

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

INDEX

	Page
1. Call to Order	4
2. Public Comment for Items not on Agenda	4
3. Adoption of August 9, 2019 Action Items and Meeting Minutes	4
4. Item No. 5, Standing Items	
Staff Report by Rodney Rodriguez	5
LA County Update by Joanna Southard	9
Status Report of Counties with Remaining VMB Funds by Jordan Kaku	11
5. Item No. 6, Interpretation of Elections Code Section 19254(c)(3) by Robbie Anderson	13
6. Item 7, Project Documentation Plan, Review and Funding Award Request of San Luis Obispo County By Jordan Kaku	21
7. Public Comments by Kim Alexander	27
8. Presentation by Tommy Gong	28
Reporter's Certificate	58
Transcriber's Certificate	59

1 P R O C E E D I N G S

2 SEPTEMBER 25, 2019

10:31 A.M.

3 CHAIR KAUFMAN: I am going to call the
4 September 25th, 2019 meeting of the Voting Modernization Board
5 to order. And ask -- who's reading the roll?

6 MS. LEAN: That'd be Stacey.

7 MS. JARRETT: Me. Stephen Kaufman.

8 CHAIR KAUFMAN: Stacey. Okay, Stacey.

9 MS. JARRETT: Sorry. Stephen Kaufman.

10 CHAIR KAUFMAN: Hi, Stacey.

11 MS. JARRETT: Hi.

12 CHAIR KAUFMAN: Yes, I am here.

13 MS. JARRETT: June Awano Lagmay.

14 MS. LAGMAY: I'm here, too.

15 MS. JARRETT: And Gabriel Sandoval.

16 MR. SANDOVAL: Present.

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

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

21 Okay, we've done our roll call.

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

1 MR. SANDOVAL: So moved.

2 MS. LAGMAY: I second.

3 CHAIR KAUFMAN: Okay. All approved, say Aye.

4 MR. SANDOVAL: Aye.

5 MS. LAGMAY: Aye.

6 CHAIR KAUFMAN: Okay. We've adopted the motion --
7 the minutes from last meeting.

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

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

19 CHAIR KAUFMAN: Hi, Rodney.

20 MR. RODRIGUEZ: Office of Voting System Technology
21 Assessment.

22 Yes, it was August 27th through February 27th --
23 August 27, 2019 to February 27, 2020, which would be the
24 grace period that was given. Currently, we have two systems
25 that just completed testing. That would be the Dominion

1 Voting Systems Democracy Suite 5.10 and the Election Systems
2 and Software EVS 6.0.4.2 systems. Those two systems are
3 currently awaiting that decision from the secretary. A
4 public hearing was held for those two systems on
5 September 4th, 2019.

6 Currently, we are testing the County of Los Angeles's
7 voting systems -- Voting Solutions for All People or VSAP
8 Tally Version 2.0. Volume and Accessibility testing is
9 scheduled to begin September 30th and conclude October 4th of
10 2019. Also, we have Hart InterCivic's Verity 3.10 voting
11 system and functional testing for that is scheduled to begin
12 on October 7th of 2019.

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

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

1 February 28th, 2020 voting system --

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

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

8 CHAIR KAUFMAN: Okay.

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

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

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

19 MR. RODRIGUEZ: Okay.

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

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

25 MS. LAGMAY: I understand this, yeah.

1 MS. LEAN: So we were really anticipating the
2 Secretary's announcement on those other two voting systems.
3 We were hoping that we could give you that information, but
4 yes, we'll take that back.

5 MS. LAGMAY: Or even a draft.

6 MS. LEAN: Okay.

7 MS. LAGMAY: Okay, thanks.

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

11 MS. LEAN: We'll take it back.

12 CHAIR KAUFMAN: If there's something you can do to at
13 least maybe provide an outline to satisfy those concerns,
14 that would be great.

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

23 MR. RODRIGUEZ: Thank you.

24 MR. SANDOVAL: Do you have any concerns about the
25 timelines, any counties not coming in, some falling through

1 the cracks given the time limits you've identified?

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

4 MR. SANDOVAL: Okay.

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

7 MR. SANDOVAL: We appreciate that.

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

11 MR. SANDOVAL: Thank you so much.

12 MR. RODRIGUEZ: Yeah, no problem.

13 CHAIR KAUFMAN: So if there's any question in
14 NaKasha's value, it's taking two people here to replace her
15 today for her different roles. So.

