BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Penal Code Sections 12025(h)(1) and (h)(3); 12031(m)(1) and (m)(3); 13014; 13023; 13730(a) Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB 2250); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571 (AB 491); Statutes 2000, Chapter 626 (AB 715); and Statutes 2004, Chapter 700 (SB 1234) Fiscal Years 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 Filed on August 22, 2017 City of San Marcos, Claimant	Case No.: 17-0240-I-01 *Crime Statistics Reports for the Department of Justice* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted January 22, 2021*) (*Served January 26, 2021*)

INCORRECT REDUCTION CLAIM

The Commission on State Mandates adopted the attached Decision on January 22, 2021.

Heather Halsey, Executive Director

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DECISION

The Commission in State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on January 22, 2021. Annette Chinn appeared on behalf of the City of San Marcos (claimant). Lisa Kurokawa appeared on behalf of the State Controller's Office (Controller).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to deny the IRC by a vote of 6-0, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Yes
Spencer Walker, Representative of the State Treasurer	Yes

Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	Yes

Summary of the Findings

This IRC challenges the Controller's reduction to reimbursement claims filed by the claimant under the *Crime Statistics Reports for the Department of Justice* program for fiscal years 2001-2002 through 2011-2012 (audit period). According to the Final Audit Report, the Controller found that of the $1,094,487 claimed during the audit period, $722,360 is allowable and $372,127 is unallowable.[1] As relevant to this IRC, the program requires local agencies to support all domestic violence-related calls for assistance with a written incident report, and to review and edit the report.[2]

The claimant contracts for all law enforcement services with the San Diego Sheriff's Office (SDSO). The claimant calculated the costs to perform the reimbursable activity by multiplying the number of domestic violence-related calls for assistance by an average of the estimated time to write the incident report. The claimant then multiplied the hours by the SDSO hourly rates to arrive at the total claimed costs.[3] The Controller found that the claimant misstated the number of written incident reports, misstated the time increments per activity, and misstated the contract productive hourly rates.[4] The claimant disputes only the reductions to the number of domestic violence incident reports in fiscal years 2001-2002 through 2006-2007, and the contract productive hourly rates in fiscal years 2001-2002 through 2006-2007 (Finding 1), and the reductions in indirect costs claimed in Finding 2.[5]

As a threshold matter, the Commission finds that the IRC was timely filed within three years of the date the Controller notified the claimant of the reduction.

The Commission further finds that it has no jurisdiction over the Controller's adjustment in Finding 1 to the increase in the allowable number of written reports of domestic violence-related calls for assistance in fiscal year 2001-2002. The claimant identified 208 written incident reports, and the Controller allowed 274 reports.[6] The Commission also lacks jurisdiction over the Controller's adjustment in Finding 2 to the calculation of indirect costs for fiscal years 2001-2002 through 2006-2007, because the Controller increased annual indirect cost rates from 10

[1] Exhibit A, IRC, filed August 22, 2017, pages 517, 519 (Final Audit Report). These figures include some uncontested audit findings.

[2] Exhibit A, IRC, filed August 22, 2017, page 506 (Parameters and Guidelines). Penal Code section 13730.

[3] Exhibit A, IRC, filed August 22, 2017, page 528 (Final Audit Report).

[4] Exhibit A, IRC, filed August 22, 2017, page 528 (Final Audit Report).

[5] Exhibit A, IRC, filed August 22, 2017, pages 4-5, 6.

[6] Exhibit A, IRC, filed August 22, 2017, page 5; Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 342.

percent to 47.7 percent.[7] Under Government Code section 17551(d), the Commission only has jurisdiction over audit reductions, but not adjustments that increase allowable costs.

On the merits, the Commission finds that the Controller's reduction in Finding 1 to the number of written reports for domestic violence-related calls for assistance claimed for fiscal years 2002-2003 through 2006-2007 is not arbitrary, capricious, or entirely lacking in evidentiary support. During the audit, the Controller requested supporting documentation to verify the number of domestic violence incidents claimed during the audit period that were supported by incident reports, and the SDSO provided reports from the Automated Regional Justice Information System (ARJIS) for the later fiscal years 2007-2008 through 2011-2012.[8] These reports identify the date and time of the domestic violence-related calls for assistance in fiscal years 2007-2008 through 2011-2012, the incident number, and the total number of incidents each year during this time period.[9] However, the SDSO was not able to provide ARJIS reports for incidents claimed for fiscal years 2002-2003 through 2006-2007, or the underlying written reports for the calls for assistance for those years.[10] The Controller therefore calculated an average annual incident count for fiscal years 2002-2003 through 2006-2007, based on the verified data for fiscal years 2007-2008 through 2011-2012. This resulted in a reduction of 412 incident reports for fiscal years 2002-2003 through 2006-2007.[11]

The claimant argues that by using an average from the five most recent audited years "does not adequately compensate the City for actual mandate related DV case costs. This SCO averaging resulted in an approximately 10% reduction to the City's costs claimed."[12] The claimant argues that supporting documentation was provided in the form of faxed reports from the SDSO, appearing to answer a query from the claimant representative regarding the annual incident count for several different offenses, including "the number of domestic violence calls for services and cases," for the two cities of Encinitas and San Marcos (the claimant);[13] 2002, 2007, and 2008 reports prepared by the San Diego Association of Governments (SANDAG), on "Crime in the San Diego Region;"[14] and Department of Justice (DOJ) crime data, "CJSC Statistics: Domestic Violence-Related Calls for Assistance," reported for the claimant's jurisdiction, and DOJ's March 2000 publication, "Criminal Statistics Reporting Requirements," which states that local

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[7] Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

[8] Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 344-375 (ARJIS reports of domestic violence-related calls for assistance for fiscal years 2007-2008 through 2011-2012).

[9] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 344-375 (ARJIS reports of domestic violence-related calls for assistance for fiscal years 2007-2008 through 2011-2012).

[10] Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

[11] Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

[12] Exhibit A, IRC, filed August 22, 2017, page 4.

[13] Exhibit A, IRC, filed August 22, 2017, pages 27-39.

[14] Exhibit A, IRC, filed August 22, 2017, pages 40-290 (SANDAG reports).

agencies are required to report data on the number of domestic violence calls on a monthly basis.[15]

The Parameters and Guidelines, adopted in 2010, require that claims for actual costs must be traceable and supported by contemporaneous source documentation (documents created at or near the time costs were incurred) that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities) and define source documents to include employee time records or time logs, sign-in sheets, invoices and receipts.[16] Although the Parameters and Guidelines are regulatory in nature, due process requires that a claimant have reasonable notice of any law that affects their substantive rights and liabilities.[17] Here, the claimant was not on notice of the contemporaneous source document requirement (CSDR) when the costs were incurred in fiscal years 2002-2003 through 2006-2007 because the Parameters and Guidelines were not adopted until September 2010. Thus, for due process reasons, the CSDR cannot be strictly enforced in these fiscal years. However, the Controller is *not* strictly enforcing the CSDR because the Controller is not requiring contemporaneous documentation and did not reduce the costs claimed to $0.

Instead, the Controller exercised its audit authority and calculated the number of written reports for domestic violence-related calls for assistance in fiscal years 2002-2003 through 2006-2007 "based on verified actual ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for unsupported years."[18] Although the claimant has provided faxed documents from SDSO to the claimant's representative and third party reports purportedly identifying a larger number of domestic violence related calls for assistance in the claim years, the claimant has not provided any source documentation (such as a list of incidents and the date they occurred, or the written incident reports themselves) for the Controller to verify the actual number of written incident reports claimed under the mandate. The Controller's audit findings are consistent with Government Code section 17561(d)(1)(C), which authorizes the Controller to audit the records of any local agency or school district to verify the actual amount of mandated costs.[19]

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[15] Exhibit A, IRC, filed August 22, 2017, pages 4, 292-310 (DOJ reports and "Criminal Statistics Reporting Requirements" March 2000).

[16] Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

[17] *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

[18] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 20; Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

[19] See also Government Code section 12410, which states: "The Controller shall superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment." The courts have held that the Controller's duty to audit includes the duty to ensure that expenditures are authorized by law. (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.)

Based on this record, the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made.[20] Under these circumstances, the Commission is required to defer to the Controller's audit authority and presumed expertise.[21] There is no evidence that the Controller's calculation is arbitrary, capricious, or entirely lacking in evidentiary support.

The Commission also finds that the Controller's reduction in Finding 1 to the claimant's contracted hourly rates for fiscal years 2001-2002 through 2006-2007 is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant contracts for all law enforcement services with the SDSO, not just for performing the reimbursable activity.[22] For fiscal years 2001-2002 through 2006-2007, the Controller found that the claimant overstated the contract rates applicable to the mandate, "co-mingled multiple classifications [including deputy patrol, sergeant patrol, and sergeant detective] into one rate," and included employee classifications that did not perform the reimbursable activities.[23] The Controller also found that the claimant used an inconsistent number of annual contract hours to compute the claimed hourly rates for these years.[24]

The Parameters and Guidelines state that the "claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified . . .," and that "[i[increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate."[25] Regarding contracted services, the Parameters and Guidelines state that only the pro-rata portion of the services used to implement the reimbursable activities can be claimed.[26] The claimant included the costs for various classifications and overhead that accounted for all law enforcement services, so the hourly contract rates used by the claimant for fiscal years 2001-2002 through 2006-2007 do not comply with the Parameters and Guidelines because they do not segregate the salary and benefit rate by the classifications that performed the reimbursable activities. Therefore, the Controller's conclusion is correct as a matter of law.

To recalculate hourly rates, the Controller obtained salary and benefit rates from the SDSO that were segregated for each peace officer classification that performed the reimbursable activities

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[20] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[21] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[22] Exhibit A, IRC, filed August 22, 2017, pages 316-468 (Contracts for Law Enforcement Services). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 23.

[23] Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-23, 377-398.

[24] Exhibit A, IRC, filed August 22, 2017, pages 532-533 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

[25] Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

[26] Exhibit A, IRC, filed August 22, 2017, page 506 (Parameters and Guidelines).

and confirmed they were accurate.[27] The Controller divided the salary and benefit costs by 1,743 productive hours (which is the number of productive hours noted in the SDSO contract for the later undisputed years) to calculate hourly contract rates for all years, including the disputed years.[28] This recalculation complies with the Parameters and Guidelines to ensure that only the pro-rata costs to comply with the mandate are reimbursable so it is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant has not provided evidence to the contrary.

Finally, the Commission finds that the Controller's reduction of indirect costs in Finding 2 for fiscal years 2007-2008 through 2011-2012 is not arbitrary, capricious, or entirely lacking in evidentiary support. Section V.B. of the Parameters and Guidelines addresses indirect costs, and provides claimants the option of either claiming 10 percent of direct labor costs, or if indirect costs exceed the 10 percent rate, developing an indirect cost rate proposal by dividing the total allowable indirect costs by an equitable distribution rate.[29] For fiscal years 2007-2008 through 2011-2012, the claimant developed indirect cost rate proposals and applied those rates to costs for contracted law enforcement services that the Controller asserts were incorrectly claimed as direct labor costs, resulting in claimed indirect cost rates ranging from 80.8 to 91.8 percent annually.[30] The Controller found that the claimed methodology was incorrect because the claimant contracted for law enforcement with the SDSO, so it was inappropriate to claim the costs as indirect "labor costs." The claimant also applied the indirect cost rates to unallowable contract services costs identified in Finding 1.[31] The Controller recalculated indirect cost rates for fiscal years 2007-2008 through 2011-2012 at 45.9 to 50.4 percent, by "dividing total contract overhead costs, station support staff costs, and "Sergeant Admin" position costs, by the contracted labor costs identified in the contract supplemental schedules," which reduced allowable rates by 35-45 percent over those claimed.[32] The other sergeant positions not included in the indirect cost pool, as requested by the claimant, remained classified as direct contract costs.[33] The Commission finds that the Controller adequately considered the claimant's position throughout the audit, all relevant factors, and demonstrated a rational connection between those

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[27] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 21.

[28] Exhibit A, IRC, filed August 22, 2017, page 533 (Final Audit Report). 1,743 productive hours is in the SDSO contract for 2008-2008 through 2011-2012; Exhibit A, IRC, filed August 22, 2017, page 452 (Contract for Law Enforcement Services), Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 406 (Contract for Law Enforcement Services).

[29] Exhibit A, IRC, filed August 22, 2017, pages 507-508 (Parameters and Guidelines).

[30] Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

[31] Exhibit A, IRC, filed August 22, 2017, page 541 (Final Audit Report).

[32] Exhibit A, IRC, filed August 22, 2017, pages 541-542 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 28, 411 (Calculation of Allowable Indirect Cost Rates).

[33] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 427 (Controller's email of April 17, 2017).

factors, the choices made, and calculated an indirect cost rate proposal consistent with the Parameters and Guidelines and the contracts with SDSO.[34] There is no evidence in the record that the Controller failed to explain its position or consider the claimant's documentation, as alleged in the IRC.

Therefore, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

04/06/2011 The claimant filed its fiscal year 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010 reimbursement claims.[35]

01/26/2012 The claimant signed its fiscal year 2010-2011 reimbursement claim.[36]

02/05/2013 The claimant filed its fiscal year 2011-2012 reimbursement claim.[37]

05/23/2017 The Controller issued the Draft Audit Report.[38]

06/01/2017 The claimant submitted comments on the Draft Audit Report.[39]

06/30/2017 The Controller issued the Final Audit Report.[40]

08/22/2017 The claimant filed the IRC.[41]

01/22/2018 The Controller filed comments on the IRC.[42]

06/05/2019 Commission staff issued a "Second Notice of Incomplete Incorrect Reduction Claim" that notified the claimant of missing documents in the IRC.

06/13/2019 The claimant filed the missing documents.

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[34] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[35] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 136-186. Exhibit A, IRC, filed August 22, 2017, page 620-670 (Annual Reimbursement Claims).

[36] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 195 (2010-2011 Reimbursement Claim).

[37] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 202 (2011-2012 Reimbursement Claim).

[38] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 39 (Final Audit Report).

[39] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 64-134 (Claimant's comments on the Draft Audit Report).

[40] Exhibit A, IRC, filed August 22, 2017, page 517 (Final Audit Report).

[41] Exhibit A, IRC, filed August 22, 2017.

[42] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018.

09/04/2020 Commission staff issued the Draft Proposed Decision.[43]

11/06/2020 The claimant filed comments on the Draft Proposed Decision.[44]

II. Background

A. The *Crime Statistics Reports for the Department of Justice* Program

The *Crime Statistics Reports for the Department of Justice* Decision was approved by the Commission on June 26, 2008 and July 31, 2009. The test claim statutes require local agencies to report information related to specified types of crimes (homicide, hate crimes, firearms) to the DOJ, and as relevant here, to support all domestic violence-related calls for assistance with a written incident report.[45]

The Parameters and Guidelines were adopted on September 30, 2010, and authorize reimbursement for local law enforcement agencies to support all domestic violence-related calls for assistance with a written incident report, and to review and edit the report, beginning July 1, 2001.[46] The Parameters and Guidelines also require actual costs to be "traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities."[47]

The Parameters and Guidelines were amended on January 24, 2014, to clarify that certain activities related to supporting all domestic violence-related calls with a written report are not reimbursable.[48] The amendment does not affect this IRC.

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[43] Exhibit C, Draft Proposed Decision, issued September 4, 2020.

[44] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020.

[45] Penal Code section 13730(a), Exhibit A, IRC, filed August 22, 2017, pages 501-502 (Parameters and Guidelines).

[46] Exhibit A, IRC, filed August 22, 2017, pages 501-502 (Parameters and Guidelines).

[47] Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

[48] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 317, 321 (Parameters and Guidelines, amended January 24, 2014). The amended Parameters and Guidelines clarify that:

> Reimbursement is ***not*** required to interview parties, complete a booking sheet or restraining order, transport the victim to the hospital, book the perpetrator, or other related activities to enforce a crime and assist the victim.
>
> In addition, reimbursement is ***not*** required to include the information in the incident report required by Penal Code section 13730(c)(1)(2), based on the Commission decision denying reimbursement for that activity in *Domestic Violence Training and Incident Reporting* (CSM-96-362-01). Reimbursement for including the information in the incident report required by Penal Code section 13730(c)(3) is not provided in these parameters and guidelines and may not be claimed under this program, but is addressed in *Domestic Violence Incident Reports II* (02-TC-18).

The *Crime Statistics Reports for the Department of Justice* program has been suspended by the Legislature pursuant to Government Code section 17581 since fiscal year 2012-2013.[49]

B. The Controller's Audit and Summary of Issues

The Controller found that of the $1,094,487 claimed during the audit period, $722,360 is allowable and $372,127 is unallowable.[50] There are two primary findings in the audit.

1. Finding 1 – The Controller Found that the Claimant Overstated the Number of Domestic Violence-Related Calls for Assistance and Its Contract Services Costs.

The claimant classified its claimed costs as personnel costs even though city personnel do not perform the reimbursable activities. The claimant contracts for all law enforcement services with the SDSO, so the claimant did not incur any salaries and benefits costs as claimed. Thus, the Controller reallocated the claimed costs to the appropriate category of contract services.[51]

The claimant calculated the hours to perform the reimbursable activity (i.e., support all domestic violence-related calls for assistance with a written incident report, and review and edit the report) by multiplying the number of domestic violence-related calls for assistance by the estimated time to write the incident report. The claimant then multiplied the hours claimed by the SDSO hourly rates to determine the total claimed costs.[52] The Controller found that the claimant misstated the number of written incident report counts, misstated the time increments per activity, and misstated the contract productive hourly rates.[53] The claimant disputes only the reductions in Finding 1 to the number of domestic violence incident reports in fiscal years 2001-2002 through 2006-2007, and the contract productive hourly rates in fiscal years 2001-2002 through 2006-2007.[54]

a. The Controller Reduced the Overall Number of Written Reports for Domestic Violence-Related Calls for Assistance for Fiscal Years 2001-2002 Through 2006-2007.

The Controller requested supporting documentation to verify the number of domestic violence incidents claimed during the audit period that were supported by incident reports, and the SDSO provided reports from the Automated Regional Justice Information System (ARJIS) for fiscal

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[49] Statutes 2019, chapter 23, Item 8885-295-0001, Schedule (5)(i). Statutes 2018, chapter 29, Item 8885-295-0001, Schedule (5)(i). Statutes 2017, chapter 14, Item 8885-295-0001, Schedule (5)(i). Statutes 2016, chapter 23, Item 8885-295-0001, Schedule (5)(i). Statutes 2015, chapter 10, Item 8885-295-0001, Schedule (5)(i). Statutes 2014, chapter 25, Item 8885-295-0001, Schedule (3)(j). Statutes 2013, chapter 20, Item 8885-295-0001, Schedule (3)(k). Statutes 2012, chapter 21, Item 8885-295-001, Schedule (3)(ddd).

[50] Exhibit A, IRC, filed August 22, 2017, pages 517, 519 (Final Audit Report).

[51] Exhibit A, IRC, filed August 22, 2017, page 528 (Final Audit Report).

[52] Exhibit A, IRC, filed August 22, 2017, page 528 (Final Audit Report).

[53] Exhibit A, IRC, filed August 22, 2017, page 528 (Final Audit Report).

[54] Exhibit A, IRC, filed August 22, 2017, pages 4-5, 6.

years 2007-2008 through 2011-2012.[55] These reports identify the date and time of the domestic violence-related calls for assistance in fiscal years 2007-2008 through 2011-2012, the incident number, and the total number of incidents each year during this time period.[56] To verify the number of incidents identified in the ARJIS reports and whether they were supported with a written report, the Controller reviewed a random sample of 33 incidents of domestic violence-related calls for assistance in fiscal years 2010-2011 and 2011-2012. The review of the incident records revealed that only one incident report claimed did not include domestic violence-related information; a discrepancy the Controller determined was immaterial. Thus, the Controller used the verified incident counts to compute allowable costs for fiscal years 2007-2008 through 2011-2012.[57] According to the Controller, "the SDSO did a sufficient and appropriate job of generating the [incident] data from ARJIS. Therefore, we concluded that the query reports provided for FY 2007-08 through FY 2011-12 were reliable."[58]

For fiscal years 2001-2002 through 2006-2007, the claimant identified 1,990 incidents of domestic violence-related calls supported with written reports.[59] However, unlike fiscal years

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[55] Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 344-375 (ARJIS reports of domestic violence- related calls for assistance for fiscal years 2007-2008 through 2011-2012). According to the ARJIS website:

> The Automated Regional Justice Information System (ARJIS) was created as a Joint Powers Agency to share information among justice agencies throughout San Diego and Imperial Counties, California. ARJIS has evolved into a complex criminal justice enterprise network used by 80+ local, state, and federal agencies in the two California counties that border Mexico. The ARJIS governance structure promotes data sharing and cooperation at all levels for member agencies, from chiefs to officers to technical staff.
>
> ARJIS is responsible for major public safety initiatives, including wireless access to photos, warrants, and other critical data in the field, crime and sex offender mapping, crime analysis tools evaluation, and an enterprise system of applications that help users solve crimes and identify offenders. ARJIS also serves as the region's information hub for officer notification, information sharing, and the exchange, validation, and real-time uploading of many types of public safety data.

Exhibit E, What Is ARJIS, http://www.arjis.org/SitePages/WhatIsARJIS.aspx (accessed on September 3, 2020).

[56] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 344-375 (ARJIS reports of domestic violence- related calls for assistance for fiscal years 2007-2008 through 2011-2012).

[57] Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 20.

[58] Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

[59] Exhibit A, IRC, filed August 22, 2017, pages 5, 529 (Final Audit Report), which show 208 claimed incident counts in fiscal year 2001-2001, 356 in fiscal year 2002-2003, 323 in fiscal year

2007-2008 to 2011-2012, the Controller found that: "The SDSO was not able to provide [ARJIS] reports or supporting documentation for incidents claimed for FY 2001-02 through FY 2006-07."[60] The Controller therefore calculated an average annual incident count for fiscal years 2001-2002 through 2006-2007, based on the verified data for fiscal years 2007-2008 through 2011-2012. This resulted in an increase of 66 incidents to the 208 claimed for 2001-2002 and a reduction of 412 incidents from 782 claimed for fiscal years 2002-2003 through 2006-2007.[61]

b. The Controller Reduced the Contract Hourly Rates Claimed for Fiscal Years 2001-2002 Through 2006-2007.

For fiscal years 2001-2002 through 2006-2007, the Controller found that the claimant overstated the contract rates applicable to the mandate. For these fiscal years, the claimant used the contract rates charged by SDSO, which were billed on a "full cost per Patrol Deputy basis" and included all overhead costs built into that "unit" rate.[62] The Controller found that the salary and benefit rates claimed for these fiscal years were overstated due to "co-mingled multiple classifications [including deputy patrol, sergeant patrol, and sergeant detective] into one rate," and included employee classifications that did not perform the reimbursable activities.[63] The SDSO provided "segregated contract salary and benefit amounts," which the Controller used to calculate allowable rates for fiscal years 2001-2002 through 2006-2007.[64] The Controller also found that the claimant used inconsistent annual contract hours (from 3,102.5 to 1,742.91) to claim hourly rates, so the Controller recalculated the rates using 1,743 productive hours noted in the contract in the later undisputed years.[65] The combined recalculations resulted in annual reductions of contract hourly rates for sheriff deputies ranging from $58.83 to $87.54 for fiscal years 2001-2002 through 2006-2007.[66]

2. Finding 2 – The Controller Found that the Claimant Misstated Its Indirect Costs.

Of the $270,405 claimed for indirect costs during the audit period, the Controller found that $238,920 is allowable and $31,485 is unallowable because the claimant "misclassified claimed

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2003-2004, 359 in fiscal year 2004-2005, 371 in fiscal year 2005-2006, and 373 in fiscal year 2006-2007, for a total of 1990 claimed incident counts.

[60] Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

[61] Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

[62] Exhibit A, IRC, filed August 22, 2017, page 6.

[63] Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-23, 377-398.

[64] Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 377-398.

[65] Exhibit A, filed August 22, 2017, IRC, pages 532-533 (Final Audit Report). Controller's Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

[66] Exhibit A, filed August 22, 2017, IRC, page 533 (Final Audit Report). For example, the deputy hourly rate for 2001-2002 was reduced from $106.17 to $47.34 (a $58.83 reduction).

direct costs as salaries and benefits rather than contract services, inappropriately calculated indirect cost rates based on direct labor rather than contract services, and applied indirect cost rates to unallowable contract services costs as identified in Finding 1."[67]

Specifically, for fiscal years 2001-2002 through 2006-2007, the claimant applied a 10 percent indirect cost rate to contract services costs that were incorrectly claimed as salaries and benefits. For fiscal years 2007-2008 through 2011-2012, the claimant prepared Indirect Cost Rate Proposals (ICRPs) of between 80.8 and 91.8 percent and applied those rates to the contract services costs that were incorrectly claimed as salaries and benefits.[68] The Controller found that the claimant's methodology to compute indirect costs as labor costs was not appropriate because the claimant contracted with SDSO to perform the activities and therefore did not have salary and benefit costs. Thus, the Controller reviewed the contract agreements and schedules between the claimant and SDSO. For fiscal years 2007-2008 through 2011-2012, the Controller found that the overhead costs identified in the contract were appropriate as they related to the performance of the mandated activities. Thus, the Controller computed the contract-services indirect cost rates for these years at 45.9 to 50.4 percent by dividing total contract overhead costs, station support staff costs, and "Sergeant Admin" position costs, by the contracted labor costs identified in the contract supplemental schedules, resulting in a 35-45 percent reduction of the rates claimed for fiscal years 2007-2008 through 2011-2012.[69]

Because schedules were not available for fiscal years 2001-2002 through 2006-2007, the Controller calculated an average contract indirect cost rate based on the rates for the later fiscal years and applied it to fiscal years 2001-2002 through 2006-2007. This resulted in an *increase* in indirect cost rates from 10 percent to an adjusted rate of 47.7 percent.[70]

III. Positions of the Parties

A. City of San Marcos

The claimant disputes the Controller's findings relating to the number of domestic violence-related calls for assistance for fiscal years 2001-2002 through 2006-2007, the methodology to calculate the contract hourly rates for fiscal years 2001-2002 through 2006-2007, and the reduction and recalculation of indirect costs.

Regarding the number of domestic violence-related calls for assistance, the mandated activity is to "support" these calls with a written report, which must be reviewed and edited.[71] The claimant argues that it should be permitted to use "actual Domestic Violence (DV) Statistics provided for fiscal years 2001-02 through 2006-07 in lieu of estimates developed by the State Controller's Office (SCO), which proposed to use an average of the five most recent years of the

[67] Exhibit A, filed August 22, 2017, IRC, page 541 (Final Audit Report).

[68] Exhibit A, filed August 22, 2017, IRC, pages 541-542 (Final Audit Report).

[69] Exhibit A, filed August 22, 2017, IRC, page 542 (Final Audit Report).

[70] Exhibit A, filed August 22, 2017, IRC, page 542 (Final Audit Report).

