

# SOS-CACEO Conference Call July 18, 2007

## Attendance:

Alameda	Riverside
Alpine	Sacramento
Amador	San Bernardino
Butte	San Diego
Calaveras	San Francisco
Contra Costa	San Luis Obispo
El Dorado	Santa Barbara
Fresno	Santa Clara
Glenn	Santa Cruz
Humboldt	Shasta
Imperial	Siskiyou
Inyo	Sonoma
Kern	Stanislaus
Lassen	Sutter
Los Angeles	Tehama
Madera	Trinity
Mariposa	Tulare
Mendocino	Tuolumne
Monterey	Ventura
Nevada	Yolo
Orange	Yuba
Placer	City of Long Beach
Plumas	

Secretary Debra Bowen

### **Top-to-Bottom Review**

As you all know, the Top to Bottom review is nearly complete, testing pretty much wrapped up early this week, and the principal investigators are in the process of writing their reports. For those who came to tour the testing facility, I hope you found it to be useful. The final report from the teams is due to me in the early part of next week. The reports will be made public on Friday, July 27<sup>th</sup> followed by a public hearing on July 30<sup>th</sup>. We are still working on the details of the public hearing; we want to make sure that we can accommodate all the comments that people want to give in person, but in broad strokes, this is how I expect it will work. The principal investigators will present the report to a panel of people from my office. The panel will probably not ask a lot of questions, but if they have questions about things that require clarification, that's the kind of questions that I would primarily expect, places where they think that the public may be confused unless there's a question. Vendors, county officials, all members of

the public will have the opportunity to comment on the report. People will not have the opportunity to ask questions of the principal investigators or the panel directly. But again, if there is something that requires clarification the panel or the principal investigators (PIs) will be asked for more information.

For obvious reasons I can't provide the counties or the vendors with an advance copy of the final report, but I am open to the idea of setting up some conference calls next week to sketch out some of the more significant findings. So you're prepared. It probably makes sense to break those conference calls up by system type, so that Sequoia counties are on one call, Diebold counties are on another, if you want to take the time to listen to what we found about another system that's fine with me because we are in this part of the process not constrained with the concerns about trade secrets that gave us so much heartburn in figuring out how to involve both Registrars and the public.

Following the public hearing on the 30<sup>th</sup>, I will be reviewing the report in greater detail, along with all of the public comments, and we will then, in our office, develop any decertification or re-certification documents necessary or required to be issued by August 3<sup>rd</sup>.

As you should know, I hope you know this already, we are in the process of looking at the counties' security procedures, and use procedures. My staff has been compiling that information based on plans that are already on file with the Secretary of State's office from the counties. They are preparing a matrix showing what we have on file from you and it would be terrific if you could review the matrix as it applies to your county and determine if we have out of date information or if we're simply missing information on procedures that you have, either security procedures or use procedures that you use. I don't know if that matrix has gone out yet. Has it, Evan, do you know? Evan: It has not, it should be this afternoon or tomorrow. Bowen: Alright, so you should be getting that shortly, and again, a review for accuracy is really important.

### **Post-Election Audit Working Group**

There is also a Post-Election Working Group. It held a public working session on July 2<sup>nd</sup>, and I know there have been several working conference calls since that time. This working group is composed of David Jefferson, the chair, he is a computer scientist with the Center for Applied Scientific Computing at Lawrence Livermore National Lab; Kim Alexander, president and founder of the California Voter Foundation; Elaine Ginnold, Marin County Registrar; Amy Lehmkuhl, CPA, there not because she knows about auditing elections, but because she knows something generally about auditing, and I thought it would be useful to have an outside view from someone who's accustomed to dealing with audits more generally; Kathleen Midstokke, City Clerk, City of Downey; and Philip Stark, professor of Statistics at UC Berkeley. This group is tasked with looking at the work that has already been done in the field of auditing and post-election auditing, and reporting to me on the various options for improving post-election audits, not just increasing but also just making the audits more useful, so that if we are over-sampling in some places and under-sampling in others, we may need to go back to the legislature and require, request under the one percent provision that we have been refined so that we

do a better job of sampling and that we can use our resources where they are best spent.