16 MR. RODRIGUEZ: True, this is true.

17 CHAIR KAUFMAN: Just for the record.

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

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

21 CHAIR KAUFMAN: Hello, Joanna.

22 MS. SOUTHARD: Good morning.

23 CHAIR KAUFMAN: Good morning.

24 MS. LAGMAY: Good morning.

25 MS. SOUTHARD: I'm Joanna Southard, the assistant

1 chief of elections for the Secretary of State's office. As
2 Rodney reported, testing continues on LA's Voting Solutions
3 for All People, the VSAP, Tally Version 2.0 through
4 October 4th. The first mobile voting unit arrived on
5 September 16th. They have been traveling around the county
6 demonstrating at community meetings. Is it buzzing again?

7 CHAIR KAUFMAN: Is it?

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

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

25 CHAIR KAUFMAN: Thank you. I encourage everyone to

1 check it out at the mock election this weekend. I'm planning
2 to be there myself, at least at some --

3 MS. SOUTHARD: Jana and I are both --

4 CHAIR KAUFMAN: -- some location.

5 MS. SOUTHARD: -- attending.

6 CHAIR KAUFMAN: You will be there?

7 MS. SOUTHARD: Yeah.

8 CHIEC KAUFMAN: Okay. We'll talk about that
9 afterwards.

10 Any questions of Joanna regarding the LA update?

11 MS. LAGMAY: No questions.

12 CHAIR KAUFMAN: Thank you.

13 MS. SOUTHARD: Thank you.

14 MR. SANDOVAL: Good luck.

15 CHAIR KAUFMAN: All right. Our next status report
16 will be on the status of counties with remaining VMB funds.
17 I don't know if we have any change or update from our last
18 report on that.

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

24 CHAIR KAUFMAN: So we think we'll see more folks in
25 November?

1 MS. KAKU: That's what the counties are saying is
2 they'll come before the board in November.

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

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

8 MR. SANDOVAL: Okay.

9 MS. KAKU: -- anything about December, January, early
10 2020. So.

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

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

14 MR. SANDOVAL: Correct.

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

16 MR. SANDOVAL: Is it 160 days?

17 CHAIR KAUFMAN: Not that you're counting.

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

21 MR. SANDOVAL: Right.

22 MS. LEAN: -- December it said the end of candidate
23 filing period. The certified list goes out the day after
24 Christmas, so people will be quite busy during Thanksgiving
25 and Christmas and then right into securing their voting

1 locations and training their poll workers. We might get one
2 or two, but I wouldn't anticipate a lot. But we'll keep you
3 informed.

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

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

10 MR. SANDOVAL: All right. Thank you.

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

13 All right, then we have Item Number 6, which is a
14 staff report on the issue that came up a couple meetings ago
15 regarding the interpretation of Elections Code Section
16 19254(c) (3).

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

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

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

1 MR. SANDOVAL: Good morning.

2 MS. LAGMAY: Good morning.

3 MR. ANDERSON: So the initial memorandum that was
4 presented to the board on the May 31st, 2019 meeting that
5 didn't fully address the language provided in Section
6 19254(c)(3) relating to a county who had previously submitted
7 a project documentation package for reimbursement for the
8 purchase of an entire new voting system. The analysis in
9 that -- analysis in that memo focused on a county being
10 reimbursed for a new voting system, however, the language in
11 Section 19254(c)(3) refers to a county who has previously
12 requested fund monies for the purchase of a new voting
13 system.

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

20 So on its face, the language appears to preclude a
21 county who has requested fund money for a new voting system
22 from doing so again. However, the application in this
23 language and the lack of any legislative history on the issue
24 does not provide the board with clear guidance. This is
25 particular -- particularly true given the voting equipment

1 has gone through an evolution since the law was enacted, and
2 many counties have had to replace earlier systems that were
3 decertified with newly certified voting equipment.

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

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

23 MS. LAGMAY: So it sounds that we've reached
24 resolution on this.

25 MR. ANDERSON: Yes, I believe so. I think it's --

1 the safest route is to be conservative with this. And, you
2 know, two of the counties have indicated they're going to
3 come forward for equipment that will expand their system,
4 which is something the board contemplated and approved back
5 in May.