[71] See Exhibit A, IRC, filed August 22, 2017, page 506 (Parameters and Guidelines).

audit."[72] The claimant states that the Controller used an estimate because the SDSO "converted its data to a new system in 2007 and were not able to generate the detailed reports SCO requested during the audit," including case numbers, dates, and applicable Penal Code sections.[73] The claimant argues that the "SDSO did however maintain the total annual case counts in summary format and believes these reports are adequate to prove the total number of Domestic Violence cases for which reports were written in compliance with the State Mandated program particularly since all the other five fiscal years audited proved 100% reliability."[74] The reports the claimant relies on are (1) ARJIS annual reports submitted from the SDSO to the claimant's consultant; (2) SANDAG reports from 2002, 2007, and 2008; and (3) annual statistical reports submitted to the State Department of Justice (DOJ).[75] The claimant argues that these are "'actual' and 'contemporaneous' statistics."[76]

In comments on the Draft Proposed Decision, the claimant alleges that the DOJ audits the data provided to them by local law enforcement to verify its accuracy, which should "add credibility and confidence to the State DOJ and … ARJIS statistics."[77] The claimant also appears to explain the variation in the number of domestic violence-related calls for assistance by arguing:

> This variation was due to the fact that the State Department of Justice (DOJ) statistics used to prepare the claims were based on calendar year reporting whereas the ARJIS statistics were reported by fiscal year. When the data is examined in total for the time period audited, the variation is extremely small. During the 5 years audited, the State found that the variation during this period was less than 10 cases out of an average of 1,300 cases examined (a negligible amount).[78]

In addition, the claimant alleges that crime throughout the City, including domestic violence incidents, trended downward throughout the audit period, and therefore "[u]sing an average from just the five most recent audited years does not adequately compensate the City for actual mandate related DV case costs."[79] The claimant emphasizes that the audit of the data for fiscal years 2007-2008 through 2011-2012 "found that data to be reliable and accurate," so ". . . it is reasonable to conclude that [the same source of] data, which was prepared and submitted

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[72] Exhibit A, IRC, filed August 22, 2017, page 4.

[73] Exhibit A, IRC, filed August 22, 2017, page 4.

[74] Exhibit A, IRC, filed August 22, 2017, page 4.

[75] Exhibit A, IRC, filed August 22, 2017, pages 4, 27-39 (ARJIS reports), 40-290 (SANDAG reports), 292-310 (DOJ reports and "Criminal Statistics Reporting Requirements" March 2000).

[76] Exhibit A, IRC, filed August 22, 2017, page 4.

[77] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 2.

[78] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 2.

[79] Exhibit A, IRC, filed August 22, 2017, page 4.

contemporaneously, should also be reliable sources for the prior fiscal years."[80] This is reiterated in the claimant's comments on the Draft Proposed Decision. The claimant also argues:

> It took the State over 10 years to review the test claim, adopt Parameters and Guidelines, and release claiming instructions for this program. Then an additional 6 years for the State Controller's Office (SCO) to initiate an audit of the program. It can be no surprise that "detailed" actual reports of each and every case are no longer available nor maintained by local agencies for State Controller to do their full review by case level. To expect that the same computer systems are still operational and full reports available after almost twenty years is beyond reasonable.
>
> The City believes that it satisfied the Claiming Instructions requirements for records retention in an aggregate format, which was shown to be valid and reasonable and therefore, should not be reduced by the approximately 10% proposed by the SCO by using their averaging methodology.[81]

Regarding the Controller's finding that the contract hourly rates were overstated, the claimant argues that "[t]he methodologies [it] used … to compute the billing rates were consistent with contract language."[82] The claimant states that for fiscal years 2001-2002 through 2006-2007, "the City was billed for law enforcement services on a full cost per Patrol Deputy basis," which included "overhead" costs for Sergeant and Sergeant Detective support "built into that one rate."[83] As a result, the claimant used a unit cost for the Deputy position, and did not include any additional eligible costs for the Sergeants to review and approve reports because their costs were already factored into the Deputy's hourly rate.[84]

The claimant further states that "[c]omingling of multiple positions in a contract situation is very common" and "[t]he City is not aware of any case where the SCO deconstructed attorney or consultant billed rates because the rates had included other overhead charges and not just the actual employee salary."[85] The claimant maintains that the deconstruction of the contract rates to calculate salaries and benefits was inappropriate, but "[i]f the Commission determines the deconstruction method used by the SCO is valid, then the City believes the indirect rate should account for all of the applicable overhead costs in the contract as they are valid costs per OMB A-87."[86] In its comments on the Draft Proposed Decision, the claimant argues that the costs were not commingled among the SDSO contract categories:

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[80] Exhibit A, IRC, filed August 22, 2017, page 5.

[81] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 2.

[82] Exhibit A, IRC, filed August 22, 2017, page 6.

[83] Exhibit A, IRC, filed August 22, 2017, page 6.

[84] Exhibit A, IRC, filed August 22, 2017, page 6.

[85] Exhibit A, IRC, filed August 22, 2017, page 6.

[86] Exhibit A, IRC, filed August 22, 2017, page 6.

> The contracts with San Diego County Sheriff's Department/Office (SCSO) detail all costs by activity, and by direct and indirect costs for: PATROL – or general law enforcement activities; TRAFFIC enforcement activities; and CUSTOM units – broken down further by "Special Purpose Details" and "Special Purposes Officers". This ensures that costs for TRAFFIC or CUSTOM or Special units are not comingled with the General Law Enforcement (PATROL) costs. [¶] . . . [¶]
>
> The County [SDSO] had different overhead rates/charges for each type of unit; thus, only related applicable overhead would be included in the computation of the claim and Commission staff's concerns that, "hourly contract rates used by the claimant for fiscal years 2001-02 through 2006-07 are not specific to the mandated activities" are unfounded.
>
> The City did not request reimbursement for the Sergeant and the Detective Sergeant positions during FY 2001-02 though FY 2006-07, therefore there is no issue of overbilling the State. [¶] . . . [¶]
>
> SCO "deconstruction" of rates to extract Sergeant and Detective positions was unnecessary as a portion of their costs was already included in the contractual overhead rate.[87]

The claimant also maintains that the Controller obtaining salary and benefit information from the SDSO, as the contracting entity, is not supported by the Parameters and Guidelines, the Claiming Instructions or the Claiming Manual. The claimant refers to the claiming instructions that require multiplying the number of hours by the hourly billing rate, arguing that the claimant calculated its services that way, and that there is no evidence that the Controller "felt that the San Diego County Sheriff's Office (SDSO) rates charged were unreasonable or excessive."[88] The claimant asserts that the Controller's methodology of calculating an average hourly rate for the other contract years and applying it to fiscal years 2001-2002 through 2006-2007 is a "new methodology" that cannot be applied retroactively (citing *City of Modesto v. National Med. Inc.* (2005) 128 Cal.App.4th 518, 527).[89]

The claimant further argues:

> The rates the Controller computed were not based on actual costs or actual billing rates as specified in Claiming Instructions or in Parameters and Guidelines. The city believes this new methodology used by the SCO to compute deconstructed

[87] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 3.

[88] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 4.

[89] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 4.

contract billing rates constituted underground rule-making by the State Controller's Office and was erroneous.[90]

The claimant requests that "this new methodology not be allowed until new instructions are drafted and clarification is provided on how to implement this new 'contract rate deconstruction methodology.'"[91]

Related to the contract rates is the Controller's findings on indirect costs, which the claimant challenges separately for fiscal years 2001-2002 through 2006-2007, and 2007-2008 through 2011-2012. Regarding fiscal years 2001-2002 through 2006-2007, the claimant sought reimbursement based on a 10 percent default rate allowed in the Parameters and Guidelines that it applied to its direct contract costs. The Controller found that this was not appropriate because the Parameters and Guidelines allowed that 10 percent rate to be applied only to salaries and benefits, not to contract services costs, which already included overhead costs.[92] The Controller deconstructed the contract services costs, as discussed above, in order to isolate the actual hourly rates applicable to the mandated activities and then calculated an average indirect cost rate for fiscal years 2001-2002 through 2006-2007 based on the audited rate for fiscal years 2007-2008 through 2011-2012.[93] The claimant argues that "ICRP rates did not have to be computed for this time period, because the County charged hourly rates already included all indirect costs, WITH THE EXCEPTION OF LIABILITY and some equipment charges which were billed separately in the contract."[94] According to the claimant, "claiming the 10% was appropriate to compensate the City for the separately billed costs and also for the citywide overhead costs incurred to administer the contract … ."[95] The Controller's calculated indirect cost rate for fiscal years 2001-2002 through 2006-2007 is 47.7 percent, based on an average of the last five years of the audit period.[96] The claimant disagrees that an averaging method was necessary and requests "if the Commission believes that deconstruction of [contract services] rates is appropriate, then the SCO be required to compute actual ICRP rates for these years using the County CLEP reports."[97]

Regarding fiscal years 2007-2008 through 2011-2012, the claimant alleges that the Controller's indirect cost rates, based on the "deconstructed" contract hourly rates, do not include all

[90] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 5.

[91] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 5.

[92] Exhibit A, IRC, filed August 22, 2017, pages 541-542 (Final Audit Report).

[93] Exhibit A, IRC, filed August 22, 2017, pages 542 (Final Audit Report).

[94] Exhibit A, IRC, filed August 22, 2017, page 7. Emphasis in original.

[95] Exhibit A, IRC, filed August 22, 2017, pages 7, 542 (Final Audit Report).

[96] Exhibit A, IRC, filed August 22, 2017, page 7.

[97] Exhibit A, IRC, filed August 22, 2017, page 8.

applicable indirect costs.[98] Specifically, the claimant states that the "SCO allowed only one sergeant…in their computation of ICRP rates."[99] According to the claimant:

> The SCO did not explain why the other approximately seven Sergeants who also have administrative and support duties were not considered allowable or "appropriate". Inclusion of only one of the seven is arbitrary and does not reflect the actual overhead incurred in the contract. Also, Detective charges were also excluded from the overhead computation, but those costs had always been considered overhead charges in prior contracts.[100]

The claimant also asserts that "[d]uring the course of the audit, the City asked the SCO staff what documentation would be required to prove the other Sergeants were indeed administrative and support positions, but the City received no response or direction."[101] The claimant states that it "provided job descriptions, contracts and the Commanding officers' statement along with his estimate of percentage of time each position spent on administrative duties."[102]

In comments on the Draft Proposed Decision, the claimant asserts that the Controller's methodology for calculating indirect costs for fiscal years 2007-2008 through 2011-2012 is incorrect because it is based on vendor billing methodology and a description in the SDSO contract, which states that the claimant would pay for "direct" staff such as detectives, sergeants, etc. The contract "is labeling a direct cost as one that is assignable to a particular CITY, 'Each CITY shall pay for direct staff. . .' and shared costs benefitting more than one agency ' . . . will be pooled and allocated as overhead to all the cities based on the number of deputies. . .'"[103] According to the claimant, the Controller's decision to use the contract labels from the costing section of the contract to determine whether a cost was direct or indirect was "erroneous and not in accordance with State Instructions and Federal Guidelines."[104]

The claimant argues that indirect costs should be "costs incurred for a joint purpose, benefitting more than one program" as required by the Parameters and Guidelines, as well state regulations and federal OMB guidelines. The claimant further argues that the sergeant positions meet the definition in these authorities because they are: (1) for a 'common or joint purpose,' (2) benefit more than one program, (3) benefit the cost objectives, and (4) may include the overhead in the

[98] Exhibit A, IRC, filed August 22, 2017, page 8.

[99] Exhibit A, IRC, filed August 22, 2017, page 8.

[100] Exhibit A, IRC, filed August 22, 2017, page 8.

[101] Exhibit A, IRC, filed August 22, 2017, page 8.

[102] Exhibit A, IRC, filed August 22, 2017, page 8.

[103] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 6. Emphasis in original. The claimant refers to Exhibit A, IRC, filed August 22, 2017, pages 413-414.

[104] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 6.

unit performing the mandate.[105] The claimant states that the Controller based its analysis on "irrelevant billing contractual descriptions to classify costs rather than the actual functional criteria of those costs/positions as specified under the Parameter and Guidelines" and other relevant authorities.[106] The claimant further asserts that the Controller used an incorrect definition of 'direct costs' in its January 22, 2018 comments on the IRC that "may have also led to their error . . . in their classification of direct and indirect costs."[107] The claimant reiterates that one sergeant position for indirect costs is insufficient because it requested that all or a majority of sergeant costs be included in its overhead calculation.[108] The claimant alleges that the Controller's conclusion "was arbitrary and did not reasonably explain why they did not treat all employees who performed in an identical job classification consistently."[109] Finally, the claimant argues that the Controller's indirect cost conclusion "yields a clearly false and illogical result, showing a clear error in judgment" because:

> With over 32 Patrol Deputies employed and working 24-hour shifts, it would be physically impossible for one single Sergeant working an eight-hour day to supervise multiple squads of officers working round the clock as well as the station's entire professional staff.[110]

B. State Controller's Office

The Controller maintains that its reductions are correct, and states that reductions related to the number of domestic violence-related calls for assistance in Finding 1 are based on a lack of supporting documentation.[111] The Controller states that the claimant "did not properly support the claimed number of domestic violence-related calls for assistance incidents for FY 2001-02 through FY 2006-07, as the city provided no supporting documentation beyond a total number of incidents claimed."[112] The Controller states that "[a]s an alternative to allowing no costs in FY 2001-02 through FY 2006-07, the SCO computed an average number of incidents based on the actual data reports provided for FY 2007-08 through FY 2011-12," and applied that average to

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[105] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 8.

[106] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 8.

[107] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 9.

[108] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, pages 9-11.

[109] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 11.

[110] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 11.

[111] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 16.

[112] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 17.

the earlier part of the audit period.[113] The Controller disagrees with the claimant's characterization of its audit finding as a qualitative assessment of the reliability of the compiled data:

> In its final audit report, the SCO attested to the accuracy of full ARJIS reports provided for FY 2007-08 through FY 2011-12 that the SCO was able to analyze and verify …. However, the SCO did not attest to the reliability of counts claimed or any other historical data for other fiscal years of the audit period, as the city did not provide support for claimed incident counts FY 2001-02 through FY 2006-07.[114]

The Controller further states, "[t]he SCO would have audited the statistics for the entire audit period if supporting documentation had been provided for our review."[115] The Controller notes:

> Corroborating documentation cannot be substituted for actual source documents. The SCO cannot use unverified reports from other agencies, nor accept correspondence at face value; we must perform substantive testing procedures to verify the accuracy of claimed information.[116]

The Controller states that its audit found "variances" from the claimed amounts in each of the five years that it was able to analyze fully. According to the Controller:

> Rather than guessing at the errors in the claimed counts for FY 2001-02 through FY 2006-07, the SCO relied on actual counts that had been verified… [and] computed an average incident count based on verified actual ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for unsupported years.[117]

As to the contract hourly rates (that the claimant calls "deconstructed" rates because the Controller separated them by classification), the Controller explains:

> The claimed rates were overstated because the city used inconsistent methodology to compute claimed rates, used contract salary and benefit amounts that were co-mingled with multiple classifications, and applied inconsistent annual contract hours to compute claimed hourly rates.[118]

The Parameters and Guidelines allow "only the pro rata portion of the services used to implement the reimbursable activities be claimed."[119] The Controller found that for 2001-2002 through 2006-2007, the claimant "co-mingled multiple classifications and overhead costs into

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[113] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 17.

[114] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 20.

[115] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 19.

[116] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 19.

[117] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 20.

[118] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 20.

[119] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 20.

one rate [for salaries and benefits]."[120] This included classifications that did not perform mandated activities, and so the Controller sought to separate the costs of mandated activities with those unrelated to the mandate, using cost schedules provided by SDSO.[121] For fiscal years 2007-2008 through 2011-2012, the costs were already segregated by classification within the contract, and so the Controller accepted those rates.[122] With respect to comingling positions within a contract, the Controller states "this should not preclude the city from determining which portion of the contract costs relate to the mandated program and which do not."[123] Finally, the Controller asserts that "[r]e-computing claimed rates is one of those audit procedures necessary to determine whether claimed rates represent costs incurred for the performance of the mandated activities or whether those rates include costs outside the scope of the program."[124]

With respect to the indirect cost issue, the Controller found that for fiscal years 2001-2002 through 2006-2007, indirect costs were claimed based on the 10 percent default rate allowed by the Parameters and Guidelines. The claimant applied the rates to contract services that the Controller found were incorrectly claimed as salaries and benefits.[125] Regarding fiscal years 2007-2008 through 2011-2012, the claimant prepared indirect cost rate proposals (ICRPs), but the Controller asserts they were misapplied to contract costs.[126]

The Controller determined that the contract services costs are not an appropriate cost basis against which to apply an indirect cost rate, whether it is the 10 percent default rate, or an ICRP.[127] Because the claimant's contract with the SDSO for fiscal years 2007-2008 through 2011-2012 isolated costs by classification, and provided labor costs and additional overhead separately, the Controller was able to calculate an indirect cost rate for each of the last five years of the audit period based on salaries and benefits for those performing the mandated activities. The Controller then averaged those indirect cost rates to apply to the earlier part of the audit period, fiscal years 2001-2002 through 2006-2007, for which contract costs were not segregated by classification.[128]

The Controller calculated indirect costs for the latter five years of the audit period "by dividing the sum of total contract overhead line items plus Station Support Staff and Administrative Sergeant position costs, by the contracted labor costs identified in the contract supplemental schedules."[129] The "contract overhead line items" included, for example, supplies, vehicles,

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[120] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 21.

[121] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 21.

[122] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 21.

[123] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 23.

[124] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 23.

[125] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 24.

[126] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 24.

[127] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 23.

[128] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 24-25.

[129] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 24.

workspace, and other similar items.[130] The Controller notes that the rates it calculated are "contract-related indirect cost rates," rather than ICRPs, because the costs are derived from the amounts in the contracts, and applied to the contract, rather than direct labor costs, which the claimant did not incur.[131] The claimant does not agree with the rates determined by the Controller, specifically because "the majority of the Sergeant Classification costs should be allocated as indirect costs."[132] The Controller, however, maintains that it "accounted for all appropriate contracted overhead costs that benefited the implementation of the entire contract."[133] With respect to the claimant's argument that the other approximately seven Sergeants who also have administrative and support duties should be included in the calculation of indirect costs, the Controller explains:

> As stated above, the SCO's original position was that the city did not incur any direct or indirect labor costs. The SCO believed all labor costs listed in the contract should be considered direct contract costs. The SCO originally computed the overhead rates for FY 2007-08 through FY 2011-12 by dividing the subtotals of overhead amounts listed in the bullets above by total labor costs listed in Attachments B [sic] to account for total overhead costs benefiting the execution of the contract as a whole. The SCO presented these computations to the city during the status meeting held on April 10, 2016 (Tab 20). Following the discussions held at the status meeting, the SCO responded to the city's comments via email dated April 17, 2017, and explained the SCO's position regarding labor costs (Tab 21).
>
> The city discussed the issue with the SCO's auditors via a teleconference and email correspondence (Tab 22). The city reviewed the SCO's methodology and proposed that we consider Station Support Staff and Administrative Sergeant position as part of the contract overhead cost pool. The city therefore proposed to move these costs into the contract indirect cost pool and exclude them from the direct labor amount. Although the SCO's position still remained that the city had not incurred any direct or indirect labor costs, after consideration of the city's proposal, the SCO concluded it was reasonable (Tab 22). The SCO revised its computations of the contracted indirect cost rates, and increased the allowable indirect cost rates accordingly to include these positions requested by the city (Tab 19). Therefore, the SCO's determination to include only these positions in the overhead cost pool and not others was not arbitrary, but rather in direct response to the city's requests (Tab 22). The SCO worked with the city to find a reasonable approach. The inclusion of the Station Support Staff and Administrative Sergeant position costs resulted in the increase of allowable indirect cost rates for the audit period. The Exit Conference Handout

[130] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 24.

[131] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 27.

[132] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 28. Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 9.

[133] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 28.

demonstrates that allowable indirect cost rates increased from the initial finding presented at the status meeting (Tab 23).[134]

Regarding the claimant's objection to using an average indirect cost rate based on the later years of the audit period and applying it to the earlier years (2001-2002 through 2006-2007), the Controller notes that the claimant's proposed alternative methodology uses a cost schedule that "we were unable to reference, from the city's Exhibits."[135] The Controller states: "We believe the city is referring to the CLEP Costing Schedule for FY 2001-02 (Tab 16)," but adds that the claimant's proposal, based on the comingled contract rates and overhead line items, actually results in a lower indirect cost rate than the Controller's methodology.[136] The Summary of Indirect Costs, attached to the Controller's Comments on the IRC, shows that for fiscal years 2001-2002 through 2006-2007, the amount of allowable indirect costs is between $7,126 and $10,608 higher than the annual amount claimed.[137]

The Controller maintains that its audit adjustments are correct and should be upheld by the Commission.[138] The Controller did not file comments on the Draft Proposed Decision.

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[139] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not

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[134] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 29.

[135] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 27.

[136] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 27-28.

[137] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 408 (Summary of Indirect Costs).

[138] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 29.

[139] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[140]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[141] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" … "In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support…." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[142]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[143] In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[144]

A. The Claimant Timely Filed This IRC Within Three Years from the Date the Claimant First Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim.

Government Code section 17561 authorizes the Controller to audit the reimbursement claims and records of local government to verify the actual amount of the mandated costs, and to reduce any claim that the Controller determines is excessive or unreasonable. If the Controller reduces a claim on a state-mandated program, the Controller is required by Government Code section 17558.5(c) to notify the claimant in writing, specifying the claim components adjusted, the

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[140] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[141] *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

[142] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[143] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[144] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment. The claimant may then file an IRC with the Commission alleging that the Controller's reduction was incorrect.[145] Section 1185.1 of the Commission's regulations requires IRCs to be filed no later than three years after the claimant first receives from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim that complies with Government Code section 17558.5(c).

The Final Audit Report, dated June 30, 2017, specifies the claim components and amounts adjusted, and the reasons for the adjustments,[146] and thereby complies with the notice requirements in Government Code section 17558.5(c). The claimant filed the IRC on August 22, 2017.[147] Less than two months having elapsed between the issuance of the Final Audit Report and the IRC filing, the Commission finds that the IRC is timely filed.

B. The Commission Does Not Have Jurisdiction to Determine the Controller's Adjustments to the Number of Reports of Domestic Violence-Related Calls for Assistance in Fiscal Year 2001-2002 (Finding 1), or the Adjustment to Indirect Costs for Fiscal Years 2001-2002 Through 2006-2007 (Finding 2), Because the Controller's Adjustments Did Not Result in a Reduction of Allowable Costs.

The claimant challenges two adjustments made by the Controller that resulted in *increased* allowable costs for the claimant. First, the claimant alleges that the Controller's adjustments in Finding 1, related to the allowable number of written reports of domestic violence-related calls for assistance "in fiscal years 2001-2002 through 2006-2007," are incorrect.[148] The claimant and the Controller identify the number of incident reports claimed for fiscal year 2001-2002 as 208, and the number allowed by the Controller for fiscal year 2001-2002 as 274.[149] Thus, the Controller increased the allowable number of incident reports by 66 incidents for fiscal year 2001-2002, which increases allowable costs and does not result in a reduction of costs.

The claimant also alleges that the Controller's method of calculating indirect costs for the entire audit period is incorrect.[150] The Controller's calculation of indirect costs for fiscal years 2001-2002 through 2006-2007, however, resulted in an increase of annual indirect cost rates from 10 percent to 47.7 percent.[151]

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[145] Government Code sections 17551(d), 17558.7; California Code of Regulations, title 2, sections 1185.1, 1185.9.

[146] Exhibit A, IRC, filed August 22, 2017, page 517 (Final Audit Report, Cover Letter).

[147] Exhibit A, IRC, filed August 22, 2017, page 1.

[148] Exhibit A, IRC, filed August 22, 2017, page 5.

[149] Exhibit A, IRC, filed August 22, 2017, page 5; Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 342.

[150] Exhibit A, IRC, filed August 22, 2017, pages 7-8.

[151] Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

Pursuant to Government Code section 17551(d), the Commission only has jurisdiction over reductions taken in the context of an audit. Therefore, the Commission does not have jurisdiction to consider these adjustments that increase allowable costs.

C. The Controller's Reduction in Finding 1 to the Number of Written Reports for Domestic Violence-Related Calls for Assistance Claimed for Fiscal Years 2002-2003 through 2006-2007 Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller reduced the number of reports for domestic violence-related calls for assistance claimed for fiscal years 2002-2003 through 2006-2007. The number of incident reports claimed are not reflected on the reimbursement claims for these fiscal years, but were "obtained [during the audit] from the summary schedule received 3/17/16," and based on a combination of DOJ counts and ARJIS counts."[152] Since the claimant was not able to provide ARJIS reports or supporting documentation to verify the number of incidents reports claimed for these years, the Controller calculated an average of 274 incident reports per year based on the verified data from fiscal years 2007-2008 through 2011-2012, and applied that average incident report count to each fiscal year from 2002-2003 through 2006-2007, resulting in a reduction of 412 reports for those years.[153] The claimant and the Controller identify the following number of incident reports claimed and the number allowed for these fiscal years:[154]

	Claimed Incident Reports	Allowable Incident Reports
FY 2002-2003	356	274
FY 2003-2004	323	274
FY 2004-2005	359	274
FY 2005-2006	371	274
FY 2006-2007	373	274

The claimant challenges this reduction stating that the SDSO "converted its data to a new system in 2007 and [was] not able to generated [sic] the detailed reports SCO requested during the audit – a detailed report showing each incident by case number, date and Penal Code for all the fiscal years."[155] The claimant argues that:

> The SDSO did however maintain the total annual case counts in summary format and believes these reports are adequate to prove the total number of Domestic Violence cases for which reports were written in compliance with the State

[152] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 342.

[153] Exhibit A, IRC, filed August 22, 2017, pages 5, 529 (Final Audit Report).

[154] Exhibit A, IRC, filed August 22, 2017, page 5; Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 342.

[155] Exhibit A, IRC, filed August 22, 2017, page 4.

> Mandated program particularly since all the other five fiscal years audited proved 100% reliability [sic].[156]

The "summary reports" that the claimant references are faxed reports from the SDSO, appearing to answer a query from the claimant representative as follows: "I am working with the following cities and would like to requests [sic] crime stats for the Cities of Encinitas and San Marcos [the claimant] for the following types of cases," including "the number of domestic violence calls for services and cases."[157] Specifically, for fiscal years 2002-2003 and 2003-2004, the single-page fax and cover pages are dated August 15, 2003 and August 24, 2004, and contain a handwritten annual incident count for several crimes including "the number of domestic violence calls for service and cases" for the City of San Marcos at 360 and 394, respectively.[158] For fiscal years 2004-2005, 2005-2006, and 2006-2007, the annual incident count for "domestic violence calls and cases" and "domestic violence calls for service" for the claimant is identified as 336, 350, and 346 respectively, based on the "Data Source: ARJIS", "available as of August 8, 2005, August 30, 2006, and October 2, 2007."[159]

According to the claimant: "[u]sing an average from just the five most recent audited years does not adequately compensate the City for actual mandate related DV case costs. This SCO averaging resulted in an approximately 10% reduction to the City's costs claimed."[160]

In addition, the claimant provides other sources of data that it argues are "'actual' and 'contemporaneous' statistics" and "were prepared based on contemporaneously provided data."[161] The first are 2002, 2007, and 2008 reports prepared by SANDAG, on "Crime in the San Diego Region."[162] The claimant argues that these reports show that the claimed number of domestic violence-related calls for assistance match the DOJ statistics, are "extremely close" to ARJIS data provided, and that the rates of domestic violence were higher during 2002 through 2007 (the years costs were reduced) and were trending down.[163] In its comments on the Draft Proposed Decision, the claimant speaks to the discrepancy between DOJ and ARJIS statistics:

> This variation was due to the fact that the State Department of Justice (DOJ) statistics used to prepare the claims were based on calendar year reporting whereas the ARJIS statistics were reported by fiscal year. When the data is examined in total for the time period audited, the variation is extremely small. During the 5 years audited, the State found that the variation during this period

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[156] Exhibit A, IRC, filed August 22, 2017, page 4.

