOVAL: Can you flesh out the earlier argument that Stephen spoke about that -- you’re making an argument that initially you were enhancing an existing system and as result of that, your request for additional funding now is not to replace an old technology, you’re in fact for the first time asking for new technology because you were just enhancing that which you already -- for purposes to ensure there was access -- accessibility to individual’s disabilities --

MR. GONG: Yes.

MR. SANDOVAL: -- is that the argument that you’re making?

MR. GONG: That is the argument that I’m making. So the base system that we had in -- that we purchased in 1999
was already purchased outright by the county, that was the Optical Scan System. And then in 2000, you know, as the requirements for the ADA requirements at the polling place came for -- came forward, then we only purchased the AutoMARK devices for the polling place. So just to supplement. So that’s why we’re here today.

I mean, they made the recommendation to approve the -- the Central Tabulation System, we want to characterize it as such. But the -- but the components, the accessible components at the polling place are being recommended not to be reimbursed because a ballot marking device.

So I guess the way to look at it is, one way of looking at it is you have two different -- maybe had three different types of technology that was available for counties to use at the polling place for voters with disabilities. You had a touchscreen device, which are designated as DREs, you had a job dial device that one vendor had that would also be deemed a DRE, and then you had the AutoMARK, which was you put a ballot into the machine and you utilized the touchscreen but it marks the ballot. So that’s the technology that is being defined as replacing -- the ICX technology today is being considered the same type of technology as the AutoMARK technology.

So, again, talking about the counties that you had recently approved their purchases, Fresno, Madera, and
El Dorado, they had obtained a DRE devices for their accessibility requirement. We had obtained AutoMARKs. And so we all went into it for accessibility equipment, not necessarily the type of technology that we were seeking. But their applications are approved because that technology they’re getting is -- is not the same type of technology by definition.

MR. SANDOVAL: How does staff respond to that issue?

CHAIR KAUFMAN: Yeah, can we have some staff input on this?

MS. LEAN: Sure. That’s correct. So for — I can go back to Madera because I remember that one more recently. I know Fresno came, let me go back to Madera. So Madera when they came forward for, they only came forward as Tommy is for the second phase. So his first phase was just to replace -- not to replace, but to get accessible equipment, and his was the ballot marking devices. So when they came forward they were getting supplemental equipment to their existing equipment before, but they chose to go for a DRE equipment. They never purchased a DRE before, therefore, they’re not supplementing or replacing purchased -- purchasing funds for what they’ve -- sorry, equipment for what they’ve already been reimbursed for.

CHAIR KAUFMAN: Is the issue the -- I don’t know if I’m saying this correctly. Is it the system or is it the
equipment?

MS. LEAN: Equipment.

CHAIR KAUFMAN: Is that -- I don’t have that language from the statute --

UNKNOWN SPEAKER: I thought she said system.

CHAIR KAUFMAN: -- in front of us again but I thought --

MS. LEAN: If they’ve got --

CHAIR KAUFMAN: -- it said system.

MS. LEAN: -- if they have this piece of -- it already been purchased for this system and this piece of equipment, that we wouldn’t be reimbursing them for the same type of equipment.

CHAIR KAUFMAN: Well, we’re using, I mean, to me a system is different, I think is different from equipment.

MS. LEAN: So they got a system -- system, equipment we can call it both the same thing. Okay. Let’s just try to --

CHAIR KAUFMAN: Because just to me it’s said just --

MS. LEAN: -- meld them together.

CHAIR KAUFMAN: -- it’s like -- the system to me is like the system of voting in the polling place.

MS. LEAN: Right. So they never --

CHAIR KAUFMAN: As opposed to vote by -- the system for vote-by-mail voting.
MS. LEAN: Understood. Totally agree with you. So Tommy never got reimbursed for a -- an overall underlying system. He got reimbursed for an accessible part of the system. So he only had been reimbursed once for that. So he's coming back and he's asking for a whole a new system, but part of that overall system is what is in there is about marking devices. And so that's what we're saying shouldn't be reimbursed for.

And -- but the rest of it, all of the other costs the staff is recommending, we're saying yes, because he never was reimbursed for that type of system. But the other system he was because he was reimbursed for the Optical Scan Devices.

It's the same analogy for Madera, I believe you said, Fresno, and El Dorado. They never were reimbursed for a system before, that they were coming forward to a second time in their Phase 2. I think -- he's nodding his head, so he understands the thought pattern there.

MR. GONG: So let me reiterate if you -- if you don't mind. Let me reiterate the disparity here. We -- we each had our existing system which was supplemented with accessible equipment. You've approved the replacement accessible equipment for those three counties because they had DREs versus a ballot marking device.