### **Additional Working Groups To Be Formed**

This group's report is due on July 27<sup>th</sup>, it is clearly a very short time frame and I do intend to create a much larger working group with a longer time frame more generally on post-election procedures. It's something that Steve Weir had asked me to do and I concur that it's something that we need to do. We'll be convening that working group at some point, and there will be additional working groups as well.

One will deal with revising the state's voter registration form. In looking at what other states do, it's clear that California does not have the most user-friendly voter registration form. From an ease-of-use standpoint, or from a standpoint of someone who's just looking at it, and deciding whether or not it's, how much complexity people feel they are presented with. Changing that form will require both in regulation and in the law, and I want the input of the Registrars at the front end of this process. After all, you have to deal with what comes in on the form, and you know best what kinds of difficulties people have in filling it out. So I will be asking Steve for a list of names of Registrars who are interested in serving on these two working groups and any others that we may form, and we'll try to put those together.

### **HAVA Spending Plan, 301 Contracts & EAID Contracts**

I'd like to thank you all for working with Chris Reynolds, Debbie O'Donoghue and the other members of my staff in finalizing the 301 and EAID contracts. Chris and Debbie tell me that all counties have submitted the data we need to determine whether a new contract must be executed for any remaining balance of HAVA funds. I would ask that you remember that any claim for HAVA funds held in the contract that expired on June 30<sup>th</sup> must be submitted by September 30<sup>th</sup> or we will not be able to pay on the claim. As for the new contracts to carry forward any voting systems or 301 funds or any polling place accessibility or EAID funds, we are still waiting adoption of the state budget. We can't spend anything until that happens; once that occurs the amended HAVA Spending Plan will be submitted to the Legislature for approval and the amendments include a request to authorize spending for the remaining balances through the contracts. The Legislature was not willing to break out this particular issue from the balance of the Spending Plan amendments so we'll have to do new contracts. If you county needs to bring this item before your Board of Supervisors, as soon as you read in the paper that the Governor has signed the state budget, it would be a good time to think about putting this item on the BoS agenda. We will send out a notice as well. We expect to be able to execute new contracts within 60 days of the Governor's signature on the 07/08 budget, whenever that may occur, it probably will take less – really all we are doing is taking the existing contracts and updating dates, so I don't think it should be too difficult.

### **Request To EAC**

I know that there are about a dozen counties that have been waiting to hear whether we can process claims for storage and warehousing costs. We heard informally from EAC staff handling these requests on July 6<sup>th</sup> that all the claims will be approved. And we

were told that they would finish the formal write up that day, but we have not yet received it. We do have until September 30<sup>th</sup> to process these claims, but I'm going to wait one more week for the EAC to respond in a more formal manner. It would be very nice to know that we do meet the EAC criteria before we begin processing claims, so we don't have to be worried about having to undo something that we've done.

### **Vote Cal**

I'd like to thank everyone who'd worked with my office to help develop the Request for Proposal for the statewide voter registration database project. Especially with developing the business requirements for the system, to answer the question, what does this system need to do? We are closing in on a significant milestone for this project, which will be the release of the Request for Proposal. We expect to do that by mid- to late-August. This is a business-based procurement, so the process allows for discussions with bidders about how they will meet the business requirements; that means that there is still an opportunity to shape the final project, even after the release of the RFP. I have asked staff to provide a briefing for the CACEO sub committee at its regularly scheduled monthly meeting after the RFP has been released and I hope that we will have additional input from you after that time, so that we can reflect your needs and concerns in the bidding process. And your point of contact for that is Bruce McDonald, who I am sure you all know. Again, given the confidential nature of the process, there's not a lot more that I can say until the RFP is released, at that point, of course, we will be able to have a much more explicit discussions about the project.