[157] Exhibit A, IRC, filed August 22, 2017, pages 27-39.

[158] Exhibit A, IRC, filed August 22, 2017, pages 31-33.

[159] Exhibit A, IRC, filed August 22, 2017, pages 34-39; 5.

[160] Exhibit A, IRC, filed August 22, 2017, page 4.

[161] Exhibit A, IRC, filed August 22, 2017, page 4.

[162] Exhibit A, IRC, filed August 22, 2017, pages 40-290 (SANDAG reports).

[163] Exhibit A, IRC, filed August 22, 2017, page 4, 537 (Final Audit Report).

> was less than 10 cases out of an average of 1,300 cases examined (a negligible amount).[164]

The claimant also provided emails from Brent Jordan, Sr., a Crime and Intel Analyst for SDSO, who states that the SANDAG reports represent "reported crime meaning that they had a case number and a written incident report," and Lieutenant Schaller of the SDSO, stating: "Just confirming Brent's statement here. These stats were generated by actual reports generated."[165]

In addition, the claimant provided California DOJ crime data: "CJSC Statistics: Domestic Violence-Related Calls for Assistance," reported for the claimant's jurisdiction, which identifies the total number of domestic violence related calls for assistance in the claimant's jurisdiction in calendar years 2002 through 2007,[166] and DOJ's March 2000 publication, "Criminal Statistics Reporting Requirements," which states that local agencies are required to report data on the number of domestic violence calls on a monthly basis.[167]

In response to the IRC, the Controller considered the claimant's documentation, which corroborates the numbers of written domestic violence incident reports used in the claimant's cost calculations, but states that the documentation does not allow the Controller to verify the validity of the number of incidents or whether they relate to the mandated activity. The Controller notes that the fax transmittals submitted by the claimant do not contain any detail or supporting information to show how the numbers were obtained, or how they related to domestic violence-related calls for assistance. The fax cover sheets also do not provide a list of cases for each fiscal year in question, so that the Controller could not verify whether they were accurate. The Controller also states that the SANDAG reports are not relevant because they do not provide a listing of incident counts to demonstrate that they relate to the reimbursable activity. And the Controller states that the DOJ reports do not provide any assurance that the reported information is accurate or related to the mandated program.[168] The Controller explains that:

> The SCO cannot use unverified reports from other agencies, nor accept correspondence at face value; we must perform substantive testing procedures to verify the accuracy of claimed information. Accepting unsubstantiated statistics that cannot be traced to source documents contradicts our objectives that include verifying the information presented in the city's claims.[169]

The Controller further explains that since the claimed incident counts from the ARJIS reports for fiscal years 2007-2008 through 2011-2012 contained errors, the Controller concluded that it was

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[164] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 2.

[165] Exhibit A, IRC, filed August 22, 2017, page 537 (Final Audit Report); 615 (emails from Brent Jordan, Sr. and Lieutenant Schaller).

[166] Exhibit A, IRC, filed August 22, 2017, pages 292-297.

[167] Exhibit A, IRC, filed August 22, 2017, pages 4, 298-310 (DOJ reports and "Criminal Statistics Reporting Requirements" March 2000).

[168] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 19.

[169] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 19.

likely that the claimed incident counts for fiscal years 2002-2003 through 2006-2007 that are purportedly from "Data Source: ARJIS," also contained errors.[170] For example, for FY 2007-08, the city claimed 291 domestic violence-related calls for assistance incidents. The Controller's review of the ARJIS reports and the testing of actual incident files revealed a variance of 55 incidents (about 20 percent variance) and an allowable count of 236 incidents. The Controller's analysis revealed that each of the five years contained deviations from claimed information.[171] Thus, "instead of allowing no costs," the Controller computed the average incident count based on verified ARJIS data for fiscal years 2007-2008 through 2011-2012 and applied that average to fiscal years 2002-2003 through 2006-2007, stating:

> Rather than guessing at the errors in the claimed counts for FY 2001-02 through FY 2006-07, the SCO relied on actual counts that had been verified for FY 2007-08 through FY 2011-12. Instead of allowing no costs, the SCO computed an average incident count based on verified actual ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for unsupported years.[172]

The Parameters and Guidelines, adopted in 2010, require that claims for actual costs must be traceable and supported by contemporaneous source documentation (documents created at or near the time costs were incurred that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities) and define source documents to include employee time records or time logs, sign-in sheets, invoices and receipts, as follows:

> To be eligible for mandated cost reimbursement for any given fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices and receipts.
>
> Evidence corroborating the source documents may include, but is not limited to, time sheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in

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[170] Exhibit A, IRC, filed August 22, 2017, pages 529, 536 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 17, 20.

[171] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20, 342, 343-349.

[172] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 20.

> compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.[173]

Although the Parameters and Guidelines are regulatory in nature, due process requires that a claimant have reasonable notice of any law that affects their substantive rights and liabilities.[174] Thus, if provisions in parameters and guidelines affect substantive rights or liabilities of the parties that change the legal consequences of past events, then the application of those provisions may be considered unlawfully retroactive under due process principles.[175] Provisions that impose new, additional, or different liabilities based on past conduct are unlawfully retroactive.[176]

Here, the claimant was not on notice of the *contemporaneous* source document requirement (CSDR) when the costs were incurred in fiscal years 2002-2003 through 2006-2007 because the Parameters and Guidelines were not adopted until September 2010. As the claimant argued in its comments on the Draft Proposed Decision:

> It took the State over 10 years to review the test claim, adopt Parameters and Guidelines, and release claiming instructions for this program. Then an additional 6 years for the State Controller's Office (SCO) to initiate an audit of the program. It can be no surprise that "detailed" actual reports of each and every case are no longer available nor maintained by local agencies for State Controller to do their full review by case level. To expect that the same computer systems are still operational and full reports available after almost twenty years is beyond reasonable.[177]

The Commission agrees that, for due process reasons, the CSDR cannot be strictly enforced in these fiscal years. This is similar to the *Clovis Unified School Dist. v. Chiang* case, where the court addressed the Controller's use of the CSDR in audits before the rule was included in the parameters and guidelines, finding that the rule constituted an underground regulation. The court recognized that "it is now physically impossible to comply with the CSDR's requirement of contemporaneousness . . . ."[178] The Controller, however, requested that the court take judicial notice that the Commission adopted the contemporaneous source document rule by later amending the parameters and guidelines. The court denied the request and did not apply the

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[173] Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

[174] *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

[175] *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

[176] *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

[177] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 2.

[178] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

CSDR, since the issue concerned the use of the rule in earlier years, when no notice was provided to the claimant. The court stated:

> We deny this request for judicial notice. This is because the central issue in the present appeal concerns the Controller's policy of using the CSDR *during the 1998 to 2003 fiscal years*, when the CSDR was an underground regulation. This issue is not resolved by the Commission's *subsequent* incorporation of the CSDR into its Intradistrict Attendance and Collective Bargaining Programs' P & G's. (Emphasis in original.)[179]

In this case, the Controller is *not* strictly enforcing the CSDR because the Controller is not requiring contemporaneous documentation and did not reduce the costs claimed to $0. Instead, the Controller found that, unlike the later fiscal years when the claimant provided the ARJIS data reports verifying the incident number and the date the incident occurred to support the number of written reports claimed, the claimant did not provide any source documents to verify the number of written reports identified and claimed in fiscal years 2002-2003 through 2006-2007. Thus, the Controller exercised its audit authority and calculated the number of written reports for domestic violence-related calls for assistance in fiscal years 2002-2003 through 2006-2007 "based on verified actual ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for unsupported years."[180]

Thus, the issue is whether the Controller's reduction of the number of incident reports in fiscal years 2002-2003 through 2006-2007 is arbitrary, capricious, or without evidentiary support. Under this standard, the courts have held that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" … "In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support…." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[181]

The Controller's discretionary or fact-finding powers generally involve the determination of the factual circumstances necessary to establish the validity of a particular claim.[182] Thus, even though the claimant urges the Commission to reject the Controller's audit decisions and determination of the number of written incident reports, the Commission may *not* reweigh the evidence or substitute its judgement for that of the Controller. Instead, the inquiry is limited to

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[179] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 809, fn. 5.

[180] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 20; Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

[181] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[182] *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1329.

whether the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made. Based on this record, the Commission finds that the Controller has adequately met this burden.

As indicated above, the Controller found that the claimant's fax transmittals from the SDSO do not contain any detail or supporting information to show how the annual numbers were obtained. Unlike the ARJIS reports that were available for the Controller's review for fiscal years 2007-2008 through 2011-2012, which identified the date, time, and incident number for each domestic violence-related calls for assistance,[183] the fax transmittals sent to the claimant's representative for fiscal years 2002-2003 through 2006-2007 do not provide this information. The fax transmittals simply identify a total number of "domestic violence calls and cases" and "domestic violence calls for service" in the fiscal year as requested by the claimant's representative.[184] The fax transmittals do not provide a list of cases for each fiscal year in question so that the Controller could properly analyze and verify whether the total numbers actually related to the incident counts in the mandated program and whether the numbers were accurate.[185]

Also, the Controller found that the SANDAG reports for 2002, 2007, and 2008 are not reliable because, like the fax sheets, they do not provide a listing of incident counts to demonstrate that they relate to the reimbursable activity. Similarly, the DOJ reports do not provide any assurance that the reported information is accurate or related to the mandated program.[186] In its comments on the Draft Proposed Decision, the claimant alleges that the DOJ audits the data provided to them by local law enforcement to verify its accuracy, which should "add credibility and confidence to the State DOJ and … ARJIS statistics."[187] However, the DOJ reports do not identify the date, time, and incident number for each domestic violence-related call for assistance, or whether a written incident report was prepared and claimed in accordance with the mandate.[188]

The Controller also explains that it did not accept the claimant's summary data for the disputed years, which were based on ARJIS and DOJ reports, because of the errors it found in the ARJIS incident counts for fiscal years 2007-2008 through 2011-2012. Thus, "[i]nstead of allowing no costs in the earlier years, the SCO computed an average incident count based on *verified* actual

[183] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 344-375 (ARJIS reports of domestic violence-related calls for assistance for fiscal years 2007-2008 through 2011-2012).

[184] Exhibit A, IRC, filed August 22, 2017, pages 27-39.

[185] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 19.

[186] The DOJ data are reported on a calendar year basis, while the ARJIS data is reported on a fiscal year basis. See Exhibit A, IRC, filed August 22, 2017, page 4.

[187] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 2.

[188] Exhibit A, IRC, filed August 22, 2017, pages 27-39.

ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for the unsupported years."[189]

The record shows that the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made to the number of written incident reports claimed. Although the claimant has provided faxed documents from SDSO to the claimant's representative and third party reports purportedly identifying the number of domestic violence-related calls for assistance in the claim years, the claimant has not provided any source documentation (such as a list of incidents and the date they occurred, or the written incident reports themselves) for the Controller to verify the actual number of written incident reports prepared under the mandate and claimed.

The Controller's audit findings are consistent with Government Code section 17561(d)(1)(C), which authorizes the Controller to audit the records of any local agency or school district to verify the actual amount of mandated costs. Moreover, the courts have held that the Controller's duty to audit includes the duty to ensure that expenditures are authorized by law.[190] As indicated above, the Commission is required to defer to the Controller's audit authority and presumed expertise in these circumstances.[191]

Based on this record, the Commission finds that the Controller's reduction and recalculation in Finding 1 of the number of written reports for domestic violence-related calls for assistance in fiscal years 2002-2003 through 2006-2007 is not arbitrary, capricious, or entirely lacking in evidentiary support.

D. The Controller's Reduction in Finding 1 to the Claimant's Contracted Hourly Rates for Fiscal Years 2001-2002 Through 2006-2007 (Including the Adjustment to Annual Productive Hours) Is Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

It is undisputed that the claimant contracts for all law enforcement services with the SDSO, not just for performing the reimbursable activities.[192] For fiscal years 2001-2002 through 2006-2007, the Controller found that the claimant overstated the contract rates applicable to the mandate. For these fiscal years, the claimant used the contract rates charged by SDSO, which were billed on a "full cost per Patrol Deputy basis" and included all overhead costs built into that

[189] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 20. Emphasis added.

[190] *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335; see also, Government Code section 12410 states: "The Controller shall superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment."

[191] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[192] Exhibit A, IRC, filed August 22, 2017, pages 316-468 (Contract for Law Enforcement Services). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 23.

"unit" rate.[193] The Controller found that the claimant's salary and benefit rates claimed for these fiscal years were overstated due to "co-mingled multiple classifications [including deputy patrol, sergeant patrol, and sergeant detective] into one rate," and included employee classifications that did not perform the reimbursable activities.[194] The SDSO provided "segregated contract salary and benefit amounts," which the Controller used to calculate allowable rates for fiscal years 2001-2002 through 2006-2007.[195] The Controller also found that the claimant used an inconsistent number of annual contract hours (from 3,102.5 to 1,742.91) to compute the claimed hourly rates.[196] Since the Controller was able to get segregated contract salary and benefit amounts, the Controller adjusted the annual productive hours to 1,743, as noted in the contract for the later undisputed years.[197] The combined recalculations resulted in annual reductions of contract hourly rates for sheriff's deputies ranging from $58.83 to $87.54 for fiscal years 2001-2002 through 2006-2007.[198]

According to the Controller, recalculating the hourly rates for fiscal years 2001-2002 through 2006-2007 was "necessary to determine whether claimed rates represent costs incurred for the performance of the mandated activities or whether those rates include costs outside the scope of the program."[199]

The claimant contends that the Controller's findings are incorrect since the rates used by the claimant are consistent with the contracts for these fiscal years. The claimant states:

> During the FY 2001-02 through FY 2006-07 time period, the City was billed for law enforcement services on a full cost per Patrol Deputy basis. The County's "Unit Cost" charge was based on the number of Deputies they "purchased", and all overhead costs (which included an allocation for Sergeant & Detective Position support) were built into that one rate. [Citation omitted.]
>
> Accordingly, the City claimed costs using the Unit Cost for the Deputy position, and did not include any additional costs for the Sergeant to review and approve reports, as were eligible, since their costs were already factored into the Deputy's hourly rate.

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[193] Exhibit A, IRC, filed August 22, 2017, page 6.

[194] Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-23, 377-398.

[195] Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 377-398.

[196] Exhibit A, IRC, filed August 22, 2017, pages 532-533 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

[197] Exhibit A, IRC, filed August 22, 2017, pages 532-533 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

[198] Exhibit A, IRC, filed August 22, 2017, page 533 (Final Audit Report). For example, the deputy hourly rate for 2001-2002 was reduced from $106.17 to $47.34 (a $58.83 reduction).

[199] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 23.

> Comingling of multiple positions in a contract situation is very common. When an agency contracts for outside legal or consulting services, for example, the rates charged typically include other support and administrative positions, such allocations of costs for secretaries, receptionist, clerks, etc. The inclusion of support staff by the County in the Deputy's hourly rates is the same principle. The City is not aware of any case where the SCO deconstructed attorney or consultant billed rates because the rates had included other overhead charges and not just the actual employee salary. This is standard practice for external contract services.
>
> Instead of using the Unit Cost as a whole contract service cost to determine the actual costs incurred by the City, the SCO's deconstructed the rates based on what the County paid only its own Deputy position. The deconstruction of the Unit Cost is inappropriate because it does not reflect actual costs and actual methods by which the services were billed to the City pursuant to the contract.[200]

In its comments on the Draft Proposed Decision, the claimant argues that the costs were actually not commingled among the different SDSO contract categories for patrol, traffic, and special purpose officers and, therefore the hourly rates claimed for patrol officers are correct:

> The contracts with San Diego County Sheriff's Department/Office (SCSO) detail all costs by activity, and by direct and indirect costs for: PATROL – or general law enforcement activities; TRAFFIC enforcement activities; and CUSTOM units – broken down further by "Special Purpose Details" and "Special Purposes Officers". This ensures that costs for TRAFFIC or CUSTOM or Special units are not comingled with the General Law Enforcement (PATROL) costs. [¶] . . . [¶]
>
> The County [SDSO] had different overhead rates/charges for each type of unit; thus, only related applicable overhead would be included in the computation of the claim and Commission staff's concerns that, "hourly contract rates used by the claimant for fiscal years 2001-02 through 2006-07 are not specific to the mandated activities" are unfounded.
>
> The City did not request reimbursement for the Sergeant and the Detective Sergeant positions during FY 2001-02 though FY 2006-07, therefore there is no issue of overbilling the State. [¶] . . . [¶]
>
> SCO "deconstruction" of rates to extract Sergeant and Detective positions was unnecessary as a portion of their costs was already included in the contractual overhead rate.[201]

The claimant also maintains that the Controller obtaining salary and benefit information from the SDSO, as the contracting entity, is not supported by the Parameters and Guidelines, the Claiming Instructions or the Claiming Manual. The claimant refers to the claiming instructions that require multiplying the number of hours by the hourly billing rate, arguing that the claimant

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[200] Exhibit A, IRC, filed August 22, 2017, page 6.

[201] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 3.

calculated its services that way, and that there is no evidence that the Controller "felt that the San Diego County Sheriff's Office (SDSO) rates charged were unreasonable or excessive."[202] The claimant further asserts that the Controller's audit methodology, used to calculate an average hourly rate for the other contract years and applying it to fiscal years 2001-2002 through 2006-2007, is a "new methodology" that cannot be applied retroactively (citing *City of Modesto v. National Med. Inc.* (2005) 218 Cal.App.4th 518, 527).[203] The claimant argues:

> The rates the Controller computed were not based on actual costs or actual billing rates as specified in Claiming Instructions or in Parameters and Guidelines. The city believes this new methodology used by the SCO to compute deconstructed contract billing rates constituted underground rule-making by the State Controller's Office and was erroneous.[204]

The claimant requests that "this new methodology not be allowed until new instructions are drafted and clarification is provided on how to implement this new 'contract rate deconstruction methodology.'"[205]

The Controller disagrees with the claimant, stating:

> For FY 2001-02 through FY 2006-07 period, the SDSO costed the contract covering these fiscal years by task or patrol vehicle. The unit cost that the city refers to included various classifications and overhead to account for a great variety of law enforcement services provided to the city. While the city "purchased" these services by paying the "Unit Cost," in doing so the city acquired all law enforcement activities that would be performed by the SDSO. Therefore, claiming the entire "Unit Cost" would result in the city seeking reimbursement for costs of services unrelated to the mandated program that was included in the same rate.[206]

The Commission finds that the Controller's reduction in Finding 1 to the claimant's contracted hourly rates for fiscal years 2001-2002 through 2006-2007, including the Controller's adjustments to the annual productive hours claimed, is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Article XIII B, section 6 requires reimbursement only for the costs incurred to comply with the reimbursable state-mandated activities. Consequently, Section IV. of the Parameters and Guidelines states that the "claimant is only allowed to claim and be reimbursed for increased

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[202] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 4.

[203] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 4.

[204] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 5.

[205] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 5.

[206] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 23.

costs for reimbursable activities identified . . .," and that "[i[increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate."[207] Section V.3. of the Parameters and Guidelines governs contracted services, and states that only the pro-rata portion of the services used to implement the reimbursable activities can be claimed, as follows:

> Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. *If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed.* Submit contract consultant and invoices with the claim and a description of the contract scope of services.[208]

The Parameters and Guidelines are regulatory in nature, and are binding on the parties.[209]

Here, the Controller found that for fiscal years 2001-2002 through 2006-2007, the claimant calculated hourly rates by using the "unit cost" identified in the contract for the task or patrol vehicle, which includes the costs for various classifications and overhead and accounts for all law enforcement services provided to the claimant.[210] This calculation is different than the calculation the claimant used for fiscal years 2007-2008 through 2011-2012, which correctly segregated the contract salary and benefit amounts specific to those peace officer classifications performing the mandate.[211] The claimant does not dispute the facts and submitted its SDSO contracts that support the Controller's conclusions.[212] For example, the contract for general law enforcement and traffic services from July 1, 1996 to June 30, 2001, states:[213]

> a) … Total costs for said [County] services shall be determined by multiplying the unit cost of each identifiable service option by the number of units service [sic] to

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[207] Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

[208] Exhibit A, IRC, filed August 22, 2017, page 506 (Parameters and Guidelines). Emphasis added.

[209] *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

[210] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 23, 380-398 (Attachment B to the contracts between the claimant and SDSO for fiscal years 2001-2002 through 2006-2007).

[211] Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report).

[212] Exhibit A, IRC, filed August 22, 2017, pages 6, 316-468 (Contracts for Law Enforcement Services).

[213] See Exhibit A, IRC, filed August 22, 2017, page 324 (Contract for Law Enforcement Services).

be provided, and multiplying the product derived by CITY's applicable beat factors, as defined below.

[¶] . . . [¶]

g) In addition to the adjustments made in paragraphs (c) and (d) of Section 5, the beat factors of CITY for each of the applicable services agreed to in the Joint Operating and Financial Plan (Attachment B) shall be adjusted annually. The beat factor is the percentage of the total on-call time spent by contracted service units inside CITY limits. The beat factor shall be that determined for the CITY for each type of service option during the calendar year immediately preceding the prospective contract year beginning July 1.[214]

Attachment B of the contract indicates that for fiscal year 2001-2002, the claimant purchased 15 units of sedan patrol units at $329,387 per unit with a beat factor of .99940 and 46,537.5 hours (or 3,102.5 hours per patrol unit), in addition to traffic services and custom (special purpose officer) services.[215] Thus, the annual contract hourly rate claimed was $106.17 ($329,387 ÷ 3,102.5 = $106.17).[216]

The contract for general law enforcement and traffic services from July 1, 2002 to June 30, 2007, similarly states:[217]

a) . . . Total costs for said services shall be determined by multiplying the unit cost of each identifiable service option by the number of units service to be provided, and multiplying the product derived by CITY'S applicable beat factors, as defined below.

[¶] . . . [¶]

g) . . . The beat factor is the percentage of the total on-call time spent by contracted service units inside CITY limits. The beat factor shall be that determined for the CITY for each type of service option during the calendar year immediately preceding the prospective contract year beginning July 1.[218]

Attachment B of the contract indicates that for fiscal year 2002-2003, the claimant purchased 15 units of sedan patrol units at $355,249 per unit with a beat factor of 1.0 and 46,537.5 hours (or

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[214] Exhibit A, IRC, filed August 22, 2017, pages 319-320 (Contract for Law Enforcement Services).

[215] Exhibit A, IRC, filed August 22, 2017, page 362 (Contract Attachment B). The 3,102.5 hours per patrol unit is 365 days per year times 8.5 hours per day. See Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 377 (Controller's calculation of hourly contract rates).

[216] This comports with the Controller's calculation of the claimed hourly rate in Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 21.

[217] See Exhibit A, IRC, filed August 22, 2017, pages 364-385 (Contract for Law Enforcement Services).

[218] See Exhibit A, IRC, filed August 22, 2017, pages 368-369 (Contract for Law Enforcement Services).

3,102.5 hours per patrol unit), in addition to traffic services and custom (special purpose officer) services.[219] Thus, the annual contract hourly rate claimed was $114.50 ($355,249 ÷ 3,102.5 = $114.50).[220]

The claimant now argues that the contract categories for patrol and traffic are not commingled and have different overhead and rates for each type of unit.[221] However, the contracts show the claimed hourly contract unit rates include costs for all personnel performing law enforcement services, which are beyond the scope of the mandated program to prepare written reports for domestic violence-related calls for assistance. In this respect, the hourly contract rates used by the claimant for fiscal years 2001-2002 through 2006-2007 are not the "pro-rata portion of the services used to implement the reimbursable activities" as required by the Section V.3. of the Parameters and Guidelines. Nor did the claimant comply with Section IV., which states that the "claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified . . .," and that "[i[increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate."[222] Accordingly, the Controller's reduction based on the conclusion that the claimant did not comply with the Parameters and Guidelines is correct as a matter of law.

To recalculate the hourly rates related to the mandate, the Controller obtained from the SDSO salary and benefit rates segregated for each peace officer classification that performed the reimbursable activities, like the claimant used for fiscal years 2007-2008 through 2011-2012, and traced the claimed amounts to the contract information and confirmed they were accurate.[223] For example, for fiscal year 2001-2002, the Controller obtained annual salary and benefit information for a Patrol Deputy ($82,510),[224] and divided it by the annual productive hours (1,743),[225] calculating the 2001-2002 hourly rate for a Patrol Deputy at $47.34.[226] The Controller also added $57.72 per hour for a Patrolling Sergeant and Detective Sergeant, a cost not separately included in the filed reimbursement claims.[227] This recalculation complies with

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[219] Exhibit A, IRC, filed August 22, 2017, page 383 (Contract Attachment B).

[220] This comports with the Controller's calculation of the claimed hourly rate in the Final Audit Report, Exhibit A, IRC, filed August 22, 2017, page 533 (Final Audit Report).

[221] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 3.

[222] Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

[223] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 21.

[224] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 382 (SDSO FY 01/02 CLEP Costing).

[225] Exhibit A, IRC, filed August 22, 2017, page 452 (Contract for Law Enforcement Services). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 406 (Contract for Law Enforcement Services).

[226] Exhibit A, IRC, filed August 22, 2017, page 533 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 21.

[227] Exhibit A, IRC, filed August 22, 2017, pages 533-534 (Final Audit Report).

the Parameters and Guidelines to ensure that only the pro-rata costs to comply with the mandate are reimbursable and is, therefore, correct as a matter of law and not arbitrary, capricious, or without evidentiary support.

The Commission also finds that the Controller's adjustment to the annual productive hours claimed for fiscal years 2001-2002 through 2006-2007 is not arbitrary, capricious, or entirely without evidentiary support. The Controller found that the claimant used an inconsistent number of annual productive hours to compute claimed hourly rates.[228] For example, 3,102.5 productive hours were used to compute the rates for fiscal years 2001-2002 through 2006-2007, but between 1,742.91 and 1,799.94 hours were used to compute the later years of the audit period.[229] The Controller used 1,743 productive hours to calculate hourly contract rates for all fiscal years,[230] which is the number of productive hours noted in the SDSO contract for the later undisputed years.[231]

Finally, the Commission is not persuaded by the claimant's argument, in its comments on the Draft Proposed Decision, that the Controller's methodology of calculating an average hourly rate for the later contract years and applying it to fiscal years 2001-2002 through 2006-2007 is a "new methodology" amounting to an underground regulation that cannot be applied retroactively (citing *City of Modesto v. National Med. Inc.* (2005) 128 Cal.App.4th 518, 527).[232] In the *City of Modesto* case, the City Council amended a business license tax ordinance and attempted to collect a tax deficiency. The court found that the City's amended ordinance was intended to apply retroactively only as to procedural changes, but not as to substantive changes. The court held that "a statutory change is substantive if it imposes new, additional or different liabilities based on past conduct."[233] This case, however, involves an audit decision rather than a law like the ordinance in the *City of Modesto* case and therefore the rule against retroactive application does not apply.

Moreover, the Commission disagrees with the claimant's argument that "deconstructed contract billing rates constituted underground rule-making by the State Controller's Office and was erroneous."[234] To constitute underground rule-making, an agency must: (1) intend its rule to

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[228] Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

[229] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

[230] Exhibit A, IRC, filed August 22, 2017, page 533 (Final Audit Report).

[231] Exhibit A, IRC, filed August 22, 2017, page 452 (Contracts for Law Enforcement Services for 2007-2008 through 2011-2012). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 406 (Contracts for Law Enforcement Services for 2007-2008 through 2011-2012).