6 MS. LAGMAY: Go ahead, keep going.

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

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

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

17 MR. ANDERSON: Yes, sir.

18 MR. SANDOVAL: Okay.

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

1 best under the circumstances.

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

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

13 CHAIR KAUFMAN: Some additions.

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

20 MR. ANDERSON: Yes.

21 CHAIR KAUFMAN: Yeah.

22 MS. LAGMAY: Okay.

23 CHAIR KAUFMAN: Yeah, I've requested and Robbie will
24 prepare a supplemental memo so that we have a record --

25 MS. LAGMAY: Got it.

1 MR. SANDOVAL: Thanks, Robbie.

2 CHAIR KAUFMAN: -- based on our original request.

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

5 MR. ANDERSON: Yes, sir.

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

15 MR. ANDERSON: I believe that was something
16 different.

17 MS. LAGMAY: That was something different?

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

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

22 MS. LAGMAY: Okay. So that's separate and apart
23 from --

24 MR. ANDERSON: From -- from --

25 MS. LAGMAY: -- our discussion on this issue. Okay.

1 MR. ANDERSON: Yes.

2 MS. LAGMAY: All right. Thank you.

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

4 CHAIR KAUFMAN: Jana?

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

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

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

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

23 MR. SANDOVAL: Yeah, you're welcome.

24 CHAIR KAUFMAN: And I don't want to jump the gun on
25 this, but it seemed like some of those issues were wrapped up

1 in the evaluation of San Luis Obispo request today that we're
2 going to be dealing with in a minute. But there are some
3 cost items that were not approved, because they are
4 essentially paying for something that was already --

5 MS. LAGMAY: Correct. Yeah.

6 CHAIR KAUFMAN: -- paid for.

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

11 CHAIR KAUFMAN: Right.

12 MS. LEAN: So there's certain portions.

13 CHAIR KAUFMAN: Right, there's different pieces of
14 it.

15 MS. LEAN: Correct, sir.

16 MR. ANDERSON: Thank you.

17 CHAIR KAUFMAN: Any more comment on this issue?

18 MS. LAGMAY: No, no further questions.

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

21 MR. ANDERSON: Will do.

22 CHAIR KAUFMAN: Thank you.

23 Okay. Now we will go on to Item 7 and that is the
24 Project Documentation Plan review and funding award request
25 of San Luis Obispo County.

1 So, Jordan, do you want to provide us with the staff
2 report on that?

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

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

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

25 So San Luis Obispo County anticipates their Phase 2

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

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

17 And after completing several successful elections
18 from 1999 through 2016 with the GEMS and the AutoMARK ballot
19 marking devices, they decided that this blended system would
20 no longer effectively serve the county to meet new
21 accessibility requirements and their business needs. So in
22 the fall of 2017, San Luis Obispo began to search for a new
23 system and they determined Dominion Voting Systems' ImageCast
24 Voting System would serve the county best in this new phase
25 of modernizing their elections.

1 So this system has several capabilities that will
2 serve the county's needs using this one system to perform
3 ballot layout and printing, tabulation, scanning and
4 reporting. And additionally, in order to meet the needs of
5 the business, the county's increased vote-by-mail ballots,
6 San Luis Obispo has contracted with ESS and purchased the --
7 a mail ballot verifier machine to help keep up with the
8 increasing amount of vote-by-mail ballots.

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

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

23 Part 2 of Phase 2 involves implementing the ICX
24 ballot marking devices in all polling places to allow voters
25 with auditory, visual, and physical limitations to use a

1 customizable touch screen interphase to both understand their
2 ballot and cast their vote privately and independently. The
3 county has also undertaken the need to meet the requirements
4 for the RV -- RAVBM ballots for voters that need a more
5 accessible vote-by-mail option. So under the Dominion
6 System's voting contract, the county has purchased the
7 ImageCast Remote 5.2 system in order to meet those
8 requirements and provide an accessible option to voters.

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

13 So although the ICX units are accessible and
14 certified by the California Secretary of State's office and
15 they are technically reimbursable under the provisions of the
16 board, the county has been previously reimbursed for these
17 ballot -- for ballot marking devices back in 2006.