### **Election Mailing Costs**

An additional item that was placed on the agenda at your request has to do with election mailing costs. I had some information from Jill Levine in Sacramento that the postal service, or at least certain postmasters in different areas across the country have apparently issued a new ruling or interpretation of the policy guidelines dealing with what elections officials can mail at a non-profit rate. This issue came to a head in Yuma County, AZ where the postmaster ruled that elections officials could no longer send voter registration confirmation cards at the non-profit rate, and in Washington state the postmaster, I'm told, is reviewing whether counties should be able to mail absentee ballots at the non-profit rate. Of course not being able to do that would mean mailing costs will increase significantly. There hasn't been a formal discussion of this at NASS, but informally what I have heard is that postmasters will abide by whatever the law provides, and leaves open the question who's going to make the determination of what the law provides. I don't know how that will work, but this is something that – I don't believe it's been an issue in California yet, but there's certainly, it's certainly a place that I'm willing to do whatever is needed to make sure that we have that ability. Jill, do you have anything you'd like to add? Jill – We are working with the National Postal Task Force on this issue, and we're going to be meeting at the Election Center Conference in New Orleans. Our office will have representatives there and many of these counties, such as Washington, Arizona will be coming to discuss this, so we should have more information in a couple of weeks. Bowen: The nice thing about this issue is that it will be one in which all the states will be united, so we should be able to present a united face to the Postal Service representatives as well as to our representatives in Congress if the need

arises. I did note after I read about this controversy that the gold sponsor is the US Postal Service, and I'd rather have their rate than their sponsorship. We apparently have factored the potential for this into our budget for mailing, but the other issue which is that the Postal Service has recently changed the way that it classifies mail. It probably makes more sense but personally I find it to be much more complicated because the rate no longer depends just on the weight and the size, but also how thick it is. I'm hard pressed to know how people are going to be able to determine the postal rate on anything other than a standard envelope without going to a counter to get advice. The impact that this has had on elections officials is that if you mail a sample ballot in an 8½ by 11 format, that used to be a letter which could be mailed for \$.10; now that is a flat, it costs \$.0227 to mail out. So even without the non-profit issue we have other significant increases in cost, not just for postage.

### **Potential Ballot Issue For February**

Potential rumblings about a ballot issue that may come on the ballot in February: I am hearing for the past few days that a number of groups who were opposed to the Indian Gaming compacts that were passed by the Legislature and signed by the Governor earlier this month may try to collect enough signatures to get a referendum on the ballot to overturn the compacts. From a time standpoint, referendum proponents would have 90 days from July 10<sup>th</sup>, which was the date the compacts were chaptered into law, to file a request with the Attorney General, have the Attorney General prepare a title and summary, and allow proponents to circulate petitions. Proponents would then have until October 8<sup>th</sup> to submit petitions, raw counts would be due from counties on October 18<sup>th</sup>, random samples would be due by December 4<sup>th</sup>. December 4<sup>th</sup> is E-63, which will put us into a supplemental ballot pamphlet situation. Of course if they don't qualify during random sample and a full signature check is required then counties would have another 30 working days to complete, which means that they probably could not qualify for the February ballot and may instead be pushed into June. For anyone who's interested in the politics of this situation there was a good article in the San Diego Union on Saturday. We don't have to memorize these dates, we'll, as we follow this, put this information in writing including the dates and get it out to everyone. Just a heads up, it's not something – we don't whether this is going to affect our February election, but given the other issues that are confronting us, particularly with the lateness of the Republican convention, anything that makes things more complicated I think we need to be paying attention to.

### **Questions**

Steve Weir, Contra Costa – I support your system by system conference call, but the idea that we've got a Friday, Saturday, Sunday to review a document just doesn't resonate well with me, and I think you can understand that. Do you have a sense of how long the document's going to be?

Bowen – I don't. And I want to say that I am not happy with any of this timeframe either. When we set about doing this, we were expecting that we were going to have, as usual, a June primary. And so all of the truncations of the timetable have been done as a result of the pres for the February primary and the belief that it's better to get this out of the way before the February primary and not be dealing potentially with changes

between February and June. I'm not happy with this either and I'm not happy with the amount of time that we're able to give the public. I don't have a sense of the length but I do think that we, with the conference calls, can help you prepare for what will be in the report.