[232] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 4.

[233] *City of Modesto v. National Med. Inc.* (2005) 128 Cal.App.4th 518, 527.

[234] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 5.

apply generally or to a class of cases rather than to a specific case, and (2) must adopt the rule to implement, interpret, or make specific the law enforced by the agency.[235] The claimant has not shown that the Controller's methodology is applied generally or to a class of cases. As a discretionary decision made in the context of an audit, the methodology does not apply generally or to a class of cases.[236]

In assessing reductions based on the Controller's audit decisions, the Commission's review of the audit is limited to ensuring that the Controller "adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute."[237] The Commission must not reweigh the evidence, or substitute its judgment for the judgment of the Controller.[238] The claimant has not provided evidence that the Controller's recalculation of the SDSO salary and benefit hourly rates are incorrect, or arbitrary or capricious.

Accordingly, the Controller's reduction in Finding 1 to the claimant's contracted hourly rates for fiscal years 2001-2002 through 2006-2007 (including adjustments to the annual productive hours claimed) is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

E. The Controller's Reduction of Indirect Costs in Finding 2 for Fiscal years 2007-2008 Through 2011-2012 Is Not Arbitrary, Capricious or Entirely Lacking in Evidentiary Support.

Section V.B. of the Parameters and Guidelines addresses indirect costs, and provides claimants the option of either claiming 10 percent of direct labor costs, or if indirect costs exceed the 10 percent rate, developing an indirect cost rate proposal by dividing the total allowable indirect costs by an equitable distribution rate.[239]

For fiscal years 2007-2008 through 2011-2012, the claimant developed indirect cost rate proposals, and applied those rates to costs for contracted law enforcement services that were incorrectly claimed as direct labor costs. The claimed indirect cost rates ranged from 80.8 to 91.8 percent for fiscal years 2007-2008 through 2011-2012.[240]

The Controller found that the claimed methodology was incorrect because the claimant contracted for law enforcement with the SDSO and did not incur direct or indirect labor costs. Therefore, the Controller found that it was inappropriate to classify and claim the costs as

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[235] *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.

[236] *Modesto City Schools v. Education Audit Appeals Panel* (2004) 123 Cal.App.4th 1365, 1381-1382.

[237] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[238] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[239] Exhibit A, IRC, filed August 22, 2017, pages 507-508 (Parameters and Guidelines).

[240] Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

indirect "labor costs." In addition, the claimant applied the indirect cost rates to unallowable contract services costs identified in Finding 1.[241]

However, the Controller recognized that the contract costs have general overhead costs associated with the performance of all law enforcement activities that the claimant purchased.[242] Thus, the Controller recalculated indirect cost rates for fiscal years 2007-2008 through 2011-2012 at 45.9 to 50.4 percent, by "dividing total contract overhead costs, station support staff costs, and "Sergeant Admin" position costs, by the contracted labor costs identified in the contract supplemental schedules," which reduced allowable rates by 35-45 percent over those claimed.[243] The Controller then applied the audited rates (45.9 to 50.4 percent) to the total allowable contract services costs.[244] This resulted in a reduction of $89,257 in fiscal years 2007-2008 through 2011-2012.[245]

The claimant argues that if the Controller's "deconstructed method is to be followed, the City requests that all applicable, contractually obligated, indirect costs be included in the computation of the ICRP [indirect cost rate proposal] rates."[246] The Controller only allowed the Administrative Sergeant in the calculation, but the "approximately seven Sergeants who also have administrative and support duties were not considered allowable or 'appropriate.'"[247] The claimant contends that including only one Sergeant in the overhead calculation, and excluding the Detective Sergeant position, is arbitrary and does not reflect the actual overhead incurred in the contract, as follows:

> The SCO allowed only one sergeant (Administrative Sergeant) in their computation of the ICRP rates. The SCO states, "we already accounted for all appropriate contracted labor costs and contracted overhead that benefited the implementation of the entire contract."
>
> The SCO did not explain why the other approximately seven Sergeants who also have administrative and support duties were not considered allowable or "appropriate." Inclusion of only one of the seven is arbitrary and does not reflect the actual overhead incurred in the contract. Also, Detective charges were also

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[241] Exhibit A, IRC, filed August 22, 2017, page 541 (Final Audit Report).

[242] Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

[243] Exhibit A, IRC, filed August 22, 2017, pages 541-542 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 28, 411 (Calculation of Allowable Indirect Cost Rates).

[244] Exhibit A, IRC, filed August 22, 2017, page 543 (Final Audit Report).

[245] Exhibit A, IRC, filed August 22, 2017, page 543 (Final Audit Report). The $89,257 adjustment was reduced by the understated indirect costs allowed in fiscal years 2001-2002 through 2006-2007, resulting in a net reduction of indirect costs during the audit period of $31,485. (Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).)

[246] Exhibit A, IRC, filed August 22, 2017, page 8.

[247] Exhibit A, IRC, filed August 22, 2017, page 8.

> excluded from the overhead computation, but those costs had always been considered overhead charges in prior contracts.
>
> According to Sheriff Administrative Lieutenant (station Supervisor), the contract and county job descriptions, ALL Sergeants are administrative/support positions to the Deputies and therefore, all should be included into the computation of the overhead rate.
>
> During the course of the audit, the City asked the SCO staff what documentation would be required to prove the other Sergeants were indeed administrative and support positions, but the City received no response or direction. The City provided job descriptions, contracts and the Commanding officers statement along with his estimate of percentage of time each position spend on administrative duties. The City would be happy to provide other support if told what would satisfy the SCO.[248]

In its comments on the Draft Proposed Decision, the claimant argues that the Controller's decision to use the contract labels from the costing section of the contract to determine whether a cost was direct or indirect was "erroneous and not in accordance with State Instructions and Federal Guidelines."[249] Specifically, the claimant states that the Controller relies on the section of the SDSO contract entitled "C. 1. Cost Center Development, A Cost Center model showing both the CITY and the COUNTY costs for each station will be developed. (emphasis added)" (See IRC, bates page 413-414)." According to the claimant, this was an erroneous methodology and inconsistent with State and Federal Guidelines because the contract "is labeling a direct cost as one that is assignable to a particular CITY, 'Each CITY will **pay** for direct staff. . .' and shared costs benefitting more than one agency ' . . . will be pooled and allocated as overhead to all the cities based on the number of deputies. . .'"[250]

The claimant points out that indirect costs must be "costs incurred for a joint purpose, benefitting more than one program" as required by the Parameters and Guidelines, as well state regulations and federal OMB guidelines. The claimant argues that the sergeant position meets the definition in these authorities because it: (1) is for a 'common or joint purpose,' (2) benefits more than one program, (3) benefits the cost objectives, and (4) may include the overhead in the unit performing the mandate. According to the claimant, the Controller based its analysis on "irrelevant billing contractual descriptions to classify costs rather than the actual functional criteria of those costs/positions as specified under Parameter and Guidelines," and other relevant authorities.[251] The claimant further asserts that the Controller used an incorrect definition of

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[248] Exhibit A, IRC, filed August 22, 2017, page 8.

[249] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 6.

[250] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 6. Emphasis in original. The claimant refers to Exhibit A, IRC, filed August 22, 2017, pages 413-414.

[251] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 8.

'direct costs' in its January 22, 2018 comments on the IRC that "may have also led to their error . . . in their classification of direct and indirect costs."[252] The claimant reiterates that one sergeant position for indirect costs is insufficient because it requested that all or a majority of sergeant costs be included in its overhead calculation.[253] The claimant argues that the Controller's conclusion "was arbitrary and did not reasonably explain why they did not treat all employees who performed in an identical job classification consistently."[254] Finally, the claimant asserts that the Controller's conclusion "yields a clearly false and illogical result, showing a clear error in judgment" because:

> With over 32 Patrol Deputies employed and working 24-hour shifts, it would be physically impossible for one single Sergeant working an eight-hour day to supervise multiple squads of officers working round the clock as well as the station's entire professional staff.[255]

Since the claimant only challenges the Controller's methodology for recalculating indirect costs (by including the cost of only one of seven sergeants in its calculation of indirect costs), the Commission must determine whether the Controller's recalculation was arbitrary, capricious, or entirely lacking in evidentiary support. As stated above, the Commission's review of audit decisions is limited to ensuring that the Controller "adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute."[256] The Commission must not reweigh the evidence, or substitute its judgment for the judgment of the Controller.[257]

On this record, the Commission finds that the Controller's calculation of indirect costs for fiscal years 2007-2008 through 2011-2012 based on the claimant's SDSO contract is not arbitrary, capricious, or without evidentiary support.

The Controller initially took the position that the claimant did not incur any direct or indirect labor costs and instead believed that all labor costs resulting from the contract should be considered direct contract costs.[258] However, the Controller reviewed the contracts between the claimant and the SDSO, and for fiscal years 2007-2008 through 2011-2012, the SDSO contract

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[252] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 9.

[253] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, pages 9-11.

[254] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 11.

[255] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 11.

[256] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[257] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[258] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 29.

agreements provided supplemental schedules and identified contracted labor and overhead costs. As a result, the Controller determined that overhead costs included in the contract were appropriate as they related to the performance of mandated activities. In notes provided to the claimant for an April 10, 2016 status meeting, the Controller explained that it computed indirect cost rates for contract services for these years by dividing total contract overhead costs by the contracted labor costs identified in the contract supplemental schedules, allowing rates from 33.70 to 37.10 percent.[259]

On April 17, 2017, the Controller's Office emailed the claimant to explain the Controller's position on indirect costs:

> The contract refers to deputies, detectives, sergeants, and community officers as direct positions. Therefore, we believe our proposed computation of indirect costs is appropriate. It computed a straight forward ratio of ancillary support costs, vehicles, supplies, management support, liability to all direct labor positions, thus arriving at contract-wide overhead rate that can be applied to claim costs for various mandated programs.[260]

On April 26, 2017, the claimant responded by email requesting that the Controller include the Station Support Staff and Sergeant Admin costs as indirect costs, and not as direct costs as follows:

> You referenced in the contract:
>
> V. Cost of Services/Consideration, C. Modified Cost Center, 2. Direct Costs:
>
> Each CITY will pay for ***direct*** staff, which includes deputies, detectives, sergeants and Community Service Officers. (emphasis added)
>
> It is very clear that it does no[t] list "Station Staff" or "Station Support Staff" as direct staff. Therefore, the amount on Attachment B should be excluded from the direct costs and included in the "Indirect Costs" calculations. The Attachment C, Overhead Cost Detail Sheet of the contract also supports this, as it specifically listed the station support staff. And, although sergeants are listed as direct staff, it is fair to say that Sergeant Admin position is a support position, therefore, should also be excluded from the direct costs and included in the "Indirect Costs" calculations.[261]

The Controller's Office responded to the claimant's April 26, 2017 email the same day as follows:

> Thank you for your clarifying email as we had a difficult time understanding your consultant's written rebuttal. Your clarifying email points out the city's request to consider including Station Support Staff and Sergeant Admin position as part of

[259] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 29, 423 (Controller's Notes for April 10, 2016 Status Meeting).

[260] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 427.

[261] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 431-432.

> our computations of allowable indirect costs within the city's contracted costs. Now that we understand the city's position clearly, we can work toward potential resolution.
>
> We will consider the city's request and we'll review our computations one more time in regards to indirect costs. . . .[262]

On May 8, 2017, the Controller's auditors emailed the claimant indicating that they "considered and evaluated the city's request to include Station Support Staff and Sergeant Admin position as part of our computations of allowable indirect costs within the city's contracted costs. We concluded that due to the nature of those classifications performing indirect activities, the city's request . . . is reasonable."[263] The Controller summarized its reasoning and interactions with the claimant as follows:

> . . . [T]he SCO's original position was that the city did not incur any direct or indirect labor costs. The SCO believed all labor costs listed in the contract should be considered direct contract costs. The SCO originally computed the overhead rates for FY 2007-08 through FY 2011-12 by dividing the subtotals of overhead amounts listed in the bullets above by total labor costs listed in Attachments B [sic] to account for total overhead costs benefiting the execution of the contract as a whole. The SCO presented these computations to the city during the status meeting held on April 10, 2016 (Tab 20). Following the discussions held at the status meeting, the SCO responded to the city's comments via email dated April 17, 2017, and explained the SCO's position regarding labor costs (Tab 21).
>
> The city discussed the issue with the SCO's auditors via a teleconference and email correspondence (Tab 22). The city reviewed the SCO's methodology and proposed that we consider Station Support Staff and Administrative Sergeant position as part of the contract overhead cost pool. The city therefore proposed to move these costs into the contract indirect cost pool and exclude them from the direct labor amount. Although the SCO's position still remained that the city had not incurred any direct or indirect labor costs, after consideration of the city's proposal, the SCO concluded it was reasonable (Tab 22). The SCO revised its computations of the contracted indirect cost rates, and increased the allowable indirect cost rates accordingly to include these positions requested by the city (Tab 19). Therefore, the SCO's determination to include only these positions in the overhead cost pool and not others was not arbitrary, but rather in direct response to the city's requests (Tab 22). The SCO worked with the city to find a reasonable approach. The inclusion of the Station Support Staff and Administrative Sergeant position costs resulted in the increase of allowable indirect cost rates for the audit period [to 45.9 to 50.4 percent]. The Exit

[262] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 431.

[263] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 29, 430.

Conference Handout demonstrates that allowable indirect cost rates increased from the initial finding presented at the status meeting (Tab 23).[264]

The claimant's arguments in comments on the Draft Proposed Decision that the Controller did not follow the Parameters and Guidelines and other State and Federal guidelines presupposes that the claimant's indirect costs apply to direct labor costs rather than, as the case here, contract costs.

More importantly, the Commission finds that the record indicates the Controller adequately considered the claimant's position throughout the audit, all relevant factors, and has demonstrated a rational connection between those factors, the choices made, and calculated an indirect cost rate proposal consistent with the Parameters and Guidelines and the contracts with SDSO. The other sergeant positions not included in the indirect cost pool remained classified as direct contract costs.[265] There is no evidence in the record that the Controller failed to explain its position or consider the claimant's documentation, as alleged in the IRC.

Accordingly, the Controller's calculation of indirect costs for fiscal years 2007-2008 through 2011-2012 is not arbitrary, capricious, or without evidentiary support and, thus, the reductions are correct.

V. Conclusion

Based on the forgoing, the Commission denies this IRC.

[264] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 29, 412-451 (Controller's correspondence with the claimant). Exhibit A, IRC, filed August 22, 2017, page 543 (Final Audit Report).

[265] Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 427 (Controller's email of April 17, 2017).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Education Code Sections 44660-44665; Statutes 1983, Chapter 498; Statutes 1999, Chapter 4 Fiscal Years 2005-2006, 2006-2007, 2007-2008, 2010-2011, 2011-2012, 2012-2013 Filed on March 2, 2020 Fairfield-Suisun Unified School District, Claimant	Case No.: 19-9825-I-03 *The Stull Act* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted March 26, 2021)* (*Served March 26, 2021*)

INCORRECT REDUCTION CLAIM

The Commission on State Mandates adopted the attached Decision on March 26, 2021.

Heather Halsey, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Education Code Sections 44660-44665; Statutes 1983, Chapter 498; Statutes 1999, Chapter 4 Fiscal Years 2005-2006, 2006-2007, 2007-2008, 2010-2011, 2011-2012, 2012-2013 Filed on March 2, 2020 Fairfield-Suisun Unified School District, Claimant	Case No.: 19-9825-I-03 *The Stull Act* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted March 26, 2021)* (*Served March 26, 2021*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on March 26, 2021. Ken Howell appeared on behalf of the State Controller's Office.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to deny the IRC by a vote of 6-0, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Yes
Spencer Walker, Representative of the State Treasurer	Yes
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	Yes

Summary of the Findings

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction of costs claimed for the *Stull Act* program for fiscal years 2005-2006 through 2007-2008 and 2010-2011 through 2012-2013 (audit period) because the Fairfield-Suisun Unified School District (claimant) did not provide contemporaneous source documentation to support the times claimed by employees to perform the reimbursable activities, as required by the Parameters and Guidelines.[1] The *Stull Act* program, under prior law, required certificated employees to be evaluated every other year and required the evaluations to be written.[2] The test claim statutes imposed a higher level of service on school districts by mandating additional requirements to the evaluation process; namely to evaluate certificated instructional personnel on two new criteria and to include that new information in the existing written evaluation; and to re-evaluate and write an additional evaluation every other year for certificated instructional and non-instructional personnel who previously received a non-satisfactory evaluation.

To determine reimbursable costs for salaries and benefits, the Controller allowed 60 minutes for each allowable evaluation claimed based on the claimant's collective bargaining agreements for the audit period, which require at least two 30-minute observations per evaluation of certificated instructional personnel.[3] The Controller calculated the allowable salaries and benefits by multiplying 60 minutes per evaluation by the number of allowable evaluations performed by the evaluator's productive hourly rate.[4] The claimant contends that 60 minutes does not allow any time to write the evaluations because the collective bargaining agreement requires 60 minutes to observe the employee. The claimant also disputes the Controller's rejection of its 2017 time study showing an average of 1.55 hours to write an evaluation, but requests the Commission to "allow some reasonable amount of time for each final write up."[5]

The Commission finds that the reduction is correct as a matter of law since the claimant did not comply with the contemporaneous source documentation requirement in the Parameters and Guidelines to support the time devoted to the reimbursable activities.

In addition, there is no evidence that the Controller's allowance of 60 minutes per evaluation is arbitrary, capricious, or entirely lacking in evidentiary support. The record shows that the Controller "adequately considered all relevant factors, and has demonstrated a rational

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[1] Exhibit A, IRC, filed March 2, 2020, page 268 (Audit Report); Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 10. According to the audit report, fiscal years 2008 through 2010 were not included in the audit because the statute of limitations to initiate the audit of these years had expired. Exhibit A, IRC, filed March 2, 2020, page 264 (Audit Report).

[2] Exhibit F, Test Claim Decision, *The Stull Act,* 98-TC-25, adopted May 27, 2004, page 18.

[3] Exhibit A, IRC, filed March 2, 2020, pages 273 (Audit Report), 112 (2005-2007 Contract), 136 (2008-2010 Contract), 162 (2012-2014 Contract). Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 14.

[4] Exhibit A, IRC, filed March 2, 2020, page 273 (Audit Report).

[5] Exhibit A, IRC, filed March 2, 2020, page 3.

connection between those factors, the choice made, and the purposes of the enabling statute."[6] The Controller fully reviewed the claimant's time study, interviewed employees who admitted that the times were "best guesses," and found a wide variation in the times reported.[7] Moreover, there is no indication that the claimant's time study captured only the higher level of service the Commission approved for this mandate. The claimant provides no evidence that the 1.55 hours alleged in the time study reflects anything other than the time to write a full evaluation.

Therefore, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

10/05/2005	The Commission adopted the Parameters and Guidelines.[8]
01/17/2007	The claimant filed a reimbursement claim for 2005-2006.[9]
02/15/2008	The claimant filed a reimbursement claim for 2006-2007.[10]
02/05/2009	The clamant filed a reimbursement claim for 2007-2008.[11]
02/15/2012	The claimant filed a reimbursement claim for 2010-2011.[12]
02/15/2013	The claimant filed a reimbursement claim for 2011-2012.[13]
02/18/2014	The claimant filed a reimbursement claim for 2012-2013.[14]
06/22/2018	The Controller issued the Audit Report.
03/02/2020	The claimant filed the IRC.[15]
07/10/2020	The Controller filed late comments on the IRC.[16]

[6] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[7] Exhibit A, IRC, filed March 2, 2020, page 279 (Audit Report). Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, pages 15-16, 26-27 (email from the Controller to the claimant, Dec. 21, 2017).

[8] Exhibit A, IRC, filed March 2, 2020, pages 248- 255 (Parameters and Guidelines).

[9] Exhibit A, IRC, filed March 2, 2020, page 287 (2005-2006 reimbursement claim).

[10] Exhibit A, IRC, filed March 2, 2020, page 293 (2006-2007 reimbursement claim).

[11] Exhibit A, IRC, filed March 2, 2020, page 297 (2007-2008 reimbursement claim).

[12] Exhibit A, IRC, filed March 2, 2020, page 308 (2010-2011 reimbursement claim).

[13] Exhibit A, IRC, filed March 2, 2020, page 316 (2011-2012 reimbursement claim).

[14] Exhibit A, IRC, filed March 2, 2020, page 323 (2012-2013 reimbursement claim).

[15] Exhibit A, IRC, filed March 2, 2020.

[16] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020.

08/10/2020	The claimant filed rebuttal comments.[17]
12/17/2020	Commission staff issued the Draft Proposed Decision.[18]
12/30/2020	The Controller filed comments on the Draft Proposed Decision.[19]

II. Background

A. The *Stull Act* Program

The Stull Act was originally enacted in 1971 to establish a uniform system of evaluation and assessment of the performance of "certificated personnel" (including certificated non-instructional personnel) within each school district.[20] As originally enacted, the Stull Act required the governing board of each school district to develop and adopt specific guidelines to evaluate and assess certificated personnel, and to avail itself of the advice of certificated instructional personnel before developing and adopting the guidelines.[21] The evaluation and assessment of the certificated personnel had to be in writing, conducted once each school year for probationary employees and every other year for permanent employees, and a copy transmitted to the employee no later than sixty days before the end of the school year.[22] If the employee was not performing in a satisfactory manner according to the standards, the "employing authority" was required to notify the employee in writing, describe the unsatisfactory performance, and confer with the employee in making specific recommendations as to areas of improvement and endeavor to assist in the improvement. The employee then had the right to initiate a written response to the evaluation, which became a permanent part of the employee's personnel file. The school district was also required to hold a meeting with the employee to discuss the evaluation.[23]

The test claim statutes amended the Stull Act in 1983 and 1999 to expand the scope of evaluation and assessment of certificated instructional personnel by adding criteria that must be included in the evaluations: the employee's instructional techniques and strategies, and adherence to curricular objectives; and the performance of instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 (i.e., the STAR test subjects) as it reasonably relates to the progress of pupils towards the state-adopted academic content standards as measured by state-adopted assessment tests.[24] And, in cases where the certificated instructional or non-instructional employee receives an unsatisfactory result, the test claim

[17] Exhibit C, Claimant's Rebuttal Comments, filed August 10, 2020.

[18] Exhibit D, Draft Proposed Decision, issued December 17, 2020.

[19] Exhibit E, Controller's Comments on the Draft Proposed Decision, filed December 30, 2020.

[20] Former Education Code sections 13485-13490.

[21] Former Education Code sections 13486-13487.

[22] Former Education Code section 13488.

[23] Former Education Code section 13488.

[24] Exhibit F, Test Claim Decision, *The Stull Act*, 98-TC-25, adopted May 27, 2004, pages 28-32.

statutes require an additional evaluation "in the years in which the permanent certificated employee would not have otherwise been evaluated."[25]

The Commission denied the activities that were required under preexisting law because they did not impose a new program or higher level of service. Denied activities included developing and adopting specific evaluation and assessment guidelines for performance; evaluating and assessing certificated personnel as it relates to the established standards; preparing and drafting a written evaluation, to include recommendations, if necessary, for areas of improvement; receiving and reviewing written responses to evaluations; and preparing for and holding a meeting with the evaluator to discuss the evaluation and assessment.[26]

The Commission partially approved the Test Claim on May 27, 2004, for those activities that represent the *limited* new program or higher level of service mandated by the state by the test claim statutes. The Parameters and Guidelines were adopted on September 27, 2005, and as relevant here, authorize reimbursement for only the following new activities:

A. Certificated Instructional Employees

1. Evaluate and assess the performance of certificated instructional employees that perform the requirements of educational programs mandated by state or federal law as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives (Ed. Code, § 44662, subd. (b), as amended by Stats. 1983, ch. 498.). (*Reimbursement period begins July 1, 1997.*)

   Reimbursement for this activity is limited to:

   a. reviewing the employee's instructional techniques and strategies and adherence to curricular objectives, and

   b. including in the written evaluation of the certificated instructional employees the assessment of these factors during the following evaluation periods:

      - once each year for probationary certificated employees;
      - every other year for permanent certificated employees; and
      - beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

[25] Exhibit F, Test Claim Decision, *The Stull Act*, 98-TC-25, adopted May 27, 2004, pages 32-33.

[26] Exhibit F, Test Claim Decision, *The Stull Act,* 98-TC-25, adopted May 27, 2004, page 19.

Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated instructional employees.

2. Evaluate and assess the performance of certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 as it reasonably relates to the progress of pupils towards the state adopted academic content standards as measured by state adopted assessment tests (Ed. Code, § 44662, subd. (b), as amended by Stats. 1999, ch. 4.). (*Reimbursement period begins March 15, 1999.*)

   Reimbursement for this activity is limited to:

   a. reviewing the results of the Standardized Testing and Reporting test as it reasonably relates to the performance of those certificated employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and

   b. including in the written evaluation of those certificated employees the assessment of the employee's performance based on the Standardized Testing and Reporting results for the pupils they teach during the evaluation periods specified in Education Code section 44664, and described below:

      - once each year for probationary certificated employees;
      - every other year for permanent certificated employees; and
      - beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

B. Certificated (Instructional and Non-Instructional) Employees

1. Evaluate and assess permanent certificated, instructional and non-instructional, employees that perform the requirements of educational programs mandated by state or federal law and receive an unsatisfactory evaluation in the years in which the permanent certificated employee would not have otherwise been evaluated pursuant to Education Code section 44664 (i.e., every other year). The additional evaluations shall last until the employee achieves a positive evaluation, or is separated from the school district (Ed. Code, § 44664, as amended by Stats. 1983, ch. 498). (*Reimbursement period begins July 1, 1997.*)

   This additional evaluation and assessment of the permanent certificated employee requires the school district to perform the following activities:

a. evaluating and assessing the certificated employee performance as it reasonably relates to the following criteria: (1) the progress of pupils toward the standards established by the school district of expected pupil achievement at each grade level in each area of study, and, if applicable, the state adopted content standards as measured by state adopted criterion referenced assessments; (2) the instructional techniques and strategies used by the employee; (3) the employee's adherence to curricular objectives; (4) the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities; and, if applicable, (5) the fulfillment of other job responsibilities established by the school district for certificated non-instructional personnel (Ed. Code, § 44662, subds. (b) and (c));

b. reducing the evaluation and assessment to writing (Ed. Code, § 44663, subd. (a)). The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If the employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the school district shall notify the employee in writing of that fact and describe the unsatisfactory performance (Ed. Code, § 44664, subd. (b));

c. transmitting a copy of the written evaluation to the certificated employee (Ed. Code, § 44663, subd. (a));

d. attaching any written reaction or response to the evaluation by the certificated employee to the employee's personnel file (Ed. Code, § 44663, subd. (a)); and

e. conducting a meeting with the certificated employee to discuss the evaluation (Ed. Code, § 44553, subd. (a)).

Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated, instructional and non-instructional, employees.[27]

The Parameters and Guidelines also require claimants to submit contemporaneous source documentation, which may include but is not limited to time records or time logs, to support their actual costs. Evidence to corroborate the source documents, such as declarations or worksheets, may also be submitted. However, corroborating documents cannot be substituted for contemporaneous source documentation. In this regard, Section IV. of the Parameters and Guidelines states:

> To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement

[27] Exhibit A, IRC, filed March 2, 2020, pages 251-252 (Parameters and Guidelines).