18 Therefore, it's our interpretation that the county is not
19 eligible for another reimbursement through the board for the
20 same type of equipment. However, under the new voting
21 systems replacement contract they may be in for reimbursed
22 for the ICX devices under the same match requirements as the
23 BMD.

24 So San Luis Obispo County will not only -- or will
25 only receive the board payments once it has submitted all

1 detailed invoices for its certified voting equipment and
2 additional voting technology components. Please note that
3 the staff proposed funding award is based upon allowable
4 reimbursement under Proposition 41. Election support,
5 maintenance, project management, and warranties listed in the
6 San Luis Obispo County contracts with Dominion Voting Systems
7 and ESS would not be covered as a reimbursable claim under
8 Prop 41. A chart of nonallowable expenses is attached
9 detailing all ineligible expenses from San Luis Obispo's
10 Phase 2 voting modernization. Therefore, it is our
11 recommendation that San Luis Obispo County's Phase 2 Project
12 Documentation Plan be approved and a funding award letter
13 issued in \$561,938.36.

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

16 MS. KAKU: Sure.

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

21 It seemed to me that most of the stuff on here are
22 items that we have historically dealt with and are outside of
23 the purview of the VMB but that the, I guess there looks like
24 two expenditures maybe for second one listed the DVS
25 ImageCast, X Ballot marking device units for 8,250 and the

1 ImageCast the X BMD accessible units for 317,500. Those
2 are -- those two seem to fall into the category of the issue
3 we just discussed which is previously reimbursed for this --
4 for a system.

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

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

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

15 MS. KAKU: Yes.

16 MS. ALEXANDER: Can I ask you a question?

17 CHAIR KAUFMAN: Let's -- let's wait on them.

18 Okay. I just wanted to be clear on what's in and
19 what's out and why. Okay.

20 Fellow Commissioners, question of staff?

21 MR. SANDOVAL: Not at this time.

22 MS. LAGMAY: No.

23 CHAIR KAUFMAN: Okay. We want to let representative
24 from San Luis Obispo County speak. I also want to take
25 public comment, if there is some and if Kim your comments are

1 directed to staff, why don't we --

2 MS. ALEXANDER: Sure.

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

5 MS. ALEXANDER: Right now?

6 CHAIR KAUFMAN: Yeah.

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

8 UNKNOWN SPEAKER: Can you go to the microphone.

9 MS. ALEXANDER: Oh, sure. Yeah.

10 UNKNOWN SPEAKER: Thank you.

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

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

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

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

25 MS. ALEXANDER: Oh, I'm sorry, yeah.

1 MS. LEAN: It's the maintenance.

2 MS. ALEXANDER: Okay.

3 MS. LEAN: Yeah.

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

7 MS. LEAN: Yes.

8 MS. ALEXANDER: So is that something that's eligible
9 for reimbursement?

10 MS. LEAN: Yes.

11 MS. ALEXANDER: Even though it's not certified?

12 MS. LEAN: Yes.

13 MS. ALEXANDER: Okay. Thanks for clarifying.

14 CHAIR KAUFMAN: Thank you, Kim.

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

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

20 CHAIR KAUFMAN: Good morning.

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

24 Okay. So I guess I just wanted to kind of clarify
25 some of, I guess, you know, there's obviously different ways

1 of looking at things. And, you know, we -- yeah, my
2 predecessor actually, you know, it goes many years ago. But
3 I was here at the time we did purchase the AutoMARK ballot
4 marking devices in 2006, when we obtained those.

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

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

21 And so, therefore, we had to work with ES&S to
22 program a second set of ballots at the polling place,
23 specifically for use with the AutoMARK. You know, we had
24 to -- but yet we maintained the system that we had already
25 purchased. And when we upgraded in twenty -- well, 2017 when

1 we obtained the Dominion System, we -- we kept to a blended
2 system, we kept the AutoMARKS, we did not replace with the
3 ICXs at the time.

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

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

24 So I guess where I'm having a hard time with this is,
25 I get the point of that the AutoMARK is deemed a ballot

1 marking device, and so therefore the ICXs designated a ballot
2 marking device that therefore is a new technol -- a
3 replacement technology, right. But at the same time, I
4 would, you know, venture to say that in the case of those
5 counties that obtained DREs, we -- that those were all
6 accessibility devices to comply with their requirements at
7 the polling place. So it was purpose driven in the sense of,
8 what was going to be offered to the voters. Basically, the
9 accessibility, the ability to be able to vote independently
10 and confidentially for voters with disabilities.