In our case, because we got a ballot marking device for our accessible equipment, the recommendation is not to
reimburse for our accessible implement for this second round.

That’s where the disparity is.

MR. SANDOVAL: What’s the underlying rationale that you were provided?

MR. GONG: Because the AutoMARK is designated a ballot marking technology -- ballot marking device technology as well as the ICX touchscreen. The ICX machines are also designated a ballot marking device technology. So that’s where the -- that’s the premise, that’s the basis for not making the recommendation.

But that’s where I’m saying that’s where there’s a disparity because we all went into it for just what are we going to get for to meet our accessible -- accessibility requirements, we just happened to choose this particular type of equipment whereas the other counties chose other types of equipment. They’re getting reimbursed for their second generation, we’re -- we’re not.

CHAIR KAUFMAN: Do you want to speak to anything else on that, or has it already been said?

MS. LEAN: No, sir, I believe it’s already been said.

That is our staff --

MR. SANDOVAL: I would recommend that we have a briefing on this and may hold this off to have a better understanding of distinctions that are being made with regard to this particular issue.
MS. LEAN: Sir, I thought it was and I thought it was spelled out in the staff report, but if you would need any further clarification, we can hold off giving any money to the San Luis Obispo, but I believe we’re -- it’s up to our staff recommendation.

MR. SANDOVAL: You can’t bifurcate it?

MS. LEAN: We did bifurcate if. So we did bifurcate what we thought was allowable versus wasn’t, and that’s what’s in the chart.

MR. SANDOVAL: Okay. Is it a possibility to look at what you’re not deeming as reimbursable at this moment? And to consider it at some future date once we get a briefing on it?

MS. LAGMAY: In other words, you don’t want to deny him his -- the money that’s been recommended.

CHAIR KAUFMAN: Sorry, yeah, you --

MR. SANDOVAL: I don’t want to deny the money that is being recommended, that’s not my course of action that I think -- I think, but I think we would like, I would like better understanding because, you know, I’m not hearing clarity with regard to why he is or should say the county is not being reimbursed with regard to this -- this other portion.

MS. LEAN: Well, it is laid out here is what we’re considering as non -- non-reimbursable. But if it is your
independent board if the board chooses to reimburse him for
that at a later date --

MR. SANDOVAL: That’s -- that’s --

MS. LEAN: -- we can use that.

MR. SANDOVAL: -- that’s not my ask. My ask is for
more understanding of the differences that have been
identified by San Luis Obispo and in more laser focused way
identify the distinctions that are being made with regard to
this county in comparison to the other counties that he’s
identifying.

MS. LEAN: So you’re asking for an additional staff
report? I just want to make sure I understand --

MR. SANDOVAL: Yes, I am.

MS. LEAN: -- to clarify.

MR. SANDOVAL: Yes.

CHAIR KAUFMAN: Are you asking for a staff report on
a more global issue? In other words, the -- the issue in
front of us today is whether we’re going to award -- what is
it -- five --

MS. LEAN: 561.

CHAIR KAUFMAN: -- $561,938.36. So I think that’s --
that’s what’s in front of us --

MS. LEAN: Right.

CHAIR KAUFMAN: -- and I think we need to vote on
that.
So my question is, are you asking for a staff report?
And this gets back to your comment earlier, I think, do you feel as a staff, you have enough direction on what is --

MR. SANDOVAL: Correct.

CHAIR KAUFMAN: -- an expansion and what is new equipment, and this seems to dovetail with -- with what you asked earlier --

MR. SANDOVAL: Correct.

CHAIR KAUFMAN: -- so are you asking them to provide more of a report on that issue, and regardless of this.

MR. SANDOVAL: So I’m asking several things. One is -- or I’m throwing it out there for consideration. One is I don’t think we should stop the recommended funding for this county.

MS. LEAN: The 561.

MR. SANDOVAL: Correct.

MS. LEAN: Okay.

MR. SANDOVAL: That’s number one. Number two is I know there is some monies that have been disallowed based on interpretation of staff. For that, I’m wondering if there’s any opportunity to reconsider that portion that’s being disallowed at some future date after we get further briefing on the issue. That’s Part 2.

And then Part 3, the issue of questions that I had, asked whether or not the staff has enough clarity. Because
my concern is that technology is evolving, I don’t see a
clear definition, you know, obviously unfortunately we don’t
have the legislative history that we would have like with
regard to this particular statute, and as a board we don’t
want to do anything that’s going to be inconsistent with what
the law provides, particularly the plain reading of the
statute.