> the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.
>
> Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.[28]

Section V. of the Parameters and Guidelines requires that "[e]ach claimed reimbursable cost must be supported by source documentation as described in section IV."[29] To claim costs for employee salaries and benefits, Section V. requires claimants to:

> Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.[30]

And Section VI. of the Parameters and Guidelines requires claimants to retain all documentation until the ultimate resolution of any audit findings:

> All documentation used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.[31]

Beginning in fiscal year 2013-2014, the claimant elected to receive block grant funding for the mandated programs identified in Government Code section 17581.6, which includes the *Stull Act* program, in lieu of submitting reimbursement claims to the State Controller's Office.[32]

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[28] Exhibit A, IRC, filed March 2, 2020, page 251-252 (Parameters and Guidelines).

[29] Exhibit A, IRC, filed March 2, 2020, page 253 (Parameters and Guidelines).

[30] Exhibit A, IRC, filed March 2, 2020, page 253 (Parameters and Guidelines).

[31] Exhibit A, IRC, filed, March 2, 2020, pages 254-255 (Parameters and Guidelines).

[32] Exhibit A, IRC, filed March 2, 2020, page 276 (Audit Report).

B. The Controller's Audit and Summary of Issues

Costs for salaries and benefits of $588,343 were claimed for the audit period (fiscal years 2005-2006 through 2007-2008, and 2010-2011 through 2012-2013). The Controller found that $402,409 was unallowable "primarily because the district claimed reimbursement for costs not supported by source documents."[33]

The Controller determined that the claimant did not provide contemporaneous *time* documentation as required by the Parameters and Guidelines to support the time spent on the reimbursable evaluation activities.[34] Instead, the claimant provided the Controller with master lists of employees evaluated by fiscal year and the collective bargaining agreements for the audit period, which required two formal observations lasting 30 minutes for each certificated instructional employee evaluated.[35] The Audit Report states, in relevant part, that to "achieve our audit objective," the Controller:

- Requested supporting time documentation for the entire audit period. The district was unable to provide contemporaneous time records for the audit period. In lieu of contemporaneous time records, we reviewed the district's collective bargaining agreements and found that certificated instructional evaluations are to be based on at least two observations of at least 30 minutes in length. We allowed 60 minutes as the time allotment for each allowable certificated instructional evaluation for the audit period.
- Requested and reviewed lists of employees evaluated for the entire audit period. Using a random number generator, we randomly selected a non-statistical sample and tested 655 evaluations (out of 2,613) for the audit period. During testing, we identified 39 errors in the sample that were not projected to the population.[36]

The Controller calculated the allowable salaries and benefits by multiplying 60 minutes per evaluation by the number of allowable evaluations performed by the productive hourly rate of the employee evaluator.[37]

On April 13, 2018, the Controller issued the Draft Audit Report.[38] The claimant responded to the Draft Audit Report on April 19, 2018, asserting that:[39]

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[33] Exhibit A, IRC, filed March 2, 2020, page 273 (Audit Report).

[34] Exhibit A, IRC, filed March 2, 2020, page 268 (Audit Report); Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 10.

[35] Exhibit A, IRC, filed March 2, 2020, page 273 (Audit Report).

[36] Exhibit A, IRC, filed March 2, 2020, page 268 (Audit Report).

[37] Exhibit A, IRC, filed March 2, 2020, page 273 (Audit Report).

[38] Exhibit A, IRC, filed March 2, 2020, page 269.

[39] Exhibit A, IRC, filed March 2, 2020, pages 281-283.

- The Controller allowed one hour for observation for each evaluation (activity a in the claiming instructions), but zero time for the final write-ups (activity b), "which we assert is out of compliance with the State's claiming instructions . . . ."[40]
- The claimant provided the Controller with hundreds of written evaluations to support both the observation costs and the final write-up costs. The actual written evaluations support the costs claimed to write the evaluations.[41]
- In Spring 2017, the claimant asked all administrators to record the time spent writing final evaluations. The District was able to obtain a large amount of data showing an average of 1.55 hours to write a final evaluation.[42] The claimant's IRC explains that the time study data was obtained from 21 school sites and 188 site administrators recorded the time spent to write final evaluations.[43] Based on the time study, the claimant reported that its employees spent an average of 1.55 hours to write up each evaluation.[44] The claimant provided to the Controller a spreadsheet with the time study results on September 27, 2017.[45]

The Controller did not change the audit findings following the claimant's response to the Draft Audit Report, so 60 minutes was allowed for each allowable evaluation based on the collective bargaining agreements. The Audit Report, dated June 22, 2018, states:

- The claimant's collective bargaining agreements do not indicate a time component to write the evaluations.
- The Controller reviewed the claimant's time study and interviewed three site administrators who participated in it. All three stated that the times reported to write the evaluations were not the "actual times," but were "estimated" or a "best guess." Consequently, the Controller did not accept the times provided to write the evaluations.
- The written evaluations themselves do not identify the time spent writing the evaluations. The claimant provided no contemporaneous time documentation.[46]

III. Positions of the Parties

A. Fairfield-Suisun Unified School District

The claimant argues that the Controller disallowed all time and associated costs to write the final evaluations.[47] The claimant points out that in addition to the observation, its collective

[40] Exhibit A, IRC, filed March 2, 2020, page 282.

[41] Exhibit A, IRC, filed March 2, 2020, page 282.

[42] Exhibit A, IRC, filed March 2, 2020, page 282.

[43] Exhibit A, IRC, filed March 2, 2020, pages 2, 5-37 (Time Study).

[44] Exhibit A, IRC, filed March 2, 2020, pages 2, 5-37 (Time Study), 279 (Audit Report).

[45] Exhibit A, IRC, filed March 2, 2020, page 279 (Audit Report).

[46] Exhibit A, IRC, filed March 2, 2020, page 279 (Audit Report).

[47] Exhibit A, IRC, filed March 2, 2020, page 2.

bargaining agreements also require writing the evaluations, asserting "to allow time for one activity and not the other means one bullet within the Collective Bargaining Agreements has more relevance than the other which is arbitrary and inconsistent."[48] According to the claimant:

> If the district's CBA [collective bargaining agreement] for each year is the basis for the allowance of a mandated activity specifically observations [sic] by administrators, then the SCO [Controller] should be allowing at least some time for the final write up by administrators, as the two activities are required by the same employees within the same section of all the CBAs listed above.[49]

In its rebuttal comments, the claimant repeats that if the collective bargaining agreements are the basis for the mandated activity, then the Controller should be allowing at least some time for the final write up.[50]

Because the claimant was "confident" that the Controller would allow time to write the evaluations, "it took the initiative in the Spring of 2017" to perform a time study by asking site administrators to track their time writing performance evaluations. Data was obtained from 21 school sites and 188 individual records of time spent on final evaluation write ups from the site administrators, showing an average of 1.55 hours to write each evaluation.[51] The claimant alleges that 1.55 hours is substantially less than the time spent to write evaluations during the early years of the audit period when the claimant used paper evaluations instead of electronic forms.[52] Noting that its time study was rejected because "three of the administrators admitted that the time they reported was not tracked to the minute, but instead was estimated to the nearest reasonable time increment,"[53] the claimant requests that its time study to write the evaluations be allowed, but to exclude the time reported by the three administrators from the average time calculation.[54]

In its rebuttal comments, the claimant states that the problems with its time study were raised by the Controller in a footnote in an email to a high school principal who would not have been familiar with the time study and had "no way of ascertaining the answers." The problems should have been addressed to the appropriate personnel assigned to the audit who would have made every effort to answer the questions "timely and fully."[55]

The claimant quotes the Audit Report that the Controller reviewed 655 written evaluations (out of 2,613) for the audit period and identified 39 errors that were not projected to the population, then argues:

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[48] Exhibit A, IRC, filed March 2, 2020, page 2.

[49] Exhibit A, IRC, filed March 2, 2020, page 2.

[50] Exhibit C, Claimant's Rebuttal Comments, filed August 10, 2020, page 1.

[51] Exhibit A, IRC, filed March 2, 2020, pages 2, 5-37 (Time Study).

[52] Exhibit A, IRC, filed March 2, 2020, page 3.

[53] Exhibit A, IRC, filed March 2, 2020, page 2.

[54] Exhibit A, IRC, filed March 2, 2020, page 3.

[55] Exhibit C, Claimant's Rebuttal Comments, filed August 10, 2020, pages 1-2.

> The District pulled thousands of evaluations from its archives for this audit, spending hundreds of staff hours to support costs claimed. It was more than clear to the State Controller's Auditors when they were on site that each evaluation in the District's records had a WRITTEN FINAL EVALUATION included in the records. For the State Controller's office to conclude zero time is allowable for an activity that is clearly documented by the actual paper records is illogical and capricious.[56]

The claimant requests that the Commission "allow some reasonable amount of time for each final write up."[57] According to the claimant's rebuttal comments:

> [W]e have always been and are still very willing to negotiate any reasonable time increment for the final write-up, as having the entire activity 100% disallowed is unacceptable. The District is just hoping for some middle ground to be found between itself and the SCO. The District proposed 1.55 hours as the appropriate amount of allowable time, however in a desire to see some sort of resolution to the issue the District was only trying to convince the SCO to be reasonable and asking for some form of negotiation or compromise.[58]

The claimant did not file comments on the Draft Proposed Decision.

B. State Controller's Office

The Controller maintains that the audit reductions are correct. Although the District provided contemporaneous records to support the number of evaluations conducted during the audit period, the claimant did not provide any contemporaneous records to support the time associated with performing the reimbursable activities.[59] The Controller agrees that reducing the claims to $0 would be arbitrary and capricious since the claimant's documentation shows that the claimant performed 2,574 reimbursable evaluations during the audit period.[60]

Thus, the Controller used the claimant's collective bargaining agreements, the only documentation the claimant provided (other than the claimant's 2017 time study) that documents its time to perform "observational activities."[61] The collective bargaining agreements do not state a time component for writing the final evaluations.[62] The Controller further states that it "makes no assessment to the relevancy of one activity versus another in the collective bargaining

[56] Exhibit A, IRC, filed March 2, 2020, page 3. Emphasis in original.

[57] Exhibit A, IRC, filed March 2, 2020, page 3.

[58] Exhibit C, Claimant's Rebuttal Comments, filed August 10, 2020, page 2.

[59] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 14.

[60] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 14.

[61] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, pages 13, 14.

[62] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 14.

agreements. Our role is to determine whether the claims submitted by the District contain actual costs traceable to and supported by contemporaneous source documentation."[63]

In addition, the Controller had many concerns with the claimant's 2017 time study. For example, of the 44 total evaluators listed on the spreadsheet, six did not list any time for completing the evaluation. Also, the listed time varied widely between employees of the same classification, as the Controller noted:

- Permanent – between 0 and 120 minutes;
- Probationary 0 – between 0 and 300 minutes;
- Probationary 1 – between 0 and 300 minutes;
- Probationary 2 – between 0 and 300 minutes.[64]

The Controller was also concerned that the original email from the claimant originated on April 28, 2017, but the e-signature dates for each evaluation covered a six-month time span. The Controller observed that approximately 86 percent of time increments listed were outside the month of April, "which is cause for concern regarding the accuracy of the data provided."[65] Also, the entries were not signed by the evaluators confirming their listed time increments for each evaluated employee.[66]

As part of its review of the time study, the Controller selected three of the claimant's employees to interview. These employees were selected because they totaled 36 of the 253 line items, or about 14 percent of the entire population, and also because; (1) the first employee (elementary) listed an identical time increment for each evaluation, which was conducted in January and February; (2) the second employee (high school) listed an identical time increment for each evaluation, which was conducted between February and April; (3) the third employee (elementary) listed the overall highest time increments of all evaluators and conducted the evaluations in January and February.[67] During the interview, the three employees stated that the time entered on the spreadsheet was not the actual time taken to complete the write up, but was "approximate" or a "best guess."[68] According to the Controller, "there is no 'approximate' or 'best guess' standard present in the Parameters and Guidelines."[69] In response to the claimant's argument that the administrator's time was tracked to the nearest reasonable time increment, the Controller notes that the site administrators did not say that their time was estimated to the nearest reasonable time increment. And one administrator said that some of the principals/vice principals may have misunderstood exactly what was to be recorded on the spreadsheet "as some

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[63] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 14.

[64] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, pages 15, 28. Exhibit A, IRC, filed March 2, 2020, pages 5-36 (Time Study).

[65] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 15.

[66] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 15.

[67] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 16.

[68] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 16.

[69] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 16.

of the larger time increments may have included activities beyond the write up."[70] The Controller also raised questions about the lack of a signed declaration for each administrator, how the spreadsheet was created, who had access to the spreadsheet, and what controls were placed on the data to ensure accurate reporting. The Controller received no responses to those questions.[71]

The Controller argues that the claimant contradicts itself by requesting 1.55 hours for each documented final write-up, then asks for "some reasonable amount of time" for the same activity. The Controller also argues that the claimant's statement that the three administrators "may not have had a stopwatch handy" to record the time to write up evaluations is an admission that the time logs presented to the Controller were not actual contemporaneous documents.[72]

The Controller urges the Commission to find that it correctly reduced the claims.[73]

On December 30, 2020, the Controller filed comments concurring with the Draft Proposed Decision.[74]

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[75] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not

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[70] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, pages 16, 26-27 (email from the Controller to the claimant, Dec. 21, 2017).

[71] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, pages 16, 27-28.

[72] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 16.

[73] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 17.

[74] Exhibit E, Controller's Comments on the Draft Proposed Decision, filed December 30, 2020.

[75] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[76]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[77] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" … "In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support…." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[78]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[79] In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[80]

A. The Claimant Timely Filed this IRC Within Three Years from the Date the Claimant First Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim.

Government Code section 17561 authorizes the Controller to audit the reimbursement claims and records of local government to verify the actual amount of the mandated costs, and to reduce any claim that the Controller determines is excessive or unreasonable. If the Controller reduces a claim on a state-mandated program, the Controller is required by Government Code section 17558(c) to notify the claimant in writing, specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the

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[76] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[77] *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

[78] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[79] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[80] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

claimant, and the reason for the adjustment.[81] The claimant may then file an IRC with the Commission "pursuant to regulations adopted by the Commission" contending that the Controller's reduction was incorrect and to request that the Controller reinstate the amounts reduced to the claimant.[82]

In this case, the Audit Report, dated June 22, 2018, specifies the claim components and amounts adjusted, and the reasons for the adjustments and thus, complies with the notice requirements in Government Code section 17558.5(c).[83]

The Commission's regulations require that an IRC be timely filed within three years of the date the claimant is notified of a reduction, and the notice complies with Government Code section 17558.5(c), as follows:

> All incorrect reduction claims shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reasons for the adjustment.[84]

Because the claimant filed the IRC on March 2, 2020,[85] within three years of the Audit Report issued on June 22, 2018,[86] the Commission finds that the IRC was timely filed.

B. The Controller's Reduction of Salary and Benefit Costs Is Correct as a Matter of Law Because the Claimant Did Not Provide Contemporaneous Source Documentation to Support the Time Devoted to the Reimbursable Evaluation Activities as Required by the Parameters and Guidelines, and There Is No Evidence in the Record that the Controller's Allowance of 60 Minutes Per Evaluation Is Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

As discussed in the Background, the Stull Act program, as originally enacted in 1971, required employee evaluations to be written.[87] The test claim statutes imposed a higher level of service on school districts by mandating additional requirements to the evaluation process. For the regularly scheduled evaluations of certificated instructional personnel, the test claim statutes

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[81] Government Code section 17558.5(c).

[82] Government Code sections 17551(d), 17558.7; California Code of Regulations, title 2, sections 1185.1, 1185.9.

[83] Exhibit A, IRC, filed March 2, 2020, page 264 (Audit Report).

[84] California Code of Regulations, title 2, sections 1185.1(c), 1185.2(a), as amended operative October 1, 2016.

[85] Exhibit A, IRC, filed March 2, 2020, page 1.

[86] Exhibit A, IRC, filed March 2, 2020, page 264 (Audit Report).

[87] Former Education Code section 13488. Exhibit F, Test Claim Decision, *The Stull Act,* 98-TC-25, adopted May 27, 2004, page 18.

mandate school districts to evaluate and assess the employee, and *add* to the written evaluation only the following criteria (reflected in Section IV.A of the Parameters and Guidelines):

- For certificated instructional employees that perform the requirements of educational programs mandated by state or federal law – include in the written evaluation an assessment of the employee's performance as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives.
- For certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 – include in the written evaluation an assessment of the employee's performance based on the Standardized Testing and Reporting results for the pupils they teach.[88]

Reimbursement is *not* required for the full written evaluation and assessment of certificated employees who have received satisfactory evaluations.

For those certificated instructional and non-instructional employees who previously received a *non-satisfactory* evaluation, the test claim statutes require an additional assessment and written evaluation "in the years in which the permanent certificated employee would not have otherwise been evaluated.[89]" Years in which the employee would not otherwise have been evaluated means every other year.[90] These additional evaluations must address: (1) the progress of pupils toward the standards established by the school district of expected pupil achievement at each grade level in each area of study, and, if applicable, the state adopted content standards as measured by state adopted criterion referenced assessments; (2) the instructional techniques and strategies used by the employee; (3) the employee's adherence to curricular objectives; (4) the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities; and, if applicable, (5) the fulfillment of other job responsibilities established by the school district for certificated non-instructional personnel. These new evaluations are required to be written, and include recommendations, if necessary, as to areas of improvement in the performance of the employee. If the employee's duties are not being performed in a satisfactory manner according to the standards prescribed by the governing board, the school district shall notify the employee in writing of that fact and describe the unsatisfactory performance. Section IV.B. of the Parameters and Guidelines authorizes reimbursement for this additional evaluation.[91]

To receive reimbursement for employee salaries and benefits, the Parameters and Guidelines require claimants to:

> Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided

[88] Exhibit A, IRC, filed March 2, 2020, page 251 (Parameters and Guidelines).

[89] Exhibit F, Test Claim Decision, *The Stull Act*, 98-TC-25, adopted May 27, 2004, pages 33-34.

[90] Exhibit A, IRC, filed March 2, 2020, page 252 (Parameters and Guidelines).

[91] Exhibit A, IRC, filed March 2, 2020, page 252 (Parameters and Guidelines).

by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.[92]

The Parameters and Guidelines also require that "[e]ach claimed reimbursable cost [including salaries and benefits] must be supported by source documentation as described in section IV."[93] Section IV. requires claimants to support their costs with contemporaneous source documentation "created at or near the same time the actual cost was incurred for the event or activity in question."[94]

The Parameters and Guidelines were adopted on September 27, 2005, well before January 17, 2007 when the first reimbursement claim at issue for fiscal year 2005-2006 was filed with the Controller, so the claimant had notice of the requirements in the Parameters and Guidelines.[95] Parameters and guidelines are regulatory in nature and, once adopted and issued, are final and binding on the parties.[96]

In this case, the only contemporaneous documentation provided by the claimant were the written evaluations themselves, which show that the evaluations were reduced to writing but provide no evidence to support the amount of time devoted to writing or the other required activities for each evaluation.[97] The only other documentation that the claimant provided to the Controller was master lists of employees evaluated by fiscal year, the collective bargaining agreements for the audit period, which required two formal observations lasting 30 minutes for each certificated instructional employee evaluated, and a 2017 time study, well after the audit period, showing an average of 1.55 hours for writing each "final evaluation."[98] None of these include contemporaneous documentation of the time devoted to the mandate. Although the claimant's collective bargaining agreements are 'contracts' and therefore corroborating documentation, the Parameters and Guidelines specify that "corroborating documents cannot be substituted for source documents."[99]

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[92] Exhibit A, IRC, filed March 2, 2020, page 253 (Parameters and Guidelines).

[93] Exhibit A, IRC, filed March 2, 2020, page 253 (Parameters and Guidelines).

[94] Exhibit A, IRC, filed March 2, 2020, page 252 (Parameters and Guidelines).

[95] Exhibit A, IRC, filed March 2, 2020, pages 251-252 (Parameters and Guidelines), 287 (2005-2006 reimbursement claim).

[96] *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

[97] Exhibit A, IRC, filed March 2, 2020, page 268 (Audit Report); Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 10.

[98] Exhibit A, IRC, filed March 2, 2020, pages 5-37 (Time Study); Exhibit A, IRC, filed March 2, 2020, pages 38-108 (completed evaluation forms) and pages 118-124 (evaluation form attached to the 2005-2007 collective bargaining agreement); Exhibit A, IRC, filed March 2, 2020, pages 273, 282 (Audit Report).

[99] Exhibit A, IRC, filed March 2, 2020, page 251-252 (Parameters and Guidelines).

As indicated in the Test Claim Decision and Parameters and Guidelines, full or "final" evaluations (as phrased by the claimant) for certificated instructional employees receiving a regular evaluation every two years are not eligible for reimbursement; the only activities eligible for reimbursement are evaluating and assessing the employee using the limited new criteria mandated by the test claim statutes and adding that criteria to the existing written evaluation for those instructional employees working on educational programs mandated by state or federal law or who teach the courses specified in the Parameter and Guidelines. Full evaluations are only required every other year for those certificated instructional and non-instructional employees who work in educational programs that are mandated by state or federal law that received a prior negative evaluation.[100] Thus, the claimant did not comply with the contemporaneous source documentation requirements of the Parameters and Guidelines and the Controller's reduction of costs is correct as a matter of law.

The Commission further finds that the Controller's allowance of 60 minutes per evaluation conducted during the audit period is not arbitrary, capricious, or entirely lacking in evidentiary support. Under this standard, the Commission is required to defer to the Controller's audit decisions and simply determine if the Controller adequately considered all relevant factors, and demonstrated a rational connection between those factors and the choice made.[101]

Since the claimant did not provide any contemporaneous source documents, the Controller reviewed the collective bargaining agreements effective during the audit period and determined that the claimant should be allowed 60 minutes total for each allowable evaluation claimed during the audit period, based on the requirement in the agreements for at least two 30-minute observations during a *full* evaluation:

> At least two (2) formal observations, one scheduled, and the other may be scheduled or unscheduled, will be held during a unit member's evaluation year to observe unit members using only the District's Certificated Personnel Observation Form (Appendix J). These formal observations will be at least thirty (30) minutes in length. These formal observations may take place any time a certificated unit member is performing within the scope of his/her classroom duties. The number, frequency and duration of the observations may vary with the requirements imposed by the type of class, the needs of the teacher, and individual situation. Formal observations may be preceded by a pre-conference and must be followed with a post-conference between the unit member and the evaluator.[102]

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[100] Education Code section 44664, as amended by Statutes 1983, chapter 498.

[101] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[102] Exhibit A, IRC, filed March 2, 2020, pages 112 (2005-2007 Contract), 136 (2008-2010 Contract), 162 (2012-2014 Contract), 273 (Audit Report). Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 14.

The claimant argues that the 60-minute requirement is just to observe the employee, but not to write the evaluation. Thus, the claimant alleges that the Controller's allowance of 60 minutes per evaluation is insufficient and does not allow the costs to write the "final evaluations."[103]

However, there is no evidence in the record that allowing 60 minutes for each evaluation claimed is arbitrary or capricious, or entirely lacking in evidentiary support. Except where a certificated employee receives a prior negative evaluation, the Parameters and Guidelines do not require reimbursement for a full evaluation.

Moreover, the Controller allowed reimbursement for all but 122 evaluations claimed during the audit period, which the claimant does not dispute.[104] In some fiscal years, there are no separate costs claimed for writing the evaluation. As indicated in the chart below, no costs were claimed for writing evaluations in fiscal year 2007-2008;[105] (2) no costs were claimed during any years in the audit period for writing the part of the evaluation regarding the STAR examination as authorized in Section IV.A.2(b) of the Parameters and Guidelines; and (3) only one hour was claimed in 2012-2013 for writing the additional evaluation when an employee receives a prior negative evaluation pursuant to Section IV.B of the Parameters and Guidelines.[106] The claimant's reimbursement claims reveal the following hours claimed per activity per fiscal year:

Fiscal year reimbursement claim	Ps&Gs Section IV.A(1)(b) Hours worked or quantity to include in the written evaluation of the certificated instructional employees the assessment of instructional techniques and strategies and adherence to curricular objectives	Ps&Gs Section IV.A.(2)(b) Hours worked or quantity to include in the written evaluation of certificated instructional employees that teach reading, writing, mathematics, history/ social science, and science in grades 2 to 11, a review of the results of the Standardized Testing and Reporting test as it reasonably relates to the employee's performance	Ps&Gs Section IV.B. Hours worked or quantity to write the additional evaluation when a certificated employee receives a prior negative evaluation
2005-2006[107]	From .5 to 59 hours	-0-	-0-
2006-2007[108]	From 2.5 to 66 hours	-0-	-0-

[103] Exhibit A, IRC, filed March 2, 2020, pages 2-3.

[104] Exhibit IRC, filed March 2, 2020, page 274 (Audit Report). The Controller found that 122 of 2,696 evaluations claimed were not eligible for reimbursement.

[105] Exhibit A, IRC, filed March 2, 2020, page 304 (2007-2008 reimbursement claim).

[106] Exhibit A, IRC, filed March 2, 2020, page 331 (2012-2013 reimbursement claim).

[107] Exhibit A, IRC, filed March 2, 2020, pages 291-292 (2005-2006 reimbursement claim).

[108] Exhibit A, IRC, filed March 2, 2020, pages 296 (2006-2007 reimbursement claim).

2007-2008[109]	"no activity"	-0-	-0-
2010-2011[110]	From 2 to 50 hours	-0-	-0-
2011-2012[111]	From 3 to 51 hours	-0-	-0-
2012-2013[112]	From 4 to 80.28 hours	-0-	1 hour

The Commission also finds that the Controller's rejection of the claimant's time study reviewed during the audit is not arbitrary, capricious, or without evidentiary support. The Controller reviewed the time study and selected three employees to interview whose time entries raised red flags, two of whom recorded the same time for each evaluation.[113] The interviewed employees admitted they estimated their "best guess" time to complete the written evaluations but did not record actual time spent on the mandate as required by the Parameters and Guidelines.[114] The Parameters and Guidelines only reimburse 'actual' costs, not estimated costs.[115]

The Controller also noted that of the 44 total evaluators listed on the time-study spreadsheet, six did not list any time for completing the evaluation, and that the listed time varied widely between employees of the same classification, as follows:

- Permanent – between 0 and 120 minutes;
- Probationary 0 – between 0 and 300 minutes;
- Probationary 1 – between 0 and 300 minutes;
- Probationary 2 – between 0 and 300 minutes.[116]

The Controller was also concerned that the original email from the claimant to the time-study participants originated on April 28, 2017, but the e-signature dates for each evaluation covered a six-month time span. The Controller noted that approximately 86 percent of time increments

[109] Exhibit A, IRC, filed March 2, 2020, pages 299-304 (2007-2008 reimbursement claim).

[110] Exhibit A, IRC, filed March 2, 2020, pages 312-316 (2010-2011 reimbursement claim).

[111] Exhibit A, IRC, filed March 2, 2020, pages 320 (2011-2012 reimbursement claim).

[112] Exhibit A, IRC, filed March 2, 2020, page 327-331 (2012-2013 reimbursement claim).

[113] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 16. The Controller indicated that the employees were selected to interview because they totaled 36 of the 253 line items, or about 14 percent of the entire population. They were also selected because: (1) the first employee (elementary) listed an identical time increment for each evaluation, which was conducted in January and February; (2) the second employee (high school) listed an identical time increment for each evaluation, which was conducted between February and April; (3) the third employee (elementary) listed the overall highest time increments of all evaluators and conducted the evaluations in January and February.

[114] Exhibit A, IRC, filed March 2, 2020, page 279 (Audit Report). Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 16.