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

23 So I just wanted to go on record with that. I
24 understand that there are other avenues for us to go and all
25 of that, but in a way, I don't know if there are going to be

1 other counties that are in the same boat. But it does seem
2 to be penalizing the counties that, you know, that we decided
3 to go with this particular model, we weren't really thinking
4 about a technology, per se, as much as avoiding the
5 touchscreens, and all of the things that happened with
6 touchscreens after the fact. So we were actually in pretty
7 good company in that way with being able to continue on for
8 all of these years.

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

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

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

23 So our GEM system was our base tabulation system.
24 So, this is -- if -- I -- it's a different replacement
25 technology, but not that we, you know, we adhere to our

1 initial application in 2006 for the ADA devices, not for
2 replacing a tabulation system. Hence, that's why they're
3 approving making a recommendation for the base tabulation
4 system. But we're talking about essentially for the
5 accessible equipment that were provided to the voters.

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

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

23 But I don't -- I don't think that we as a board, can
24 stray, you know, uncomfortably into territory where we're,
25 you know, potentially running up against those restrictions.

1 So, that's -- that's what we're left with. We would like
2 nothing more than to be able to award you your full
3 allocation. And I hope that you find as you move through
4 this election cycle additional items that you can come before
5 this board and seek additional funding for, you know, perhaps
6 some others enhancements that you might decide to pursue.

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

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

16 CHAIR KAUFMAN: Right.

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

1 So, yeah, I'll be back for that then.

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

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

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

17 MR. GONG: Certainly is now.

18 MS. LAGMAY: Okay, okay, okay.

19 MR. GONG: Thank you.

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

23 MR. GONG: In terms of, you know, looking at the
24 chart here and what we submitted, you know, we certainly
25 anticipate that in terms of the accessible voting devices

1 would be approved through the state funding, and then work
2 will see what else is -- would be deemed as reimbursable by
3 the state funding. But those will be -- those are obviously
4 the largest costs.

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

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

7 MS. LAGMAY: Okay, thank you.

8 MR. GONG: Yes.

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

10 MR. GONG: Yes.

11 MS. LAGMAY: Gabriel.

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

21 MR. GONG: Yes.

22 MR. SANDOVAL: -- is that the argument that you're
23 making?

24 MR. GONG: That is the argument that I'm making. So
25 the base system that we had in -- that we purchased in 1999

1 was already purchased outright by the county, that was the
2 Optical Scan System. And then in 2000, you know, as the
3 requirements for the ADA requirements at the polling place
4 came for -- came forward, then we only purchased the AutoMARK
5 devices for the polling place. So just to supplement. So
6 that's why we're here today.

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

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

24 So, again, talking about the counties that you had
25 recently approved their purchases, Fresno, Madera, and

1 El Dorado, they had obtained a DRE devices for their
2 accessibility requirement. We had obtained AutoMARKs. And
3 so we all went into it for accessibility equipment, not
4 necessarily the type of technology that we were seeking. But
5 their applications are approved because that technology
6 they're getting is -- is not the same type of technology by
7 definition.

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

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

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

24 CHAIR KAUFMAN: Is the issue the -- I don't know if
25 I'm saying this correctly. Is it the system or is it the

1 equipment?

2 MS. LEAN: Equipment.

3 CHAIR KAUFMAN: Is that -- I don't have that language
4 from the statute --

5 UNKNOWN SPEAKER: I thought she said system.

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

8 MS. LEAN: If they've got --

9 CHAIR KAUFMAN: -- it said system.

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

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

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

19 CHAIR KAUFMAN: Because just to me it's said just --

20 MS. LEAN: -- meld them together.

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

23 MS. LEAN: Right. So they never --

24 CHAIR KAUFMAN: As opposed to vote by --the system
25 for vote-by-mail voting.

1 MS. LEAN: Understood. Totally agree with you. So
2 Tommy never got reimbursed for a -- an overall underlying
3 system. He got reimbursed for an accessible part of the
4 system. So he only had been reimbursed once for that. So
5 he's coming back and he's asking for a whole a new system,
6 but part of that overall system is what is in there is about
7 marking devices. And so that's what we're saying shouldn't
8 be reimbursed for.