So those are three components to it, and I’m more
than happy to under -- hear what you have to say and what my
colleague June has to say.

CHAIR KAUFMAN: Well, I think we should vote on the
staff recommendation that’s in front of us because we don’t
want to hold up this funding and I know Mr. Gong doesn’t want
to --

MR. SANDOVAL: Right.

CHAIR KAUFMAN: -- hang up this --

MR. SANDOVAL: I don’t want to do that.

CHAIR KAUFMAN: -- hold up this funding.

If it is your desire, and perhaps your desire and I’m
not saying it’s not my desire, but if it’s our desire to
further delve into the issue of what constitutes expansion
versus replacement, or what have you, we can certainly delve
into the issue further with the assistance of staff.

MR. SANDOVAL: Sure.

CHAIR KAUFMAN: And I don’t know that there would be
any prejudice, I mean, if we make some other determination
down the road, there is nothing preventing San Luis Obispo
County or any other county from coming back and resubmitting
on items that were previously denied.

MS. LEAN: I would agree, and that’s why it’s laid
out so distinctly in the staff report. So if for some reason
at a later date you chose to go a different route, there’s a
different interpretation, it’s laid out what was approved and
what was not. So that’s --

CHAIR KAUFMAN: I mean, we have, you know,
historically we’ve never really had to deal with this issue
before.

MR. SANDOVAL: It’s a nuanced issue that is
incredibly interesting that needs to be addressed.

CHAIR KAUFMAN: It -- it is. But, you know, we have
for years, you know, for example, denied requests for, you
know, warranties and training and all that other stuff that
isn’t covered.

MR. SANDOVAL: Sure.

CHAIR KAUFMAN: If at some point, you know, the
legislature or the people want to pass some, you know,
 amendment that would allow us to reimburse that, I’d presume
everybody could come back and ask for it again.

MR. SANDOVAL: Sure, sure.

CHAIR KAUFMAN: So this is an entirely new category,
there’s no reason why we couldn’t continue to deal with the
issue in some manner, and should circumstances change, you
know, allow for further application.

MR. GONG: If you don’t mind me saying, too, I think
you’re going to encounter the same -- the same exact
situation with future applications from other counties.
Because we were, you know, there were a number of us that
went the AutoMARK route, just the same. So. Just it’s not,
it’s not just unique to San Luis Obispo. So.

CHAIR KAUFMAN: Yeah. It -- and it, you know, it may
or may not result in issues with other counties just given
what they’re submitting on and how much they’ve used of their
funding or what have you.

MR. SANDOVAL: Agreed.

CHAIR KAUFMAN: We certainly identified three
counties where we thought it might be an issue, and now it
appears to not be an issue. But, you know, now we have an
issue right in front of us. So. I’m not adverse to
continuing to look at the issue, but I don’t want to hold up
this and I don’t think Mr. Gong --

MR. SANDOVAL: I think we’re all on the same page
too. Yeah.

CHAIR KAUFMAN: Yeah. All right.

MR. GONG: That’s what I said all or nothing, right?

Just kidding.
CHAIR KAUFMAN: So I think we should take a motion to -- or, you know, take a motion and on what’s in front of us and then if you want to take a vote on, you know, some other further research or review that we should be doing on that issue, then I’m certainly open to that as well.

MS. LAGMAY: Okay, I move that we adopt the staff’s report to award funding in the amount of 561,938.36.

CHAIR KAUFMAN: Do we have a second?

MR. SANDOVAL: Second.

CHAIR KAUFMAN: Okay. Let’s just do a roll call, though, for the fun of it.

MS. JARRETT: Gabriel Sandoval.

MR. SANDOVAL: Yes.

MS. JARRETT: June Awano Lagmay.

MS. LAGMAY: Aye.

MS. JARRETT: And Stephen Kaufman.

CHAIR KAUFMAN: Yes. Okay. Mr. Gong, congratulations.

MR. GONG: Thank you.

CHAIR KAUFMAN: We will execute a funding award letter that you will receive shortly for that amount.

Now, let’s talk about the other piece. Because if we’re going to ask for something, we should be clear on what we’re asking for.

You know, I share some discomfort that you have,
again this is kind of new territory, I think, for everybody. You know, I’m wondering if it might make sense to give some direction, it’s going to fall on Robbie probably, Jana and Robbie. Do we -- it -- I don’t know if we need to do this formally or informally, but it -- would it help to just get more clarification on what items that were previously awarded to other counties that were mentioned here today or distinguishable from this or -- in what form do you want it kind of have an analysis made or conducted? What are you looking for? How do -- is it information about what actions we’ve taken previously and how that fits in this, or --

MS. LAGMAY: Let me ask this, let me ask -- I’m sorry for interrupting you, Stephen.