Steve Weir – Then without asking you to give away the storyline, do you anticipate any out and out decertifications?

Bowen – I haven't read anything yet. So, I don't know. I'm waiting for the report.

Steve Weir – So you'll have precious little time to review this yourself.

Bowen – I'm going to begin at the same time or shortly before you do. I'll be looking beginning next Monday, I'm not going to have a lot more time. But I do think that the conference calls will be helpful.

Barbara Dunmore, Riverside – How will we be notified about the conference calls?

Bowen – I think the best thing for us to do is to work with Steve.

Steve Weir – I think if you could set it up today, so that people know... to plan their calendars.

Bowen – I'm not sure that we can do that today, but we'll try to do it as soon as possible; I think that people are working on this pretty hard, but I do understand that the earlier we can get it on peoples' calendars the more useful it is, because it doesn't conflict with other things on their schedules. But I think we're going to want to consult with you, Steve, on timing before we set it up.

Steve Weir – I'm happy to try to help, but I think it's really the whole group trying to decide a day where they can do this.

Bowen – Well, we had the same challenge with the tours, and we'll just do our best to try to make sure that everyone who's interested can participate.

Evan Goldberg – Let me just jump in, Steve, and ask, is there some blackout day or timeframe where you know that doesn't work, where there's a conference that you're all attending or something we don't know about?

Steve Weir – Not that I see; some of our staffs are trying to take their 08 vacations this summer, but there probably isn't a better day than other, the sooner the better obviously for us. Monday or Tuesday probably.

Bowen – I have to have enough time to read and say something intelligible, so we'll try to figure out how to make that happen earlier rather than later.

Deborah Seiler, San Diego – I was wondering if we need to have multiple days for the public hearing; it sounds as if, because of the fact that we won't receive the report until the 27<sup>th</sup>, and because there are multiple systems to be heard, and so many speakers, potentially, available to speak, if this could spill over to a subsequent day.

Bowen – You know, it's something that we've debated internally a lot, we've had a number of discussions about the best way to do it, but my feeling was that some speakers are going to have the same comments to make about all of the systems that have been reviewed, and that if we do the systems individually that we will hear from the same people with identical testimony three times, instead of once. So it was better to do it together, and if we need to spill over into another day, well, we'll have to deal with

that. I want to make sure that people have an opportunity to be heard. And obviously you can submit written testimony that exceeds what you would have the opportunity to present orally.

Barbara Dunmore – Is there a limit on the time that you have to present orally?

Bowen – We've have some discussion about this too, and I can't remember what the final, or if we've got to a final...

Evan Goldberg – We haven't got to a final, I believe previously there have been 2 minute limit, internally we've been talking about the idea of 5 minutes.

Bowen – But we've also talked about, just so you know, and this was something that wasn't done before, about allowing people to aggregate their time, and basically designate a spokesperson, who could go into more detail or take additional time.

Steve Weir – On that subject, who's your hearing officer going to be? Have you made that decision yet?

Bowen – No.

Barbara Dunmore – I have a question about the Top to Bottom review, the testing of the paper ballot units. Were the paper ballot units, for example the Sequoia 400c, where those, my understanding is that they were tested for accuracy?

Bowen – Since I am sitting in Portland I don't have any of the specifications in front of me, and can't answer the question, without looking at my... you know the systems, each of your systems, obviously, I don't know all of them without looking at the, at my outline of who uses what.

Barbara Dunmore – Well, we don't use that system but we're interested in it, and I'm just wondering...

Bowen – Is it used in California?

Barbara Dunmore – It's a paper ballot central count, Sequoia's central count.

Cathy Darling – It is used in California.

Barbara Dunmore – My question is were they tested with paper ballot to determine whether they accurately read the votes that are recorded by the voter.

Bowen – We tested both paper and electronic systems to the same standard. We did not distinguish, when we were looking at accuracy, whether something was paper-based or electronic.

Barbara Dunmore – And so did the vendors supply those ballots?

Bowen – I have not been involved in the testing itself other than to set it up, so I'm going to have to ask my principal investigators. I have deliberately stayed out of the testing rooms, I wanted them to do their work.