[115] Exhibit A, IRC, filed March 2, 2020, page 250 (Parameters and Guidelines).

[116] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, pages 15, 28. Exhibit A, IRC, filed March 2, 2020, pages 5-36 (Time Study).

listed were outside the month of April, "which is cause for concern regarding the accuracy of the data provided."[117] Also, the entries were not signed by the evaluators confirming their listed time increments for each evaluated employee.[118] The Controller also raised questions related to the time study about the lack of a signed declaration for each administrator, how the spreadsheet was created, who had access to the spreadsheet, and what controls were placed on the data to ensure accurate reporting, but received no responses from the claimant to those questions.[119]

Accordingly, the Commission finds that the Controller "adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute."[120]

Moreover, the average time identified in the time study of 1.55 hours to write each evaluation appears to reflect the time to write the *entire* evaluation rather than the limited criteria authorized in Section IV.A. of the Parameters and Guidelines. The claimant gives no indication that the 1.55 hours per evaluation reflects anything other than the time to write a full evaluation.[121] As indicated above, the claimant claimed the vast majority of the costs under Section IV.A of the Parameters and Guidelines to "include" in the existing written evaluation of the certificated instructional employees only the new criteria required by the test claim statutes, and claimed only one hour in fiscal year 2012-2013 for the full written evaluation required when an employee receives a prior negative evaluation.[122]

Therefore, the Controller's reduction of costs for salaries and benefits is correct as a matter of law, and there is no evidence in the record that the Controller's decision to allow 60 minutes total per evaluation is arbitrary, capricious, or entirely lacking in evidentiary support.

V. Conclusion

Based on the foregoing analysis, the Commission denies this IRC.

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[117] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 15.

[118] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 15.

[119] Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, pages 16, 27-28.

[120] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[121] Exhibit A, IRC, filed March 2, 2020, pages 4-36 (Time Study).

[122] Exhibit A, IRC, filed March 2, 2020, page 331 (2012-2013 reimbursement claim).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE CONSOLIDATED INCORRECT REDUCTION CLAIM Los Angeles Regional Quality Control Board Order No. 01-182; Permit CAS004001, Part 4F5c3 Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, City of Claremont, Claimant Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, City of Downey, Claimant Fiscal Years: 2008-2009, 2009-2010, 2010-2011, 2011-2012, City of Glendora, Claimant Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, City of Pomona, Claimant Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, City of Santa Clarita, Claimant Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, City of Signal Hill, Claimant Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, County of Los Angeles, Claimant	Case Nos.: 19-0304-I-04, 20-0304-I-06, 20-0304-I-08, 20-0304-I-09, 20-0304-I-10, 20-0304-I-11, and 20-0304-I-13 *Municipal Storm Water and Urban Runoff Discharges* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted May 28, 2021)* (*Served June 4, 2021*)

CONSOLIDATED INCORRECT REDUCTION CLAIM

The Commission on State Mandates adopted the attached Decision on May 28, 2021.

Heather Halsey, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE CONSOLIDATED INCORRECT REDUCTION CLAIM Los Angeles Regional Quality Control Board Order No. 01-182; Permit CAS004001 Part 4F5c3 Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, City of Claremont, Claimant Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, City of Downey, Claimant Fiscal Years: 2008-2009, 2009-2010, 2010-2011, 2011-2012, City of Glendora, Claimant Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, City of Pomona, Claimant Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, City of Santa Clarita, Claimant Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2010-2011, 2011-2012, 2012-2013, City of Signal Hill, Claimant Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, County of Los Angeles, Claimant	Case Nos.: 19-0304-I-04, 20-0304-I-06, 20-0304-I-08, 20-0304-I-09, 20-0304-I-10, 20-0304-I-11, and 20-0304-I-13 *Municipal Stormwater and Urban Runoff Discharges* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted May 28, 2021*) *(Served June 4, 2021)*

DECISION

The Commission on State Mandates (Commission) heard and decided this Consolidated Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on May 28, 2021. Howard Gest and William Winter appeared on behalf of the claimants. Lisa Kurokawa appeared on behalf of the State Controller's Office (Controller).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to deny the IRC by a vote of 6-0, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Yes
Spencer Walker, Representative of the State Treasurer	Yes
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	Yes

Summary of the Findings

This Consolidated Incorrect Reduction Claim (IRC) alleges that the State Controller's Office (Controller) incorrectly reduced reimbursement claims filed by the cities of Claremont, Downey, Glendora, Pomona, Santa Clarita, and Signal Hill, and the County of Los Angeles for costs claimed to implement the *Municipal Stormwater and Urban Runoff Discharges* program. This IRC and Decision are limited to the issue of whether local return revenues received by the claimants from the Los Angeles County Metropolitan Transportation Authority under the Proposition A and Proposition C local return programs, which were used to fund the costs of the mandated program, are required to be identified as offsetting revenues.

The Controller found that the claimants failed to identify and deduct as offsetting revenues the Proposition A and Proposition C local return funds received from the Los Angeles County Metropolitan Transportation Authority (Metro) that the claimants used to pay for the installation and maintenance of trash receptacles at transit stops required by the mandated program.

The Commission finds that the IRCs and Notices of Intent to Join a Consolidated IRC (Notice of Intent to Join) were timely filed.

The Commission further finds that the Controller's reduction, based on its determination that Proposition A and Proposition C local return funds are offsetting revenues that should have been identified and deducted from the reimbursement claims, is correct as a matter of law. Proposition A and Proposition C are transactions and use taxes levied by Metro. A portion of the Proposition A and Proposition C tax revenues are distributed to the claimant cities and county through the Proposition A and Proposition C local return programs for use on eligible transportation projects. These taxes, however, are not levied "by or for" the cities and county, as that constitutional phrase is interpreted by the courts, because the claimants do not have the authority to levy Proposition A and C taxes, and thus, these taxes are not the claimants' local

proceeds of taxes.[1] Nor are the proceeds subject to the cities' or the county's respective appropriations limits.[2] Under article XIII B, section 6 of the California Constitution, the state is required to provide reimbursement only when a local government is mandated to spend its own proceeds of taxes subject to the appropriations limit of article XIII B.[3]

Accordingly, the Commission denies this Consolidated IRC.

COMMISSION FINDINGS

I. Chronology

08/01/2011	The City of Pomona filed its reimbursement claims for fiscal years 2002-2003 through 2010-2011.[4]
09/21/2011	The City of Downey filed its reimbursement claims for fiscal years 2002-2003, 2003-2004, 2004-2005, and 2005-2006.[5]
09/22/2011	The County of Los Angeles filed its reimbursement claim for fiscal year 2009-2010.[6]
09/28/2011	The City of Claremont filed its reimbursement claims for fiscal years 2002-2003 through 2010-2011.[7] The City of Glendora filed its reimbursement claims for fiscal years 2008-2009 and 2009-2010.[8] The City of Santa Clarita filed its reimbursement claims for fiscal years 2002-

[1] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32; Article XIII B, section 8(b) of the California Constitution.

[2] Public Utilities Code sections 130350 (Stats. 1976, ch. 1333), 130354; Exhibit L, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), page 6.

[3] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486–487.

[4] Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, pages 13, 17, 19, 21, 23, 25, 28, 30, 32.

[5] Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, pages 33, 41, 43, 45.

[6] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 206.

[7] Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, pages 11, 12, 14, 18, 20, 22, 24, 26, 28, 30.

[8] Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, pages 20, 22.

	2003 through 2008-2009.[9] The City of Signal Hill filed its reimbursement claims for fiscal years 2002-2003 through 2009-2010.[10]
12/15/2011	The County of Los Angeles filed its reimbursement claim for fiscal year 2010-2011.[11]
02/15/2012	The City of Signal Hill filed its reimbursement claim for fiscal year 2010-2011.[12]
09/26/2012	The County of Los Angeles filed its reimbursement claims for fiscal years 2002-2003 through 2008-2009.[13]
01/22/2013	The City of Claremont filed its reimbursement claims for fiscal year 2011-2012.[14]
02/11/2013	The City of Glendora filed its reimbursement claims for fiscal years 2010-2011 and 2011-2013.[15] The County of Los Angeles filed its reimbursement claim for fiscal year 2011-2012.[16]
02/15/2013	The City of Pomona filed its reimbursement claim for fiscal year 2011-2012.[17] The City of Signal Hill filed its reimbursement claim for fiscal year 2011-2012.[18]
02/04/2014	The County of Los Angeles filed its reimbursement claim for fiscal year 2012-2013.[19]
02/13/2014	The City of Signal Hill filed its reimbursement claim for fiscal year 2012-2013.[20]

[9] Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, pages 2, 3, 7, 11, 15, 19, 23, 28.

[10] Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, pages 24, 31, 38, 45, 52, 59, 66, 73.

[11] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 209.

[12] Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, page 80.

[13] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 168, 178, 191, 194, 197, 203.

[14] Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, page 32.

[15] Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, pages 24, 26.

[16] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 212.

[17] Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, page 34.

[18] Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, page 87.

[19] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 218.

[20] Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, page 94.

06/30/2017	The Controller issued the final audit report to the City of Downey.[21]
10/20/2017	The Controller issued the final audit report to the City of Claremont.[22]
11/06/2017	The Controller issued the final audit report to the County of Los Angeles.[23]
05/21/2018	The Controller issued the final audit report to the City of Pomona.[24]
06/25/2018	The Controller issued the final audit report to the City of Signal Hill.[25]
08/09/2018	The Controller issued the final audit report to the City of Glendora.[26]
08/28/2018	The Controller issued the final audit report to the City of Santa Clarita.[27]
06/30/2020	The City of Downey filed its IRC.
10/16/2020	The City of Claremont filed its IRC.
11/05/2020	The County of Los Angeles filed its IRC with intent to consolidate on behalf of other similarly situated claimants.[28]

[21] Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, page 4.

[22] Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, page 3. The Controller refers to its review of the reimbursement claims filed by the cities of Claremont and Pomona and the County of Los Angeles as "reviews" or "desk reviews" (instead of audits) and its reports thereon as "final letters" or "final letter reports" (instead of final audit reports). While Government Code section 17558.5 authorizes the Controller to audit or review a reimbursement claim filed by a local agency or school district and to make adjustments thereto, the Controller's underlying authority, as prescribed by Government Code 12410, is to "superintend the fiscal concerns of the state," including auditing "the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment." Furthermore, section 1185.1(c) of the Commission's regulations refers to the deadline for filing an incorrect reduction claim as no later than three years after the date the claimant first receives from the Controller "a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c)." For the sake of simplicity and because whether it is called an "audit" or a "desk review" the requirements of 1185.1(c) are met so long as notice that complies with 17558.5(c) is given, this decision refers to the Controller's audits and reviews of the claimants' reimbursement claims as "audits" and the final reports and letters issued thereon as "final audit reports."

[23] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 148.

[24] Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, page 2.

[25] Exhibit G, City of Signal Hill's Notice of Intent to Join, filed November 9, 2021, page 5.

[26] Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, page 3.

[27] Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, page 33.

[28] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020.

01/28/2021	The City of Glendora filed its Notice of Intent to Join a Consolidated IRC (Notice of Intent to Join).[29]
02/04/2021	The City of Downey filed its Notice of Intent to Join.[30]
02/09/2021	The City of Santa Clarita filed its Notice of Intent to Join.[31] The City of Signal Hill filed its Notice of Intent to Join.[32]
02/10/2021	The City of Claremont filed its Notice of Intent to Join.[33] The City of Pomona filed its Notice of Intent to Join.[34]
03/19/2021	Commission staff issued the Draft Proposed Decision.[35]
04/08/2021	The City of Claremont filed comments on the Draft Proposed Decision.[36]
04/08/2021	The Controller filed comments on the Draft Proposed Decision.[37]
04/09/2021	The County of Los Angeles filed comments on the Draft Proposed Decision.[38]

II. Background

This Consolidated IRC challenges the Controller's reduction of reimbursement claims filed by the cities of Claremont, Downey, Glendora, Pomona, Santa Clarita, and Signal Hill, and County of Los Angeles for the *Municipal Stormwater and Urban Runoff Discharges* program for fiscal years ranging from 2002-2003 through 2012-2013 (audit period). Specifically, this IRC addresses the issue of whether local return revenues received by the claimants from the Los Angeles County Metropolitan Transportation Authority under Proposition A and Proposition C local return program, which the claimants used to fund the costs of the mandated program, are required to be identified as offsetting revenues.

A. The *Municipal Stormwater and Urban Runoff Discharges* Program

The *Municipal Stormwater and Urban Runoff Discharges* 03-TC-04, 03-TC-19,03-TC-20, 03-TC-21 program arose from a consolidated test claim filed by the County of Los Angeles and

[29] Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021.

[30] Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021.

[31] Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021.

[32] Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021.

[33] Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021.

[34] Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021.

[35] Exhibit H, Draft Proposed Decision, issued March 18, 2021.

[36] Exhibit I, City of Claremont's Comments on the Draft Proposed Decision, filed April 8, 2021.

[37] Exhibit J, Controller's Comments on the Draft Proposed Decision, filed April 8, 2021.

[38] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021.

cities within the county alleging that various sections of a 2001 stormwater permit issued by the Los Angeles Regional Water Control Board, a state agency, constituted a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[39]

On July 31, 2009, the Commission adopted the Test Claim Decision, finding that the following activity in part 4F5c3 of the permit imposed a reimbursable state mandate on those local agencies subject to the permit that are not subject to a trash total maximum daily load (TDML):

> Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[40]

The Commission adopted the Parameters and Guidelines for this program on March 24, 2011.[41] The Parameters and Guidelines provide for reimbursement as follows:

> For each eligible local agency, the following activities are reimbursable:
>
> A. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):
>
> 1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
> 2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
> 3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.
> 4. Purchase or construct receptacles and pads and install receptacles and pads.
> 5. Move (including replacement if required) receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.
>
> B. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):
>
> 1. Collect and dispose of trash at a disposal/recycling facility. This activity is limited to no more than three times per week.

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[39] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 132 (Parameters and Guidelines).

[40] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 132 (Parameters and Guidelines).

[41] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 132 (Parameters and Guidelines).

2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.
3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. Graffiti removal is not reimbursable.
4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.[42]

Section VIII of the Parameters and Guidelines provides the following regarding offsetting revenues and reimbursements:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.[43]

B. The Controller's Audits and Summary of the Issues

City of Claremont: The Controller performed an audit of reimbursement claims filed by the City of Claremont for fiscal years 2002-2003 through 2011-2012 and found that of the total amount of $170,182 claimed, $166,345 was unallowable.[44] The Controller determined that the claimant "did not offset any revenues on its claim forms for the review period" and "should have offset $166,345 in Proposition C local return funds that were used to pay for the ongoing maintenance of transit stop trash receptacles."[45]

The Controller characterized Proposition C funds as "special revenue" funds, which it defined as funds that "are used to account for the proceeds of specific revenue sources that are legally restricted to expenditures for specified purposes."[46] Because the claimant used Proposition C funds to pay for the mandated activities, "it was not required to rely on the use of discretionary general funds."[47] The Controller determined that under the Parameters and Guidelines, the

[42] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 135 (Parameters and Guidelines).

[43] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 138 (Parameters and Guidelines).

[44] Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, page 3.

[45] Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, page 8.

[46] Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, page 8.

[47] Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, page 9.

claimant should have identified and offset the Proposition C funds from the reimbursement claims.[48]

City of Downey: The Controller audited costs claimed by the City of Downey for fiscal years 2002-2003 through 2013-2014 and determined that of the $716,563 claimed, $652,652 was unallowable.[49] The audit report contains two findings: That the claimant overstated ongoing maintenance costs (Finding 1) and did not report offsetting revenues or reimbursements on its claim forms for the audit period (Finding 2).[50] Only Finding 2 is at issue in this consolidated IRC.

Finding 2 states that the claimant did not offset any revenues or reimbursements on its claim forms and should have offset $186,921 for the audit period.[51] The Controller found that for fiscal years 2002-2003 through 2005-2006, the claimant used Proposition A local return funds to pay for the mandated activities.[52] Specifically, one-time costs to purchase and install transit stop trash receptacles during the 2002-2003 fiscal year were reduced, as were ongoing trash receptacle maintenance costs for fiscal years 2002-2003 through 2005-2006, to the extent the claimant paid for those activities with Proposition A local return funds.[53]

The Controller reasoned that because the claimant used Proposition A funds to pay for both the one-time and ongoing mandated activities, "it did not have to rely solely on discretionary general funds to pay for the mandated activities."[54] The Controller determined that under section VIII of the Parameters and Guidelines, the Proposition A funds were required to be identified and deducted from the reimbursement claims.[55]

City of Glendora: The Controller audited costs claimed by the City of Glendora for fiscal years 2002-2003 through 2011-2012.[56] Of $190,310 in total claimed costs, the Controller found that $79,856 was unallowable because the claimant did not offset Proposition C local return funds used to pay for the mandated activities.[57] The Controller determined that the claimant used Proposition C revenues in fiscal years 2008-2009 through 2011-2012 to pay for the salaries and benefits of employees who maintained transit stop trash receptacles.[58] To the extent the claimant

[48] Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, pages 8-9.

[49] Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, page 4.

[50] Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, pages 14, 17.

[51] Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, pages 17-18.

[52] Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, page 18.

[53] Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, pages 18-19.

[54] Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, page 19.

[55] Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, page 19.

[56] Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, page 6.

[57] Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, page 3.

[58] Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, page 12.

"used Proposition C monies to fund the payroll costs of city staff who performed the reimbursable activities," it was required under section VII of the Parameters and Guidelines to deduct those revenues from its costs claimed.[59]

The Controller described Proposition C as a "special supplementary sales tax" whose revenues are "restricted solely to benefiting public transit," as opposed to unrestricted general sales taxes which can be used for any general governmental purpose.[60] Because Proposition C funds constitute "revenues raised outside of [the claimant's] appropriations limit," to the extent it paid for the mandated activities using Proposition C funds, the claimant did not incur increased costs as a direct result of the mandate program.[61] Additionally, the Local Return Guidelines permit advancement of Proposition C funds only when reimbursement is available from grant or private funding; mandate reimbursement does not qualify as such.[62]

City of Pomona: The Controller audited reimbursement claims filed by the City of Pomona for fiscal years 2002-2003 through 2011-2012 and found that the entire claimed amount of $272,474 was unallowable.[63] The Controller made two findings: That the claimant claimed ineligible on-time costs for the 2002-2003 fiscal year (Finding 1) and did not report offsetting revenues or reimbursements on its claim forms for the audit period (Finding 2).[64] Only Finding 2 is at issue in this consolidated IRC. In Finding 2, the Controller determined that the claimant should have offset $264,515 in Proposition A local return funds used to pay $81,392 in one-time costs and $183,123 in ongoing maintenance costs.[65]

The Proposition A and Proposition C Local Return Guidelines identify installation and maintenance of transit stop trash receptacles as projects eligible to be paid for using Proposition A funds.[66] Under section VIII of the Parameters and Guidelines, the claimant was required to identify and deduct from its claims those Proposition A funds used to pay for the mandated activities.[67] The Controller reasoned that because mandate reimbursement is limited to costs incurred solely from a local agency's tax revenues, to the extent the claimant elected to use Proposition A funds, reimbursement was not required.[68]

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[59] Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, page 13.

[60] Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, page 14.

[61] Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, page 15.

[62] Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, page 15.

[63] Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, page 2.

[64] Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, pages 7-8.

[65] Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, page 8.

[66] Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, page 9.

[67] Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, page 9.

[68] Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, page 10.

City of Santa Clarita: The Controller audited costs claimed by the City of Santa Clarita for fiscal years 2002-2003 through 2008-2009.[69] The Controller found the entire claimed amount of $362,982 was unallowable because the claimant misstated the annual number of trash collections and did not offset "restricted funds" used to pay for the mandated activities.[70] At issue in this consolidated IRC is only Finding 2, wherein the Controller found that the claimant should have, but did not, offset $177,692 in "restricted funds," including Proposition A and Proposition C local return funds, as revenues or reimbursements on its claim forms for the audit period.[71]

Specifically, the Controller found that the claimant should have offset $24,372 in Proposition A and Proposition C funds that were used to purchase and install transit-stop trash receptacles in fiscal year 2007-2008 and $153,320 in revenues from the claimant's Transit System Fund that were used to pay for ongoing trash receptacle maintenance throughout the audit period.[72] The Controller reasoned that because the Transit System Fund (which is funded with Proposition A and Proposition C local return funds) is used to account for revenues from fee-generating activities, and no general funds were transferred into the Fund during the audit period, the claimant did not have to rely on discretionary funds to pay for the mandated activities.[73]

The Controller describes Proposition A and Proposition C as special supplementary sales taxes, the proceeds of which are restricted to the development and/or improvement of public transit services, as opposed to unrestricted general sales taxes, which "can be spent for any general governmental purpose."[74] The Controller further notes that the claimant did not provide any documentation showing that the Proposition A and Proposition C local return funds were included in the claimant's appropriations limit.[75]

City of Signal Hill: The Controller audited costs claimed by the City of Signal Hill for fiscal years 2002-2003 through 2012-2013.[76] Of the total claimed amount of $233,135, the Controller found that $199,732 was unallowable because the claimant overstated the number of trash collections and did not offset Proposition A local return funds used to pay for the mandated

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[69] Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, page 33.

[70] Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, page 33.

[71] Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, page 44.

[72] Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, pages 44-45. The Transit System Fund includes Proposition A and Proposition C local return funds, as well as other transit funds and fees received, as identified on page 45 of Exhibit F, City of Santa Clarita's Notice of Intent, filed February 9, 2021. These consolidated IRCs pertain only to the Controller's determination that Proposition A and Proposition C local return funds are offsetting revenues; no IRC was filed disputing the other Transit System Fund revenues.

[73] Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, page 45.

[74] Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, page 47.

[75] Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, page 47.

[76] Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, page 5.

activities.[77] At issue in this consolidated IRC is only Finding 2, wherein the Controller found that the claimant failed to report as offsetting revenues the Proposition A funds it used to pay for ongoing trash receptacle maintenance.[78] The Controller asserts that, because the claimant used Proposition A funds which the Controller characterizes as "revenues outside [the claimant's] appropriations limit," the claimant did not have to rely on discretionary funds to pay for the mandated activities.[79] Under section VIII of the Parameters and Guidelines, the claimant was required to offset its claims for reimbursement in the amount of Proposition A funds applied to the mandated activities.[80]

County of Los Angeles: The County of Los Angeles claimed $6,129,851 for fiscal years 2002-2003 through 2012- 2013.[81] The Controller found that all costs claimed were unallowable because the claimant did not offset Proposition A local return funds used to pay for the mandated activities.[82] Specifically, the Controller found that the claimant used Proposition A funds to pay $288,802 in one-time costs and $5,841,049 in ongoing maintenance costs.[83]

The Controller described Proposition A as a "special supplementary sales tax" that is "restricted solely for the development and or improvement of public transit services."[84] The claimant did not provide the Controller with any documentation showing that the Proposition A funds are included in the claimant's appropriation limit.[85] The Controller asserts that because the claimant used "restricted" Proposition A funds to pay for the mandated activities, it did not have to rely on discretionary general funds and was required under the Parameters and Guidelines to offset the Proposition A funds from its reimbursement claims.[86] Furthermore, the Controller disagrees with the claimant's assertion that Proposition A funds may be advanced pending mandate reimbursement.[87] Under the Local Return Guidelines, Proposition A funds may only be advanced for projects that will be reimbursed from federal, state, or local grant funding; mandate reimbursement does not qualify as grant funding.[88]

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[77] Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, page 5.

[78] Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, page 19.

[79] Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, page 20.

[80] Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, page 20.

[81] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 148.

[82] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 153.

[83] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 153.

[84] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 158.

[85] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 158.

[86] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 153-154.

[87] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 158.

[88] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 158.

C. Proposition A and Proposition C Local Return Funds

In 1976, the Legislature created the Los Angeles County Transportation Commission (Transportation Commission) as a countywide transportation improvement agency[89] and authorized the Transportation Commission to levy a transactions and use tax throughout Los Angeles County.[90]

> A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the County of Los Angeles may be adopted by the Los Angeles County Transportation Commission in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, provided that a majority of the electors voting on the measure vote to authorize its enactment at a special election called for that purpose by the commission.[91]

Public Utilities Code section 130354 states that "revenues received by the Los Angeles County Transportation Commission from the imposition of the transactions and use taxes shall be used for public transit purposes."[92]

In 1980, Los Angeles County voters approved Proposition A, a one-half percent transactions and use tax to fund public transit projects throughout the county.[93] Proposition A was passed by a majority of voters as required by the original language of Public Utilities Code section 130350, but not the two-thirds vote required by article XIII A, section 4 (Proposition 13). Thereafter, the executive director of the Transportation Commission refused to levy the tax. The Transportation Commission filed a petition for writ of mandate to compel the executive director to implement the tax.

In *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, the California Supreme Court held that the Transportation Commission could, consistent with Proposition 13, impose the tax with the consent of only a majority of voters, instead of the two-thirds required under article XIII A, section 4.[94] The court reasoned that "special district" within the meaning of

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[89] Public Utilities Code section 130050.

[90] Public Utilities Code sections 130231(a), 130350.

[91] Public Utilities Code section 130350 (Stats. 1976, ch. 1333). Section 130350 was amended in 2007 to reflect the two-thirds vote requirement for special taxes under article XIII A, section 4.

[92] Public Utilities Code section 130354.

[93] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

[94] In 1978, California voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A, section 4 provides:

> Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem

article XIII A, section 4 included only those districts with the authority to levy a tax on real property, and because the Transportation Commission had no such authority, it did not constitute a "special district."[95] While the court noted that the terms "special districts" and "special taxes" as used in section 4 were both ambiguous, it did not address whether Proposition A constituted a "special tax" within the meaning of section 4.[96] Nor did the court address whether the Transportation Commission or the Proposition A tax were subject to the government spending limitations imposed by article XIII B.

In *Rider v. County of San Diego* (1991) 1 Cal.4th 1, the California Supreme Court addressed "a question previously left open" in *Richmond*, regarding the validity of a supplemental sales tax "enacted for the apparent purpose of avoiding the supermajority voter approval requirement" under article XIII A, section 4.[97] The court ruled that a "special district" within the meaning of article XIII A, section 4 includes "any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of Proposition 13," regardless of whether the district has the authority to levy real property taxes.[98] However, the court declined to overrule *Richmond* with respect to local agencies created prior to Proposition 13 and which lacked the authority to levy property taxes, such as the Transportation Commission.[99] The court further held that a "special tax" within the meaning of article XIII A, section 4, "is one levied to fund a specific government project or program," even when that project or program is the agency's sole reason for being.[100]

In 1990, voters approved Proposition C, a second one-half percent transactions and use tax, also used to fund public transit projects countywide.[101] Similar to Proposition A, Proposition C was also approved by a majority of voters, not the two-thirds required under Proposition 13 and Proposition 62.[102] In an unpublished decision, the Second District Court of Appeal upheld a challenge to Proposition C, finding that the proposition did not require a two-thirds vote under either Proposition 13 or Proposition 62.[103] The court reasoned that the Transportation

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> taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

[95] *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 208.

[96] *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 201-202.

[97] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 5.

[98] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 11.

[99] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 7-9.

[100] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 15.

[101] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

[102] *Vernon v. State Bd. of Equalization* (*Los Angeles County Transp. Com'n*) (1992) 5 Cal.Rptr.2d 414, 416.