CHAIR KAUFMAN: That’s okay, June.

MS. LAGMAY: It’s my age.

CHAIR KAUFMAN: Go ahead, go ahead. I’ve talked enough.

MS. LAGMAY: Is this conundrum unique to San Luis Obispo? Have other counties been turned down on -- on the issue that he brought up where he can’t get reimbursed for ICXs but others were? Is this --

CHAIR KAUFMAN: No.

MS. LAGMAY: -- unique -- no.

CHAIR KAUFMAN: This is the first.

MS. LAGMAY: Okay.
MR. SANDOVAL: So it is unique.

CHAIR KAUFMAN: Yes.

MS. LAGMAY: It is unique.

Let me ask this, and I don’t mean to put staff on the
spot, but just -- just give me a yes or no that you can or

can’t.

Is there something that San Luis Obispo coulda,

shoulda, woulda done that would’ve avoided him being in this

situation that he is in today?

MS. LEAN: No, Ma’am.

MS. LAGMAY: No. There wasn’t an alternative choice

or -- or sequence of events that would have allowed him to

recoup these money.

MS. LEAN: Not with the plan I move forward to the

board, no.

MS. LAGMAY: Okay. That concludes my question.

MS. ALEXANDER: Is there public comment on that?

CHAIR KAUFMAN: Yes. Sure.

MS. ALEXANDER: Hi. Kim Alexander with the

California Voter Foundation.

I just want to say, I don’t fully agree with the

staff analysis. My view of voting system is the entire

system and it includes the polling place solution, the vote-

by-mail solution, the accessible solution, the election

management system. So to me that’s the whole system and a
piece of that system has been decertified, which the AutoMARK
has been, then it seems to me that the purpose of Prop. 41 is
to help counties acquire certified voting sys -- voting
equipment. And so I would argue in favor of allowing
counties that are in that situation of having a component
that they need to meet, federal, Help America Vote Act
requirements, and state accessibility requirements be able to
use remaining Prop. 41 money for that purpose.

And I also hope that this board and staff as you
consider this analysis, which I think is a really important
one and I’m glad you’re getting out of it, consider how the
Voter’s Choice Act impacts this analysis because I think the
reason why Fresno, El Dorado, and Madera were all allowed to
use their funds for their systems is because they have a
whole new voting system because they’ve moved to the Voter’s
Choice Act.

Those ICX machines in those counties will be used for
all voters in the polling place, not only as accessible
units. So technically, yes, they’re ballot marking devices,
but their purposes within the scheme of each county’s voting
system is now expanded to not just be for the accessibility
solution, but also their polling place when this case votes
center solution.

So I think as we consider this very important
question, we need -- we need to do it also through the lens
of how the Voter’s Choice Act is going to impact these
counties’ critical position.

Thanks.

CHAIR KAUFMAN: Thank you. And to be clear, I mean,
I think all of us, again, sitting up here, Ms. Alexander, you
mentioned the purpose of Prop -- of Prop 41. You know, I
think we all agree that the purpose of Prop 41 is, you know,
for us to enable the counties to update their voting
equipment according to what’s being certified and permitted
by the Secretary of State.

Unfortunately, we have language in the statute that
we also have to adhere to. As much as we’d like to say
otherwise, I mean, it seems to be going against the purpose
that -- that we’d all like to fulfill here. So, you know,
that’s a very real issue that we have to grapple with.

I’m going to make a suggestion that rather than, I
don’t know, formalize this in any way that perhaps myself, as
a representative of the board, can work with staff to try and
see if we can come up with a further articulation of the kind
of distinction that lie here with enhancements and systems,
and that perhaps we can do this in the next -- come back in
November.

So eight weeks or so -- six weeks or so, and you
know, try and provide some further report and clarification
to the board on that issue.
MR. SANDOVAL: That would be appreciated. I think it’s important to lay out what the law provides, what guidance, if any, that’s written has been adhered to to ensure that the law is not violated in any way with regard to requests similarly made by the counties.

And what has been the practice, right, in terms of awarding some monies, because even though it may be a practice that has been followed, it may not necessarily be rooted in any particular law or policy. So. And particularly now because there’s such an ever-evolving technological --

MS. LAGMAY: Runaway train.