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

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

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

24 In our case, because we got a ballot marking device
25 for our accessible equipment, the recommendation is not to

1 reimburse for our accessible implement for this second round.
2 That's where the disparity is.

3 MR. SANDOVAL: What's the underlying rationale that
4 you were provided?

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

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

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

20 MS. LEAN: No, sir, I believe it's already been said.
21 That is our staff --

22 MR. SANDOVAL: I would recommend that we have a
23 briefing on this and may hold this off to have a better
24 understanding of distinctions that are being made with regard
25 to this particular issue.

1 MS. LEAN: Sir, I thought it was and I thought it was
2 spelled out in the staff report, but if you would need any
3 further clarification, we can hold off giving any money to
4 the San Luis Obispo, but I believe we're -- it's up to our
5 staff recommendation.

6 MR. SANDOVAL: You can't bifurcate it?

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

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

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

16 CHAIR KAUFMAN: Sorry, yeah, you --

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

24 MS. LEAN: Well, it is laid out here is what we're
25 considering as non -- non-reimbursable. But if it is your

1 independent board if the board chooses to reimburse him for
2 that at a later date --

3 MR. SANDOVAL: That's -- that's --

4 MS. LEAN: -- we can use that.

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

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

13 MR. SANDOVAL: Yes, I am.

14 MS. LEAN: -- to clarify.

15 MR. SANDOVAL: Yes.

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

20 MS. LEAN: 561.

21 CHAIR KAUFMAN: -- \$561,938.36. So I think that's --
22 that's what's in front of us --

23 MS. LEAN: Right.

24 CHAIR KAUFMAN: -- and I think we need to vote on
25 that.

1 So my question is, are you asking for a staff report?

2 And this gets back to your comment earlier, I think, do you
3 feel as a staff, you have enough direction on what is --

4 MR. SANDOVAL: Correct.

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

8 MR. SANDOVAL: Correct.

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

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

15 MS. LEAN: The 561.

16 MR. SANDOVAL: Correct.

17 MS. LEAN: Okay.

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

24 And then Part 3, the issue of questions that I had,
25 asked whether or not the staff has enough clarity. Because

1 my concern is that technology is evolving, I don't see a
2 clear definition, you know, obviously unfortunately we don't
3 have the legislative history that we would have like with
4 regard to this particular statute, and as a board we don't
5 want to do anything that's going to be inconsistent with what
6 the law provides, particularly the plain reading of the
7 statute.

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

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

15 MR. SANDOVAL: Right.

16 CHAIR KAUFMAN: -- hang up this --

17 MR. SANDOVAL: I don't want to do that.

18 CHAIR KAUFMAN: -- hold up this funding.

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

24 MR. SANDOVAL: Sure.

25 CHAIR KAUFMAN: And I don't know that there would be

1 any prejudice, I mean, if we make some other determination
2 down the road, there is nothing preventing San Luis Obispo
3 County or any other county from coming back and resubmitting
4 on items that were previously denied.

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

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

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

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

19 MR. SANDOVAL: Sure.

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

24 MR. SANDOVAL: Sure, sure.

25 CHAIR KAUFMAN: So this is an entirely new category,

1 there's no reason why we couldn't continue to deal with the
2 issue in some manner, and should circumstances change, you
3 know, allow for further application.

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

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

14 MR. SANDOVAL: Agreed.

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

21 MR. SANDOVAL: I think we're all on the same page
22 too. Yeah.

23 CHAIR KAUFMAN: Yeah. All right.

24 MR. GONG: That's what I said all or nothing, right?
25 Just kidding.

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

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

8 CHAIR KAUFMAN: Do we have a second?

9 MR. SANDOVAL: Second.

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

12 MS. JARRETT: Gabriel Sandoval.

13 MR. SANDOVAL: Yes.

14 MS. JARRETT: June Awano Lagmay.

15 MS. LAGMAY: Aye.

16 MS. JARRETT: And Stephen Kaufman.

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

19 MR. GONG: Thank you.

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

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

25 You know, I share some discomfort that you have,

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

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

14 CHAIR KAUFMAN: That's okay, June.

15 MS. LAGMAY: It's my age.

16 CHAIR KAUFMAN: Go ahead, go ahead. I've talked
17 enough.

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

22 CHAIR KAUFMAN: No.

23 MS. LAGMAY: -- unique -- no.

24 CHAIR KAUFMAN: This is the first.

25 MS. LAGMAY: Okay.

1 MR. SANDOVAL: So it is unique.

2 CHAIR KAUFMAN: Yes.

3 MS. LAGMAY: It is unique.

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

7 Is there something that San Luis Obispo coulda,
8 shoulda, woulda done that would've avoided him being in this
9 situation that he is in today?