[103] *Vernon v. State Bd. of Equalization* (*Los Angeles County Transp. Com'n*) (1992) 5 Cal.Rptr.2d 414, 423. Proposition 62 was a statutory initiative adopted by California voters in

Commission was not a "district" within the meaning of Proposition 13 or Proposition 62 because it lacked the power to levy a property tax and was formed prior to the enactment of Proposition 13.[104]

Public Utilities Code section 99550, which was added in 1992, states as follows:

> The decision of the California Supreme Court in *Los Angeles County Transportation Agency v. Richmond* (1982), 31 Cal.3d 197, shall be applicable to and control, and the decision of the California Supreme Court in *Rider v. County of San Diego* (1991), 1 Cal. 4th 1, shall not be applicable to and shall not control, any action or proceeding wherein the validity of a retail transactions and use tax is contested, questioned, or denied *if the ordinance imposing that tax was adopted by a transportation agency and approved prior to December 19, 1991, by a majority of the voters.*
>
> For purposes of this section, "transportation agency" means any agency, authority, district, commission, or other public entity organized under provisions of this code and authorized to impose a retail transactions and use tax.[105]

The Transportation Commission is statutorily authorized to levy both the Proposition A and Proposition C transaction and use taxes.[106]

> The Los Angeles County Transportation Commission is authorized to impose a transactions and use tax within the County of Los Angeles pursuant to the

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1986, which added a new article to the Government Code (sections 53720-53730). Under Proposition 62, no local government or district may impose a special tax, defined as a tax imposed for specific purposes, without two-thirds voter approval. Government Code sections 53721, 53722.

[104] *Vernon v. State Bd. of Equalization* (*Los Angeles County Transp. Com'n*) (1992) 5 Cal.Rptr.2d 414, 423.

[105] Public Utilities Code section 99550 (Stats. 1992, c. 1233), emphasis added. In *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 236, the California Supreme Court held that "district" within the meaning of Proposition 62 was not limited to "special districts" as construed by the *Richmond* court but instead encompassed all "districts," as defined by Government Code section 53720(b) (a provision of Proposition 62), including those without the power to levy real property taxes. Government Code section 53720(b) defines "district" as "an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."

In 1996, Proposition 218 added some of the statutory language from Proposition 62 to the California Constitution, including the definitions of "special district" and "special tax." California Constitution, article XIII C, section 1. Under article XIII C, section 2, any tax imposed by a local government is either general or special, and special districts have no authority to levy general taxes. California Constitution, article XIII C, section 2(a).

[106] Public Utilities Code section 130231(a).

> approval by the voters of the commission's Ordinance No. 16 [Proposition A] in 1980 and its Ordinance No. 49 [Proposition C] in 1990, and has the authority and power vested in the Southern California Rapid Transit District to plan, design, and construct an exclusive public mass transit guideway system in the County of Los Angeles, including, but not limited to, Article 5 (commencing with Section 30630 of Chapter 5 of Part 3 of Division 11).[107]

The Proposition A Ordinance does not state whether Proposition A tax proceeds are subject to the Transportation Commission's appropriations limit.[108] The Proposition C Ordinance, however, expressly includes a provision establishing an appropriations limit for the Transportation Commission for the Proposition C proceeds.[109]

> 3-10-080 Appropriations Limit. A [Los Angeles County Transportation] Commission appropriations limit is hereby established equal to the revenues collected and allocated during the 1990/91 fiscal year plus an amount equal to one and a half times the taxes that would be levied or allocated on a one-half of one percent transaction and use tax in the first full fiscal year following enactment and implementation of this Ordinance.[110]

In 1993, the Transportation Commission was abolished and the Los Angeles County Metropolitan Transportation Authority (Metro) was created and succeeded to the Transportation Commission's and the Southern California Rapid Transit District's powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its governing body.[111] Since becoming

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[107] Public Utilities Code section 130231(a).

[108] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 31-39 (Proposition A Ordinance).

[109] Exhibit L, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), page 6.

[110] Exhibit L, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), page 6.

[111] Public Utilities Code sections 130050.2, 130051.13. Section 130051.13 states as follows:

> On April 1, 1993, the Southern California Rapid Transit District and the Los Angeles County Transportation Commission are abolished. Upon the abolishment of the district and the commission, the Los Angeles County Metropolitan Transportation Authority shall succeed to any or all of the powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its governing body.

the successor agency to the Transportation Commission, Metro has continued to levy the Proposition A and Proposition C taxes.[112]

The purpose of the Proposition A tax is to "improve and expand existing public transit Countywide, including reduction of transit fare, to construct and operate a rail rapid transit system hereinafter described, and to more effectively use State and Federal funds, benefit assessments, and fares."[113] Under the Proposition A Ordinance, tax revenues can be used for capital or operating expenses[114] and are allocated as follows:

a. Twenty-five percent, calculated on an annual basis, to local jurisdictions for local transit, based on their relative percentage share of the population of the County of Los Angeles.

b. Thirty-five percent, calculated on an annual basis, to the commission for construction and operation of the System.

c. The remainder shall be allocated to the Commission for public transit purposes.[115]

The purpose of the Proposition C tax is to "improve transit service and operations, reduce traffic congestion, improve air quality, efficiently operate and improve the condition of the streets and freeways utilized by public transit, and reduce foreign fuel dependence."[116] The enumerated purposes of the tax include:

(1) Meeting operating expenses; purchasing or leasing supplies, equipment or materials; meeting financial reserve requirements; obtaining funds for capital projects necessary to maintain service within existing service areas;

(2) Increasing funds for existing public transit service programs;

(3) Instituting or increasing passenger or commuter services on rail or highway rights of way;

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[112] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

[113] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 33 (Proposition A Ordinance).

[114] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 33 (Proposition A Ordinance).

[115] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 34 (Proposition A Ordinance).

[116] Exhibit L, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), page 3.

(4) Continued development of a regional transportation improvement program.[117]

Under the Proposition C Ordinance, tax revenues are allocated as follows:

(1) Forty percent to improve and expand rail and bus transit, including fare subsidies, graffiti prevention and removal, and increased energy-efficiency;

(2) Five percent to improve and expand rail and bus security;

(3) Ten percent to increase mobility and reduce congestion;

(4) Twenty percent to the Local Return Program; and

(5) Twenty-five percent to provide transit-related improvements to freeways and state highways.[118]

Local jurisdictions receive transportation funding from Metro through the Proposition A and Proposition C local return programs. Twenty-five percent of Proposition A funds and twenty percent of Proposition C funds are allocated to the local return programs for local jurisdictions to use for "in developing and/or improving public transit, paratransit, and the related transportation infrastructure."[119] Metro allocates and distributes local return funds to cities and the county each month, on a "per capita" basis.[120]

Use of Proposition A tax revenues is restricted to "eligible transit, paratransit, and Transportation Systems Management improvements" and cities are encouraged to use the funds to improve transit services.[121]

> The Proposition A Ordinance requires that LR [Local Return] funds be used exclusively to benefit public transit. Expenditures related to fixed route and paratransit services, Transportation Demand Management, Transportation Systems Management and fare subsidy programs that exclusively benefit transit are all eligible uses of Proposition A LR funds.[122]

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[117] Exhibit L, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), page 3.

[118] Exhibit L, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), pages 3-4.

[119] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

[120] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 47, 74 (Local Return Guidelines).

[121] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 33, 35 (Proposition A Ordinance).

[122] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

The Proposition C Ordinance requires that Proposition C local return funds be used to benefit "public transit, paratransit, and related services including to improve and expand supplemental paratransit services to meet the requirements of the Federal Americans With Disabilities Act."[123] Eligible projects include "Congestion Management Programs, bikeways and bike lanes, street improvements supporting public transit service, and Pavement Management System projects."[124]

Amongst the eligible uses of Proposition A and Proposition C local return funds are bus stop improvements and maintenance projects.[125] The Local Return Guidelines provide as follows:

> Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:
>
> - Concrete landings – in street for buses and at sidewalk for passengers
> - Bus turn-outs
> - Benches
> - Shelters
> - *Trash receptacles*
> - Curb cut
> - Concrete or electrical work directly associated with the above items.[126]

Proposition A local return funds may also "be given, loaned or exchanged" between local jurisdictions, provided that certain conditions are met, including that the traded funds be used for public transit purposes.[127] Proposition C funds cannot be traded.[128] Jurisdictions are permitted to use local return funds to advance eligible projects that will be reimbursed by "federal, state, or

[123] Exhibit L, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), page 4.

[124] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

[125] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 53 (Local Return Guidelines).

[126] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 53 (Local Return Guidelines), emphasis added.

[127] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 59 (Local Return Guidelines).

[128] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

local grant funding, or private funds."[129] Subsequent reimbursement funds must then be deposited into the Proposition A or Proposition C Local Return Fund.[130]

III. Positions of the Parties

A. Cities of Claremont, Downey, Glendora, Pomona, Santa Clarita, and Signal Hill and County of Los Angeles

The claimants challenge the Controller's finding that their use of Proposition A and Proposition C local return funds during the audit period to pay for the mandated activities of installing and maintaining transit stop trash receptacles constituted reimbursement from a non-local source.[131] The claimants do not dispute the Controller's determination that the claimants used Proposition A and Proposition C funds to perform mandated activities. Rather, the claimants argue that requiring the claimants to offset Proposition A and Proposition C local return funds from their reimbursement claims (1) violates article XIII B, section 6 of the California Constitution; (2) is inconsistent with the Parameters and Guidelines; and (3) constitutes an unlawful retroactive application of the Parameters and Guidelines.[132] The claimants assert that the Controller's actions were arbitrary, capricious, and lacking in evidentiary support.[133]

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[129] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 76 (Local Return Guidelines).

[130] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 76 (Local Return Guidelines).

[131] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 10. The claimants' position is derived from the IRC filed by the County of Los Angeles, the lead claimant in this consolidated IRC, which was joined by all claimants to this consolidated claim. While the County of Los Angeles' IRC involves Proposition A only, the County asserts that there is no relevant distinction here between Proposition A and Proposition C.

> Propositions A and C both were adopted for transit purposes, and both provide local agencies with direct "local return" funds that were available to the municipalities for local transit needs. Gest Decl. at ¶ 7.
>
> In addition to these factual similarities, the main legal issue in each IRC is essentially identical, because all relate to the same essential SCO argument – that because special sales tax, instead of other tax revenues were advanced to pay for the receptacles, such sales tax revenues should have offset the reimbursement request.

Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 5. Because of the factual and legal similarities between Proposition A and Proposition C, reference to Proposition C has been added to the County of Los Angeles' discussion of Proposition A in order to capture the reimbursement claims involving Proposition C.

[132] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 10.

[133] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 14.

The claimants argue that offsetting Proposition A and Proposition C local return funds is unconstitutional.[134] The Controller characterizes Proposition A and Proposition C as "special supplementary" sales taxes, the use of which is restricted, and distinguishes restricted sales taxes from unrestricted general sales taxes, the latter of which the Controller asserts can be used for any general governmental purpose.[135] The claimants challenge the Controller's conclusion that because the claimants used Proposition A or Proposition C tax revenues to perform the mandated activities of installing and maintaining trash receptacles, they did not have to rely on general funds.[136] Neither article XIII B, section 6 nor the case law interpreting it distinguishes between general and restricted taxes.[137] Proposition A and Proposition C are local sales and use taxes, the revenues of which article XIII B, section 6 was designed to protect.[138] Furthermore, whether the Proposition A and Proposition C local return funds are subject to the claimants' appropriations limit "is irrelevant to the question before the Commission, which is whether the State has mandated a program that requires the expenditure of local tax revenue."[139] By requiring the claimants to use local tax revenues to pay for the mandated activities simply because the revenues are restricted to public transit purposes, the Controller has added a new requirement that violates article XIII B, section 6 and precludes the claimants from using local tax revenues on other transit programs of their choosing.[140]

The claimants further assert that the offset is inconsistent with the Parameters and Guidelines.[141] The Controller's approach shifts the financial burden of a state-mandated program onto a local agency simply because the local agency uses a "restricted" local sales tax to fund the mandate.[142] The claimants reason that Proposition A and Proposition C local return funds do not constitute offsetting revenues under section VIII of the Parameters and Guidelines because Proposition A and Proposition C are local taxes and therefore not a "federal, state, or non-local source."[143] The claimants point out that the Controller does not dispute that "Proposition A is a local sales tax imposed on local citizens," citing to the fact that the Controller did not seek to revise the

[134] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 14.

[135] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 14.

[136] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 17.

[137] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 14-15.

[138] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 14-15.

[139] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 15, footnote 4.

[140] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 15.

[141] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 16.

[142] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 16.

[143] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 16.

Parameters and Guidelines before they were adopted to require deduction of "special local taxes" like Proposition A.[144]

The claimants did not err in using Proposition A or Proposition C funds to pay for the installation and maintenance of the trash receptacles because the trash receptacles qualified for such use.[145] Under the Local Return Guidelines, the claimants were permitted to initially use the Proposition A or Proposition C funds for trash receptacles and then, upon reimbursement by the state, apply those funds to other transit projects.[146] This is exactly the sort of "advance" contemplated by the Local Return Guidelines.[147]

The claimants challenge the Controller's position that Proposition A and Proposition C funds can only permissibly be used as an advance where funds will be repaid by federal, state, or local grants, or private funds, all of which are distinguishable from subvention of funds to reimburse a local government for the cost of state mandated activities.[148] The claimants assert that whether reimbursement is from a non-grant source is irrelevant; the Local Return Guidelines anticipate "reimbursement not only from grant funds but also other 'fund sources.'"[149]

Expending Proposition A or Proposition C funds prior to reimbursement is consistent with the intent behind article XIII B, section 6.[150] Neither Proposition A nor Proposition C is a "source other than taxes" under Government Code section 17556(d) and the Parameters and Guidelines, the use of which to pay for mandated expenses renders the expenses ineligible for reimbursement.[151] By denying the claimants this portion of their claims for reimbursement, the claimants' transportation project funding is limited as though the state were to refuse to reimburse the claimants for general funds used for the same purpose.[152]

The claimants further allege that the Controller is retroactively applying the Parameters and Guidelines in contravention of applicable law.[153] The fiscal years during which the claimants used Proposition A funds to pay for the mandated activities preceded the effective date of the Parameters and Guidelines.[154] The claimants argue that in addition to being unlawful, it is arbitrary and capricious for the Controller to find that the Parameters and Guidelines

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[144] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 16-17.

[145] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 17.

[146] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 17.

[147] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 17.

[148] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 17-18.

[149] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 17.

[150] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 18.

[151] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 18.

[152] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 18.

[153] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 18.

[154] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 18.

retroactively prohibited the use of Proposition A and Proposition C funds in way that was lawful at the time the funds were used.[155] The claimants challenge the Controller's determination that Proposition A and Proposition C funds are from a non-local source on the basis that they are "restricted" tax revenues, arguing that article XIII B, section 6 makes no distinction between restricted and non-restricted taxes.[156]

In comments filed on the Draft Proposed Decision, the City of Claremont asserts that the determination that the Proposition A and Proposition C local return funds are not included in the City's appropriations limit is incorrect.[157] In support, the claimant has provided a declaration from Adam Pirrie, Finance Director for the City of Claremont, stating that the Proposition A and Proposition C funds received by the City were included in its appropriations limit for fiscal years 2002-2003 through 2011-2012, as well as resolutions adopted by the City of Claremont City Council showing that the appropriations limits for those fiscal years included Proposition A and Proposition C funds.[158]

The County of Los Angeles argues that the Commission's Draft Proposed Decision misinterprets article XIII B, section 6 by conditioning mandate reimbursement on a local agency using its own proceeds of taxes, subject to the agency's appropriations limit.[159] The county alleges that there is no language in section 6 tying the state's duty to reimburse to any other section of article XIII B, including section 1 (appropriations limit) or section 8(c) (defining "proceeds of taxes").[160] As such, the county reasons, the California Constitution does not require taxes used to fund mandated activities to have been levied "by or for" the local agency or included in the agency's appropriations limit, so long as the taxes are designated for the agency's use.[161]

The county asserts that it is undisputed that the Proposition A and Proposition C local return funds are the claimants' "local sales and use tax revenues" and therefore, under the plain meaning of article XIII B, section 6, the claimants were permitted to use those funds to pay for

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[155] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 18.

[156] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, page 11.

[157] Exhibit I, City of Claremont's Comments on the Draft Proposed Decision, filed April 8, 2021, page 1.

[158] Exhibit I, City of Claremont's Comments on the Draft Proposed Decision, filed April 8, 2021, pages 2-71.

[159] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, page 2.

[160] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, page 4.

[161] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, page 2.

the mandated activities.[162] The county states that "appropriations subject to limitations" and "proceeds of taxes" as defined in article XIII, section 8, specifically exclude subventions made pursuant to section 6, which the claimant interprets to mean that section 6 does "not condition the subvention obligation on the funds having first been subject to the Claimants' appropriations limit or the funds falling within the definitions of 'appropriations subject to limitation' and 'proceeds of taxes.'"[163]

To support its position that article XIII B, section 6 operates independent of sections 1 and 8, the claimant cites to the Voter Pamphlet that accompanied Proposition 4 for the proposition that "neither the ballot summary nor the arguments in favor of the proposition linked Section 6's obligations to the appropriations limit sections."[164]

The county argues that no court has conditioned reimbursement under section 6 on a local agency's expenditures being subject to the agency's appropriations limit or "proceeds of taxes" within the meaning of article XIII B, sections 1, 8(b), and 8(c).[165] The county cites to a number of cases interpreting article XIII B for the purpose of showing that while courts have found that article's intent is to limit the growth of government appropriations at both the state and local levels, courts interpreting section 6 "have emphasized the limitations article XIII A has placed on local government's ability to assess taxes, not the appropriations limit of article XIII B."[166]

The county contends that because the state's obligation to provide a subvention of funds for state-mandated activities existed prior to section 6, the voters' approval of Proposition 4 cannot be interpreted as limiting that obligation.[167] According to the county, the state's duty to reimburse local agencies for state mandates originated in 1972 with the Property Tax Relief Act and neither the law as originally passed or its subsequent forms tied the state's duty to provide mandate reimbursement to 'proceeds of taxes,' or 'appropriations subject to limitation,' because no such limitations had been adopted."[168] Furthermore, the claimant argues that in adopting

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[162] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, page 3.

[163] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, pages 5-6.

[164] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, pages 5-6. The adoption of Proposition 4 added Article XIII B to the California Constitution.

[165] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, page 6.

[166] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, pages 6-7.

[167] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, pages 8-9.

[168] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, pages 8-9.

Proposition 4, the voters did not intend to make state mandate reimbursement narrower than what already existed under the then-existing Revenue and Taxation Code.[169] The county challenges the characterization of Proposition A and Proposition C as "non-local" sources of revenue.[170] The county reasons that the Proposition A and Proposition C local return revenues constitute "proceeds of taxes" within the meaning of article XIII B, section 8(c) because that section defines "proceeds of taxes" to include "all tax revenues" and does not require the taxes to be "levied by or for that entity," a requirement that exists separately within the definition of "appropriations subject to limitation" in section 8(b).[171]

According to the county, "'non-local' means non-local…" not "…local, with a caveat attached to it."[172] The claimant argues that during the administrative process to develop the Parameters and Guidelines, the claimants were not informed that a revenue source such as local return funds from a local county tax would be considered a "non-local" source if not included in a claimant's appropriations limit.[173] The term "non-local source" is not defined in the Parameters and Guidelines, nor was it defined during the drafting phase.[174] Furthermore, there was no discussion in the Decision on the Parameters and Guidelines of offsetting non-fee revenues from any source.[175] Therefore, the claimants had no notice and opportunity to address the determination that a local sales tax assessed by another local entity and made available for use by the claimants would constitute funds from a "non-local source" under the Parameters and Guidelines.[176] To read the Parameters and Guidelines as requiring such "eighteen years after the first expenditure of Proposition A funds and eight years after the expenditure of such funds ceased" is an unlawful retroactive application of the Parameters and Guidelines.[177]

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[169] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, pages 9-10.

[170] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, pages 10-11.

[171] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, page 11.

[172] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, page 12.

[173] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, page 12.

[174] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, pages 11-12.

[175] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, page 12.

[176] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, pages 11-12.

[177] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, pages 12-13.

B. State Controller's Office

The Controller agrees with the Commission's conclusion that Proposition A and Proposition C local return funds are offsetting revenues that should have been identified and deducted from the claimed costs and that costs for the applicable time period were correctly reduced as a result.[178]

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit.[179] The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[180] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[181]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[182] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may

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[178] Exhibit J, Controller's Comments on the Draft Proposed Decision, filed April 8, 2021, page 1.

[179] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64, 71, fn. 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

[180] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[181] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[182] *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

> not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" … "In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support…." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[183]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[184] In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[185]

Claims challenging reductions made by the Controller for the same mandate may be consolidated, provided certain requirements are met. Under Government Code section 17558.7(b) and section 1185.3 of the Commission's regulations, an individual claimant may seek to consolidate incorrect reduction claims on behalf of a class of claimants if all of the following apply:

> (1) The method, act, or practice that the claimant alleges led to the reduction has led to similar reductions of other parties' claims, and all of the claims involve common questions of law or fact.
>
> (2) The common questions of law or fact among the claims predominate over any matter affecting only an individual claim.
>
> (3) The consolidation of similar claims by individual claimants would result in consistent decision making by the Commission.
>
> (4) The claimant filing the consolidated claim would fairly and adequately protect the interests of the other claimants.[186]

The Commission may also consolidate incorrect reduction claims, in part or in whole, as necessary to ensure the complete, fair, or timely consideration of any such claims.[187]

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[183] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[184] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[185] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

[186] Government Code section 17558.7(b); California Code of Regulations, title 2, section 1185.3.

[187] California Code of Regulations, title 2, section 1185.6.

A claimant seeking to file a consolidated incorrect reduction claim must notify the Commission of its intent to do so at the time of filing.[188] Under Government Code section 17558.7(b) and section 1185.3 of the Commission's regulations, the Commission shall request that the Controller provide, within 30 days, the Commission and the claimant with a list of claimants for whom the Controller has reduced similar claims under the same mandate, and the date each claimant was notified of the adjustment. Upon receipt of this list from the Controller, the claimant may notify, and the Commission shall notify, the claimants on the list and other interested parties of the claimant's intent to file a consolidated incorrect reduction claim.[189] Within 30 days of receiving the Commission's notice, any other eligible claimant shall file a notice of intent to join the consolidated incorrect reduction claim.[190]

Any claimant that joins a consolidated incorrect reduction claim may opt out and not be bound by any determination made on the consolidated claim within 15-days of service of the Controller's comments.[191] A claimant that opts out of a consolidated claim shall file an individual IRC no later than one year after opting out or within the three-year period of limitation under section 1185.1(c) of the Commission's regulations.[192] If a claimant opts out and an individual IRC for the claimant is already on file with the Commission, the individual filing is automatically reinstated.[193]

A. The Claimants Timely Filed the IRCs and Notices of Intent to Join the Consolidated IRC.

At the time the final audit reports were issued, section 1185.1(c) of the Commission's regulations required an incorrect reduction claim to be filed with the Commission no later than three years after the date the claimant first receives from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c). Under Government Code section 17558.5(c), the Controller is required to notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notice must specify which claim components were adjusted and in what amount, as well as interest charges on claims adjusted, and the reason for the adjustment.[194] A notice of intent to join a consolidated

[188] California Code of Regulations, title 2, section 1185.3(b).

[189] Government Code section 17558.7(d); California Code of Regulations, title 2, section 1185.3(f).

[190] Government Code section 17558.7(e); California Code of Regulations, title 2, section 1185.4(a).

[191] Government Code section 17558.7(f); California Code of Regulations, title 2, section 1185.5.

[192] Government Code section 17558.7(f); California Code of Regulations, title 2, section 1185.5(b).

[193] California Code of Regulations, title 2, section 1185.5(c).

[194] Government Code section 17558.5(c).

incorrect reduction claim is subject to the three-year statute of limitations specified in section 1185.1(c).[195]

This means that, to join the consolidated claim, the claimant must either already have a timely filed IRC pending or else file the Notice of Intent within three years from the first notice of reduction. Additionally, all Notices of Intent must be filed within 30 days of the Notice of the Opportunity to Join a Consolidated IRC.[196]

City of Claremont: The Controller issued its final audit report to the City of Claremont on October 20, 2017, which complied with section 17558.5(c).[197] The claimant filed the IRC *Municipal Stormwater and Urban Runoff Discharges*, 20-0304-I-06 on October 16, 2020, within three years of the date of the final audit report. The Commission finds that the IRC was timely filed. On January 13, 2021, Commission staff issued the Notice of Claimant's Intent to Consolidate and Opportunity for Eligible Claimants to Join the Consolidated Claim. The City of Claremont filed its Notice of Intent to Join on February 10, 2021, within 30 days of the Notice of Opportunity for Eligible Claimant's to Join the Consolidated Claim. The Commission finds that the Notice of Intent was timely filed.

City of Downey: The Controller issued its final audit report to the City of Downey on June 30, 2017, which complied with section 17558.5(c).[198] The claimant filed the IRC *Municipal Stormwater and Urban Runoff Discharges*, 19-0304-I-04 on June 30, 2017, three years from the date of the final audit report. The Commission finds that the IRC was timely filed. On January 13, 2021, Commission staff issued the Notice of Claimant's Intent to Consolidate and Opportunity for Eligible Claimants to Join the Consolidated Claim. The City of Downey filed its Notice of Intent to Join on February 4, 2021, within 30 days of the Notice of Opportunity for Eligible Claimant's to Join the Consolidated Claim. The Commission finds that the Notice of Intent was timely filed.

City of Glendora: The Controller issued its final audit report to the City of Glendora on August 9, 2018, which complied with section 17558.5(c).[199] On January 13, 2021, Commission staff issued the Notice of Claimant's Intent to Consolidate and Opportunity for Eligible Claimants to Join the Consolidated Claim. The claimant filed the Notice of Intent to Join *Municipal Stormwater and Urban Runoff Discharges*, 20-0304-I-09 (20-0304-I-08) on January 28, 2021, within three years of the date of the final audit report and within 30 days of the Notice of Opportunity for Eligible Claimant's to Join the Consolidated Claim .[200] The Commission finds that the Notice of Intent was timely filed.

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[195] California Code of Regulations, title 2, section 1185.4(d).

[196] Government Code section 17558.7(d), California Code of Regulations, title 2, section 1185.3(f).

[197] Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, page 3.

[198] Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, page 4.

[199] Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, page 3.

[200] Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, page 1.

City of Pomona: The Controller issued its final audit report to the City of Pomona on May 21, 2018, which complied with section 17558.5(c).[201] On January 13, 2021, Commission staff issued the Notice of Claimant's Intent to Consolidate and Opportunity for Eligible Claimants to Join the Consolidated Claim. The claimant filed the Notice of Intent to Join *Municipal Stormwater and Urban Runoff Discharges*, 20-0304-I-09 (20-0304-I-08) on February 10, 2021, within three years of the date of the final audit report and within 30 days of the Notice of Opportunity for Eligible Claimant's to Join the Consolidated Claim .[202] The Commission finds that the Notice of Intent was timely filed.

City of Santa Clarita: The Controller issued its final audit report to the City of Santa Clarita on August 28, 2018, which complied with section 17558.5(c).[203] On January 13, 2021, Commission staff issued the Notice of Claimant's Intent to Consolidate and Opportunity for Eligible Claimants to Join the Consolidated Claim. The claimant filed the Notice of Intent to Join *Municipal Stormwater and Urban Runoff Discharges*, 20-0304-I-11 (20-0304-I-08) on February 9, 2021, within three years of the date of the final audit report and within 30 days of the Notice of Opportunity for Eligible claimant's to Join the Consolidated Claim.[204] The Commission finds that the Notice of Intent was timely filed.