MR. SANDOVAL: Runaway train as June said. Or just it’s ever-evolving and so, you know, even though the legislative history is also not necessarily helpful in defining what the scope of it is, but there’s other laws that have been passed that could give us a signal. Although it may not necessarily allow us to act in a certain way, it could give us a sense as to what -- what is the ultimate purpose of these monies are.

CHAIR KAUFMAN: Well --

MR. SANDOVAL: So --

CHAIR KAUFMAN: Yeah, and by the same token on that fund, given that there has been other legislation passed that is -- is specially broader in terms of what it covers, then
Prop 41, that also might provide us with an indication that the legislature wanted to provide another pot of money to cover things that we don’t cover.

MR. SANDOVAL: Those are all issues that I think would be great for the staff to explain.

CHAIR KAUFMAN: Because again, as we’ve discussed, I mean, Mr. Gong you’re -- using you as an example, sorry we keep using you as example -- as Exhibit A, but, I mean, there is another pot of money for you to go after to pay for this. So. Anyway.

MR. SANDOVAL: Yeah.

MS. LAGMAY: May I also suggest as part of your discussion, Mr. Chair, with staff that consideration of legislative remedy or legislative supplemental bill for clarification could be discussed as well. That -- that not -- need be precluded from the discussion.

CHAIR KAUFMAN: Okay. So noted. We can --

MS. LAGMAY: Thank you.

MR. SANDOVAL: Thank you.

CHAIR KAUFMAN: -- certainly talk about that as well. It’s not so easy amending an initiative, but.

MS. LEAN: As we saw before.

CHAIR KAUFMAN: As we saw before, but we can certainly throw that in the hopper.

So I’ll call it a working group, if you will, between
myself and staff to address that issue. And I don’t mean to
exclude anybody, but since we have --

MS. LAGMAY: We’ll discuss it at the next meeting.

CHAIR KAUFMAN: Yeah, since we -- since we have
certain open meeting laws and limits on how many people can
be involved, that’s probably the easiest course of action.

MR. SANDOVAL: Well, I appreciate that, and I
appreciate staff looking into this, but I think concerns
raised by the county and by our colleague from the
foundation, and you, and June, and I, I think it’ll be a best
discussion and good working group, I would imagine. So we
look forward to your presentation.

CHAIR KAUFMAN: Okay. I think we’ve covered that
topic.

MS. LAGMAY: Yes.

CHAIR KAUFMAN: Now is there any other business that
we should be aware of? We have another meeting in
November 13th. Anything else -- I don’t think we have
anything scheduled --

MR. SANDOVAL: Is November 13th confirmed?

CHAIR KAUFMAN: Yeah.

MR. SANDOVAL: That’s good to know.

CHAIR KAUFMAN: We don’t have anything currently on
calendar after that. Given what you said, I don’t know that
we need to do that at this point, unless you think we should
block out something just in case.

MS. LEAN: How about at the November meeting we bring some dates back and we'll see if we can schedule some more into the early next year?

CHAIR KAUFMAN: Okay. Perfect.

MR. SANDOVAL: Is it possible to move the November 13th date?

MS. LEAN: Well, we just put out a memo to the counties letting --

MR. SANDOVAL: Okay.

MS. LEAN: -- them know if they wanted to come forward for that date, that they need to get a plan in. So that just went out. So if we change the date, we need to let them know right away.

MR. SANDOVAL: Okay. I'll let you know.

MS. LEAN: Please let me know as soon as possible so that we can make sure that the staff is available, because it is a really crazy time for -- we are the elections division, so it's a really crazy time for us, too, so if we can figure that out.

CHAIR KAUFMAN: Yeah. And I think if we go earlier now, we're going to be cutting people off. So.

MS. LAGMAY: Yeah, we can't go earlier.

CHAIR KAUFMAN: And then we'll, you know. And the candidate filing period and all the other filing periods
start in November and run to December so it’s going to be hairy.

MR. SANDOVAL: So maybe Teri Holoman can join us.
CHAIR KAUFMAN: One can only hope.
MR. SANDOVAL: Thank you.
CHAIR KAUFMAN: All right. Do we have a motion to adjourn?

MS. LAGMAY: Go ahead.
CHAIR KAUFMAN: I heard somebody move. So.
MR. SANDOVAL: Move.
CHAIR KAUFMAN: Gabe moved. June seconded it.
MS. LAGMAY: June sure seconds.
CHAIR KAUFMAN: All in favor of adjourning say aye.
MS. LAGMAY: Aye.
CHAIR KAUFMAN: We are adjourned.
MR. SANDOVAL: Thank you.
MS. LAGMAY: Thank you.

(Thereupon, the hearing was adjourned at 11:40 a.m.)

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