10 MS. LEAN: No, Ma'am.

11 MS. LAGMAY: No. There wasn't an alternative choice
12 or -- or sequence of events that would have allowed him to
13 recoup these money.

14 MS. LEAN: Not with the plan I move forward to the
15 board, no.

16 MS. LAGMAY: Okay. That concludes my question.

17 MS. ALEXANDER: Is there public comment on that?

18 CHAIR KAUFMAN: Yes. Sure.

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

21 I just want to say, I don't fully agree with the
22 staff analysis. My view of voting system is the entire
23 system and it includes the polling place solution, the vote-
24 by-mail solution, the accessible solution, the election
25 management system. So to me that's the whole system and a

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

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

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

24 So I think as we consider this very important
25 question, we need -- we need to do it also through the lens

1 of how the Voter's Choice Act is going to impact these
2 counties' critical position.

3 Thanks.

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

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

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

23 So eight weeks or so -- six weeks or so, and you
24 know, try and provide some further report and clarification
25 to the board on that issue.

1 MR. SANDOVAL: That would be appreciated. I think
2 it's important to lay out what the law provides, what
3 guidance, if any, that's written has been adhered to to
4 ensure that the law is not violated in any way with regard to
5 requests similarly made by the counties.

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

12 MS. LAGMAY: Runaway train.

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

21 CHAIR KAUFMAN: Well --

22 MR. SANDOVAL: So --

23 CHAIR KAUFMAN: Yeah, and by the same token on that
24 fund, given that there has been other legislation passed that
25 is -- is specially broader in terms of what it covers, then

1 Prop 41, that also might provide us with an indication that
2 the legislature wanted to provide another pot of money to
3 cover things that we don't cover.

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

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

11 MR. SANDOVAL: Yeah.

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

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

18 MS. LAGMAY: Thank you.

19 MR. SANDOVAL: Thank you.

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

22 MS. LEAN: As we saw before.

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

25 So I'll call it a working group, if you will, between

1 myself and staff to address that issue. And I don't mean to
2 exclude anybody, but since we have --

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

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

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

13 CHAIR KAUFMAN: Okay. I think we've covered that
14 topic.

15 MS. LAGMAY: Yes.

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

20 MR. SANDOVAL: Is November 13th confirmed?

21 CHAIR KAUFMAN: Yeah.

22 MR. SANDOVAL: That's good to know.

23 CHAIR KAUFMAN: We don't have anything currently on
24 calendar after that. Given what you said, I don't know that
25 we need to do that at this point, unless you think we should

1 block out something just in case.

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

5 CHAIR KAUFMAN: Okay. Perfect.

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

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

10 MR. SANDOVAL: Okay.

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

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

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

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

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

24 CHAIR KAUFMAN: And then we'll, you know. And the
25 candidate filing period and all the other filing periods

1 start in November and run to December so it's going to be
2 hairy.

3 MR. SANDOVAL: So maybe Teri Holoman can join us.

4 CHAIR KAUFMAN: One can only hope.

5 MR. SANDOVAL: Thank you.

6 CHAIR KAUFMAN: All right. Do we have a motion to
7 adjourn?

8 MS. LAGMAY: Go ahead.

9 CHAIR KAUFMAN: I heard somebody move. So.

10 MR. SANDOVAL: Move.

11 CHAIR KAUFMAN: Gabe moved. June seconded it.

12 MS. LAGMAY: June sure seconds.

13 CHAIR KAUFMAN: All in favor of adjourning say aye.

14 MS. LAGMAY: Aye.

15 CHAIR KAUFMAN: We are adjourned.

16 MR. SANDOVAL: Thank you.

17 MS. LAGMAY: Thank you.

18 (Thereupon, the hearing was adjourned at
19 11:40 a.m.)

20 --oOo--

21

22

23

24

25