Terry Hansen, Yuba – Is anyone from that venue online that could speak to that?

Evan Goldberg – A couple of people who would know the answer 100% don't happen to be in the room. I know that the vendors supplied the election definition, I am fairly certain that they would then supply any ballots that were associated with that test, but then I haven't been involved in the testing either, so I don't want to provide you with bad information, so can we get back to everybody with a complete answer? I am pretty sure that's the answer but I want to verify.

Bowen – Lowell would certainly know the answer to that, but he's not able to join us this morning.

Bowen – I think the most urgent thing for us to do, from the standpoint of our work with you is to set up the conference calls, the vendor-specific conference calls, and get that underway, and then as soon as we complete our work on this structure of the hearings, we will make sure that you know, and that's a place where we certainly can provide you with information before we put it out in a press release.

Steve Weir – On those conference calls, are vendors permitted to be on those calls?

Bowen – I don't think we've determined that. I mean there's obviously a problem with, I mean, we've gone back and forth on the issue of who should get notice when, you know, it's difficult, and the problem is once we provide information, if it goes out to the press then we really have undermined the idea of presenting everything at the same time, so, if you have a point of view on that, this is a good time to express it.

Terry Hansen, Yuba – I would just think that the vendors should probably be made aware of any previously significant findings, because obviously we will be immediately on the phone with them, and they should probably have the opportunity to realize what is coming as well as we do.

Bowen – Well, you know normally when we do a report in a government process that is not done, the report's released and everybody learns at the same time what the contents of it are. That's true when the, when you're a government agency and you're being audited that certainly was true when the state Auditor audited the Secretary of State's office; you know, everyone finds out at the same time what the results are.

Steve Weir – But in any of those cases, was it a Friday release for a Monday public hearing?

Bowen – You know, again, that's not by choice, part of it's a result of vendor's not getting their material to us when we requested it way back in February, so we started late in part because we just didn't have the material from vendors that we had requested and which under the certification was required to be given to us within 30 days of the request, and was not by any of the vendors.

Barbara Dunmore – But I thought that Sequoia did, and their review got held up because you were waiting for three systems?

Bowen – Nobody got to us within the 30 day request. It's true that some vendors were earlier than others, but nobody got to us within the 30 days.

Deborah Seiler – Will the vendors be given an opportunity to correct any factual errors?

Bowen – Certainly, of course, but that will part of the normal review, if we've made factual errors, if the reviewers have made factual errors I'm sure that people won't hesitate to notice, to notify us, and we need to know.

Barbara Dunmore – When you say part of the normal review, that'll be part of the Friday release? So incorrect information will be out there?

Bowen – Well I'm assuming there won't be incorrect information. If our reviewers have done a good job we won't have incorrect information.

Terry Hansen – They're human like the rest of us.

Bowen – Yes. If we have incorrect information, I'm certain that we'll be informed and that we can stand corrected.



Dean Logan, Los Angeles – In terms of your analogy with the audit process, was there any consideration given to something in the nature of an exit conference? I'm mean, typically in an audit process the agency, for the very reason we just discussed, does have an opportunity to have an exit conference with the auditors to address those kind of factual-

Bowen – Well this isn't an audit.

Dean Logan – Well I was just asking because you used that as an example.

Bowen – But this is not an audit, it is most certainly not an audit. And we're not auditing the counties, we're looking at equipment; one of the things we're doing now, we're beginning to factor in, as we look at what we should do, what are your security use procedures? So, in audit, that would have been done as a part of the process. But again, we're highly time-constrained, we would have probably done much of this in a different way if we were dealing with a June election in 2008, but we're not. We've all been pressed in a way that's unfortunate.

We'll be in touch about conference calls, through Steve and Evan will be coordinating.  
Evan – Yes.

### **Next Call**

Next call will be scheduled for Wednesday, August 15, at 10:00 a.m.

*Respectfully submitted*  
*Cathy Darling*  
*CACEO Secretary*  
*Shasta County Clerk/RoV*