City of Signal Hill: The Controller issued its final audit report to the City of Signal Hill on June 25, 2018, which complied with section 17558.5(c).[205] On January 13, 2021, Commission staff issued the Notice of Claimant's Intent to Consolidate and Opportunity for Eligible Claimants to Join the Consolidated Claim. The claimant filed the Notice of Intent to Join *Municipal Stormwater and Urban Runoff Discharges*, 20-0304-I-10 (20-0304-I-08) on February 9, 2021, within three years of the date of the final audit report and within 30 days of the Notice of Opportunity for Eligible claimant's to Join the Consolidated Claim.[206] The Commission finds that the Notice of Intent was timely filed.

County of Los Angeles: The Controller issued its final audit report to the County of Los Angeles on November 6, 2017, which complied with section 17558.5(c).[207] The claimant filed the IRC with intent to consolidate *Municipal Stormwater and Urban Runoff Discharges*, 20-0304-I-08 on November 5, 2020, within three years of the date of the final audit report.[208] The Commission finds that the IRC was timely filed.

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[201] Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, page 2.

[202] Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, page 1.

[203] Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, page 33.

[204] Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, page 1.

[205] Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, page 5.

[206] Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, page 1.

[207] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 148.

[208] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 1.

Based on the above, the Commission finds that the IRCs and Notices of Intent to Join were timely filed by the cities of Claremont, Downey, Glendora, Pomona, Santa Clarita, and Signal Hill, and the County of Los Angeles.

B. The Controller's Reduction of Costs, Based on the Determination That Proposition A and Proposition C Local Return Funds Are Offsetting Revenues That Should Have Been Identified and Deducted from the Reimbursement Claims, Is Correct as a Matter of Law.

The Controller found that the claimants failed to report offsetting revenues for the audit period in the following amounts:

City of Claremont:	$166,345[209]
City of Downey:	$186,921[210]
City of Glendora:	$79,856[211]
City of Pomona:	$264,515[212]
City of Santa Clarita:	$177,692[213]
City of Signal Hill:	$101,656[214]
County of Los Angeles:	$6,129,851[215]

The Controller determined that the claimants received tax revenues from the Los Angeles County Metropolitan Transportation Authority's Proposition A and Proposition C local return programs and used those funds to perform the mandated activities of installing and maintaining transit-stop trash receptacles.[216] The Controller reasoned that under section VIII of the Parameters and Guidelines, Proposition A and Proposition C local return funds are non-local

[209] Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, page 3.

[210] Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, page 17.

[211] Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, page 3.

[212] Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, page 8.

[213] Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, page 44.

[214] Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, page 19.

[215] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 148.

[216] Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, pages 8-9; Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, pages 18-19; Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, pages 12-13; Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, pages 8-9; Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, pages 44-46; Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, pages 19-20; Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 153-154.

source funds and therefore constitute offsetting revenues or reimbursements that should have been deducted from the reimbursement claims and reduced the claims accordingly.[217]

The claimants do not contest receiving and using Proposition A and Proposition C local return funds in the manner alleged by the Controller. Rather, the claimants argue that the Controller's determination that the Proposition A and Proposition C funds are unreported offsets that must be deducted from the reimbursement claims violates article XIII B, section 6 of the California Constitution, is inconsistent with the Parameters and Guidelines, and constitutes an unlawful retroactive application of the Parameters and Guidelines.[218]

1. Proposition A and Proposition C local return funds constitute reimbursement from a non-local source within the meaning of the Parameters and Guidelines.

Section VIII of the Parameters and Guidelines addresses offsetting revenues as follows:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.[219]

The claimants assert that Proposition A and Proposition C local return funds do not fall within section VIII because Proposition A and Proposition C are local taxes and therefore not a "federal, state, or non-local source."[220] According to the claimants, the Controller does not dispute that "Proposition A is a local sales tax imposed on local citizens," citing to the fact that the Controller did not comment on, or seek modification of, the Parameters and Guidelines before they were adopted.[221] In comments filed on the Draft Proposed Decision, the claimants argue that because "non-local source" is not defined in the Parameters and Guidelines and was not discussed during the drafting phase, the claimants lacked notice and an opportunity to challenge the determination

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[217] Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, pages 8-9; Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, pages 18-19; Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, pages 12-13; Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, pages 8-9; Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, pages 44-46; Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, pages 19-20; Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 153-154.

[218] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 10.

[219] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 138 (Parameters and Guidelines).

[220] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 16.

[221] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 16-17.

that "non-local source" includes a local sales tax assessed by another local agency and made available for use by the claimants.[222]

The Commission disagrees. While the Parameters and Guidelines do not expressly require that funds from Proposition A or Proposition C be identified as offsetting revenue, they do state that "reimbursement for this mandate received from any federal, state or *non-local source* shall be identified and deducted from this claim."[223]

The Parameters and Guidelines do not stand alone; they must be interpreted in a manner that is consistent with the California Constitution[224] and principles of mandates law.[225] As explained below, to qualify as reimbursable "proceeds of taxes" under mandates law, a "local tax" cannot be levied "by or for" an entity other than the local agency claiming reimbursement, nor can it be subject to another entity's appropriations limit, even if that entity is another local agency.[226] To find otherwise would disturb the balance of local government financing upon which the tax and spend limitations of articles XIII A and XIII B are built.[227]

Neither Proposition A nor Proposition C are the claimants' local "proceeds of taxes" because they are neither levied by nor for the claimants, nor subject to the claimants' respective appropriations limits. Any costs incurred by the claimants in performing the mandated activities that are funded by Proposition A or Proposition C, non-local taxes, are excluded from mandate reimbursement under article XIII B, section 6 of the California Constitution.

2. Proposition A and Proposition C local return tax revenues are not the claimants' "proceeds of taxes" within the meaning of article XIII B of the California Constitution because the taxes are not levied by the claimants nor subject to the claimants' appropriations limit.

The claimants' reliance on the former provisions of the Revenue and Taxation Code in this case is misplaced. The California Supreme Court has made it clear that when "construing the meaning of the constitutional provision, our inquiry is not focused on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979."[228]

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[222] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, pages 11-12.

[223] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 138 (Parameters and Guidelines), emphasis added.

[224] See *State Board of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813, 823, holding that a Board tax rule was null and void, as applied, because it violated the Constitution.

[225] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 811-812.

[226] See *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

[227] See *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 492 (Arabian, J., concurring).

[228] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

Interpreting the reimbursement requirement in article XIII B, section 6 of the California Constitution requires an understanding of articles XIII A and XIII B, which "work in tandem, together restricting California governments' power both to levy and to spend taxes for public purposes."[229]

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A drastically reduced property tax revenue previously enjoyed by local governments by providing that "the maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value" and that the one percent (1%) tax was to be collected by counties and "apportioned according to law to the districts within the counties…"[230] In addition to limiting property tax revenue, section 4 also restricts a local government's ability to impose special taxes by requiring a two-thirds approval by voters.[231]

Article XIII B was adopted by the voters less than 18 months after the addition of article XIII A, and was billed as "the next logical step to Proposition 13."[232] While article XIII A is aimed at controlling ad valorem property taxes and the imposition of new special taxes, "the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, Article XIII B places limits on the authorization to expend the 'proceeds of taxes.'"[233]

Article XIII B established "an appropriations limit," or spending limit for each "local government" beginning in fiscal year 1980-1981.[234] Section 1 of article XIII B defines the appropriations limit as follows:

> The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided by this article.[235]

No "appropriations subject to limitation" may be made in excess of the appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.[236]

Article XIII B does not limit the ability to expend government funds collected from all sources; the appropriations limit is based on "appropriations subject to limitation," meaning "any

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[229] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486.

[230] California Constitution, article XIII A, section 1.

[231] California Constitution, article XIII A, section 1.

[232] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

[233] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

[234] California Constitution, article XIII B, section 8(h).

[235] California Constitution, article XIII B, section 1.

[236] California Constitution, article XIII B, section 2.

authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity*."[237] For local agencies, "proceeds of taxes" subject to the appropriations limit include all tax revenues; proceeds from regulatory charges and fees to the extent such proceeds exceed the costs reasonably borne by government in providing the product or service; the investment of tax revenue; and subventions received from the state (other than pursuant to section 6).[238]

No limitation is placed on the expenditure of those revenues that do not constitute "proceeds of taxes."[239] For example, appropriations subject to limitation do not include "local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the state, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities."[240]

Article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of tax revenues which are subject to limitation. Thus, contrary to the claimants' assertions, the courts have consistently found that the purpose of section 6 is to preclude "the state from shifting financial responsibility for carrying out governmental functions to local governmental entities, which are 'ill equipped' to assume increased financial responsibilities *because of the taxing and spending limitations that articles XIII A and XIII B impose.*"[241] The California Supreme Court, in *County of Fresno v. State of California*,[242] explained:

> Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.; see Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and

[237] California Constitution, article XIII B, section 8(b), emphasis added.

[238] California Constitution, article XIII B, section 8(c); *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 448.

[239] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

[240] California Constitution, article XIII B, section 8(i).

[241] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81), emphasis added.

[242] *County of Fresno v. State of California* (1991) 53 Cal.3d 482.

> historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.[243]

Article XIII B, section 6 must therefore be read in light of the fact that "articles XIII A and XIII B severely restrict the taxing and spending powers of local governments"; it requires the state to provide reimbursement only when a local government is mandated to expend its own proceeds of taxes subject to the appropriations limit of article XIII B.[244]

a. The Proposition A and Proposition C sales taxes are not proceeds of taxes levied by or for the claimants.

The crux of the claimants' position is that Proposition A and Proposition C are "local taxes" because they are imposed on "local citizens" and therefore do not fall into any of the offsetting revenue categories enumerated in section VIII the Parameters and Guidelines, which include "federal, state, or non-local source" revenue.[245] The claimants disagree with the Controller's characterization of Proposition A as a supplementary, restricted use tax, as opposed to a general tax, which the claimants assert is a distinction that exists in neither article XIII B, section 6 nor the case law interpreting it.[246]

> There is no difference between a municipality using local sales tax monies to install trash receptacles, receiving a subvention of funds, and then using those funds for other general purposes, and a municipality using Proposition A local sales tax revenues to install trash receptacles, receiving a subvention of funds, and then using those funds for other public transit purposes. In both cases, the State has mandated the expenditure of funds for a program the State believes should be implemented in lieu of other programs the municipality believes should have priority, requiring the municipality to expend funds not on the municipality's priorities, but on the programs mandated by the State.[247]

In comments on the Draft Proposed Decision, the claimants argue that it is an error to limit mandate reimbursement to taxes levied "by or for" the claimants and subject to the claimants' respective appropriations limits.[248] The claimants assert that the California Constitution does not condition a local agency's right to reimbursement under article XIII B, section 6 on the agency using its own "proceeds of taxes," subject to the agency's appropriations limit, and that the claimants should be entitled to reimbursement because the Proposition A and Proposition C taxes

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[243] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, emphasis in original.

[244] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486–487.

[245] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 16-17.

[246] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 14-15.

[247] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 15.

[248] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, page 2.

are "local taxes" that, while not levied by or for the claimants, were designated for the claimants' use.[249]

The Commission disagrees. It has been the long-held position, supported by case law, that only state mandates that require the expenditure of a claimant's "proceeds of taxes" limited by the tax and spend provisions in articles XIII A and XIII B are reimbursable, and that local governments authorized to recoup costs through non-tax sources are not eligible for reimbursement under article XIII B, section 6.[250] While the claimants seek to characterize Proposition A and Proposition C as "local taxes," for purposes of mandates reimbursement, they are not the claimants' proceeds of taxes.

The power of a local government to tax is derived from the Constitution, upon the Legislature's authorization.[251] "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."[252] In other words, a local government's taxing authority is derived from statute.

Metro, as the successor to the Los Angeles County Transportation Commission, is authorized by statute to levy the Proposition A and Proposition C transactions and use taxes throughout Los Angeles County.[253] Public Utilities Code section 130350, as originally enacted, states as follows:

> A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the County of Los Angeles may be adopted by the Los Angeles County Transportation Commission in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, provided that a majority of the electors voting on the measure vote to authorize its enactment at a special election called for that purpose by the commission.[254]

Under the Proposition A and Proposition C ordinances, twenty-five percent of Proposition A taxes and twenty percent of Proposition C taxes, respectively, are allocated to the local return

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[249] Exhibit K, County of Los Angeles' Comments on the Draft Proposed Decision, filed April 9, 2021, pages 2-3.

[250] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 (Article XIII B "was not intended to reach beyond taxation").

[251] California Constitution, article XIII, section 24(a).

[252] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450 ("Taxes are levied by the Legislature, or by counties and municipalities under their delegated power, for the support of the state, county, or municipal government").

[253] Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

[254] Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

program funds for cities and the county to use for public transit purposes.[255] As discussed above, local jurisdictions are then permitted to use those funds on public transit projects as prescribed by the Local Return Guidelines.[256] Permissible uses include bus stop improvements and maintenance projects, which include the installation, replacement and maintenance of trash receptacles.[257]

The claimants do not dispute receiving Proposition A and Proposition C revenues through the local return program during the audit period, at least a portion of which was used for the eligible purposes of installing and maintaining trash receptacles at transit stops. Nonetheless, the claimants misunderstand what constitutes a local agency's "local sales tax revenues" for purposes of determining eligibility for reimbursement under article XIII B, section 6. Contrary to the claimants' assertions, the Proposition A and Proposition C transactions and use taxes are *not* the claimants' local "proceeds of taxes" because they are neither levied by nor for the claimants.

> The phrase "to levy taxes by or for an entity" has a special meaning of long-standing. The concept of one entity levying taxes for another dates back to at least 1895 (stats. 1895, p. 219) and the adoption of an act providing for the levy of taxes "by or for" municipal corporations. This act allowed general law and charter cities to continue to exercise their taxing power directly or, if they so desired, to have the county levy and collect their taxes for them. (*Griggs v. Hartzoke* (1910) 13 Cal.App. 429, 430–432, 109 P. 1104; *County of Los Angeles v. Superior Court* (1941) 17 Cal.2d 707, 710–711, 112 P.2d 10.) The legal effect of this arrangement, as explained by case law, was that the taxing power exercised was that of the city, and it remained in the city. The county officers in levying taxes for the city became ex-officio officers of the city and exercised the city's taxing power. (*Madary v. City of Fresno* (1912) 20 Cal.App. 91, 93–94, 128 P. 340.) In levying taxes for the city the county was levying "municipal taxes" through the ordinary county machinery. (*Griggs*, *supra*, 13 Cal.App. at p. 432, 109 P. 1104.)
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> Thus, the salient characteristics of one entity levying taxes "for" another entity are: (1) the entity for whom the taxes are levied has the taxing power; (2) the levying officers of the county exercise the taxing power of the entity for whom they are levying; (3) they exercise such power as ex-officio officers of that entity, and (4) the taxes collected are those of the "levied for" entity.[258]

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[255] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

[256] See Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 41-111 (Local Return Guidelines).

[257] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 53 (Local Return Guidelines).

[258] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32.

Similar to the redevelopment agency in *Bell Community Redevelopment Agency v. Woosley*, the claimants here do not have the power to levy the Proposition A and Proposition C taxes.[259] Public Utilities Code section 130350 authorizes the Los Angeles Transportation Commission (through its successor, Metro) to levy the Proposition A and Proposition C retail transactions and use taxes. The Proposition A and Proposition C ordinances authorize Metro to allocate a portion of those tax proceeds to local jurisdictions within Los Angeles County for use on specified local transit programs.[260] Therefore, Metro is not levying the Proposition A and Proposition C taxes "for" the claimants. The claimants' receipt and use of Proposition A and Proposition C tax revenues through the local return programs does not render those funds the claimants' "proceeds of taxes."

b. The Proposition A and Proposition C local return funds allocated to the claimants are not subject to the claimants' appropriations limits.

Contrary to the claimants' assertions, article XIII B, section 6 does not operate independent of the appropriations limit as set forth in article XIII B. The reimbursement requirement in article XIII B, section 6 "was included in recognition of the fact 'that articles XIII A and XIII B severely restrict the taxing and spending powers of local government.'"[261] In other words, it was "designed to protect the tax revenues of local governments from state mandates that would require the expenditure of such revenues."[262] Article XIII B does not limit a local government's ability to expend tax revenues that are not its "proceeds of taxes."[263] Therefore, where a tax is neither levied by nor for the local government claiming reimbursement, the resulting revenue is not the local government's "proceeds of taxes" and is therefore not the local government's "appropriations subject to limitation."[264]

Reimbursement under article XIII B, section 6 is only required to the extent that a local government must incur "increased actual expenditures of limited tax proceeds that are counted

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[259] See *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 27 [Because redevelopment agency did not have the authority to levy a tax to fund its efforts, allocation and payment of tax increment funds to redevelopment agency by county, a government taxing agency, were not "proceeds of taxes levied by or for" the redevelopment agency and therefore were not subject to the appropriations limit of Article XIII B].

[260] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 34 (Proposition A Ordinance); Exhibit L, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), pages 3-4.

[261] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

[262] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

[263] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

[264] California Constitution, article XIII B, section 8.

against the local government's spending limit."[265] Where a local agency expends tax revenues other than its own proceeds of taxes, the need under article XIII B, section 6 to protect the local agency's own tax revenues is not present; the agency is not called upon to expend its limited tax proceeds, nor does it bear the burden of increased financial responsibility for carrying out state governmental functions.[266] Because the Proposition A and Proposition C local return funds are not the claimants' "proceeds of taxes levied by or for that entity," they are not the claimants' "appropriations subject to limitation."[267]

i. The Proposition A tax is not subject to an appropriations limit.

Los Angeles County has passed four separate half-cent transportation sales taxes over the past 40 years: Proposition A (1980), Proposition C (1990), Measure R (2008) and Measure M (2016).[268] With the exception of Proposition A, the remaining three tax ordinances, all adopted since 1990, expressly state that their respective transportation sales tax revenues are subject to either the Los Angeles County Transportation Commission's (as predecessor to Metro) or Metro's appropriations limit.

The Proposition A tax is not subject to an appropriations limit. Under *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197, the Transportation Commission is not a "special district" subject to the taxation limitations of article XIII A and could therefore impose the Proposition A tax without the two-thirds voter approval required by article XIII A, section 4. Therefore, consistent with Public Utilities Code section 99550, any tax imposed by the Transportation Commission that was approved prior to December 19, 1991 is exempt from the taxing limitations of article XIII A.

While article XIII A "imposes a direct constitutional limit on state and local power to adopt and levy taxes,"[269] the purpose of article XIII B is to provide discipline in government spending "by creating appropriations limits to restrict the amount of such expenditures."[270] As discussed above, articles XIII A and XIII B work together to impose restrictions on local governments' ability to both levy and spend taxes.[271] Because the Transportation Commission's power to adopt and levy taxes is not limited by article XIII A, it is not surprising that an appropriations limit was not established for the Proposition A revenues under article XIII B.

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[265] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

[266] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 492-493 (Arabian, J., concurring).

[267] California Constitution, article XIII B, section 8.

[268] Exhibit L, Metro, Local Return Program, https://www.metro.net/projects/local_return_pgm/ (accessed on February 25, 2021), page 1.

[269] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, footnote 1.

[270] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 491 (Arabian, J., concurring).

[271] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486.

Furthermore, if the Transportation Commission were considered a "special district," Article XIII B, section 9 states that "Appropriations subject to limitation" for each entity of government do *not* include

> (c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per $100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.[272]

The Transportation Commission was created prior to January 1, 1978 and did not levy real property taxes. Therefore, whether or not the Transportation Commission is considered to be a special district, Proposition A funds are not subject to an appropriations limit.

ii. The Proposition C tax is subject to the Transportation Commission's appropriations limit.

Los Angeles County voters, when approving Proposition C, established a Transportation Commission appropriations limit for Proposition C revenues as follows:

> 3-10-080 Appropriations Limit. A [Los Angeles County Transportation] Commission appropriations limit is hereby established equal to the revenues collected and allocated during the 1990/91 fiscal year plus an amount equal to one and a half times the taxes that would be levied or allocated on a one-half of one percent transaction and use tax in the first full fiscal year following enactment and implementation of this Ordinance.[273]

Under Government Code section 7904, "[i]n no event shall the appropriation of the same proceeds of taxes be subject to the appropriations limit of more than one local jurisdiction or the state."[274] Because the Proposition C taxes are levied "by and for" Metro, Proposition C tax revenues are subject *only* to Metro's appropriations limit; they cannot be subject to both Metro and the claimants' appropriations limits.

iii. Neither Proposition A nor Proposition C revenues are subject to the claimants' appropriations limits.

Despite the fact that the claimants do not have statutory authority to levy the Proposition A or Proposition C taxes, the City of Claremont has provided documentation purporting to show that during the audit period, the City's appropriation limit included Proposition A and Proposition C

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[272] California Constitution, article XIII B, section 9(c).

[273] Exhibit L, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), page 6.

[274] Government Code section 7904.

local return funds.[275] As explained above, Proposition A revenues are not the claimants' proceeds of taxes and are not subject to an appropriations limit because the taxing and spending limitations of articles XIII A and XII B did not apply to the Transportation Commission at the time Los Angeles County voters approved Proposition A.[276] Any decision by a local jurisdiction receiving Proposition A local return revenues to characterize them as subject to the local jurisdiction's appropriations limit is in error and does not change their exemption from the appropriations limit.

Nor can the Proposition C revenues be subject to the claimants' appropriations limits. The Proposition C Ordinance establishes that Proposition C revenues are subject to the Transportation Commission's appropriations limit. In light of the prohibition against proceeds of taxes being subject to more than one government entity's appropriations limit,[277] any decision by a local jurisdiction receiving Proposition C local return revenues to characterize them as subject to the local jurisdiction's appropriations limit is in error and does not change their nature as "proceeds of taxes" belonging to the Transportation Commission (through its successor, Metro).

The claimants are incorrect in asserting that the Controller's finding functionally reduces the claimants' transportation funding as though the state were to refuse to reimburse the claimants as if they had relied upon general funds for the same purpose.[278] While Proposition A and Proposition C are imposed on the "local citizens" of the claimants' jurisdictions, the taxes are levied throughout Los Angeles County by and for Metro, who then distributes a portion of the revenues to cities and the county.

Because the Proposition A and Proposition C taxes are neither levied by nor for the claimants, nor subject to the claimants' appropriations limits, the Proposition A and Proposition C local return revenues do not constitute the claimants' "local proceeds of taxes" for which claimants are entitled to reimbursement under article XIII B, section 6. Local government cannot accept the benefits of non-local tax revenue that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.[279] To the extent that the claimants funded the mandated activities using Proposition A or Proposition C revenues, reimbursement is not required under article XIII B, section 6 of the California Constitution.

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[275] Exhibit I, City of Claremont's Comments on the Draft Proposed Decision, filed April 8, 2021, pages 2-71.

[276] Section 130350, which gives the Transportation Commission the authority to levy a transactions and use tax, was amended in 2007 to reflect the two-thirds vote requirement for special taxes under article XIII A, section 4.

[277] Government Code section 7904.

[278] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 18.

[279] See *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

3. The advancement of Proposition A or Proposition C funds to pay for the installation and maintenance of the trash receptacles does not alter the nature of those funds as offsetting revenues, nor does the deduction of those funds from the costs claimed constitute a retroactive application of the law.

The claimants argue that because the Local Return Guidelines permit the claimants to use Proposition A and Proposition C funds on mandated activities and then, upon reimbursement from the state, apply those funds to other transit projects, the claimants cannot now be penalized for doing so through retroactive application of the Parameters and Guidelines.[280] The claimants allege that the Controller's application of the Parameters and Guidelines is both incorrect as a matter of law and arbitrary and capricious.[281] Whether the Controller correctly interpreted the Parameters and Guidelines in finding that Proposition A and Proposition C are non-local sources of funds that must be deducted from the reimbursement claims is purely a question of law subject to the de novo standard of review and to which the arbitrary and capricious standard does not apply.[282]

Because the claimants used "non-local source" funds to install and maintain trash receptacles, they were required to identify and deduct those funds from their claims for reimbursement. As discussed above, the Proposition A and Proposition C funds received by the claimants are not the claimants' "proceeds of taxes" within the meaning of article XIII B, section 8. The requirement in section VIII of the Parameters and Guidelines that reimbursement received from any "non-local source" must be identified and deducted from the claim simply restates the requirement under article XIII B, section 6 that mandate reimbursement is only required to the extent that the local government expends its own proceeds of taxes.[283] A rule that merely restates or clarifies existing law "does not operate retrospectively even if applied to transactions predating its enactment because the true meaning of the [rule] remains the same."[284]

Where, as here, a local government funds mandated activities with *other than* its own proceeds of taxes (e.g., revenue from a tax levied by a separate local government entity), it is required to deduct those revenues from its reimbursement claim. The fact that the Commission did not adopt the Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program until well into the audit period[285] does not alter the analysis, nor does the

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[280] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 18-19.

[281] Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 18.

[282] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64, 71, fn. 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

[283] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486–487; see also Government Code section 17553(b)(1)(F)(iii) and California Code of Regulations, title 2, section 1183.7(g)(2).

[284] *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

[285] The Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program were adopted March 24, 2011. The reimbursement claims at issue range from fiscal years 2002-2003 through 2012-2013.

claimants' ability under the Local Return Guidelines to expend Proposition A or Proposition C funds on the installation and maintenance of transit stop trash receptacles prior to mandate reimbursement.

The Commission finds that the Controller's determination, that the Proposition A and Proposition C local return funds are offsetting revenue that should have been identified and deducted from the reimbursement claims, is correct as a matter of law.

V. Conclusion

Based on the forgoing analysis, the Commission finds that the IRCs and Notices of Intent to Join were timely filed and the Controller's determination, that Proposition A and Proposition C local return funds are offsetting revenues that should have been identified and deducted from the reimbursement claims, is correct as a matter of law. Accordingly, the Commission denies this Consolidated IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Los Angeles Regional Water Quality Control Board Order No. 01-182 Permit CAS004001 Part 4F53c Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2009-2010 Filed on August 17, 2018 City of Bellflower, Claimant	Case No.: 18-0304-I-01 *Municipal Storm Water and Urban Runoff Discharges* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted July 23, 2021)* (*Served July 23, 2021*)

INCORRECT REDUCTION CLAIM

The Commission on State Mandates adopted the attached Decision on July 23, 2021.

Heather Halsey, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Los Angeles Regional Quality Control Board Order No. 01-182 Permit CAS004001, Part 4F5c3 Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010 Filed on August 17, 2018 City of Bellflower, Claimant	Case No.: 18-0304-I-01 *Municipal Storm Water and Urban Runoff Discharges* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted July 23, 2021*) (*Served July 23, 2021*)

DECISION

The Commission in State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 23, 2021. Lisa Kurokawa appeared on behalf of the State Controller's Office (Controller). The claimant did not appear at the hearing.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to deny the IRC by a vote of 5-0, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Absent
Spencer Walker, Representative of the State Treasurer	Yes
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	Yes

Summary of the Findings

This IRC challenges the Controller's reduction to reimbursement claims filed by the City of Bellflower (claimant) for the *Municipal Storm Water and Urban Runoff Discharges* program for fiscal years 2002-2003 to 2009-2010 (the audit period).

The Controller found that the claimant failed to identify and deduct as offsetting revenues the Proposition C local return funds received from the Los Angeles County Metropolitan Transportation Authority (Metro) under the Proposition C local return program that the claimant

used to pay for the maintenance of trash receptacles at transit stops as required by the mandated program. During the audit period, the claimant filed reimbursement claims totaling $533,742 to perform the mandated activities of maintaining trash receptacles at each of its transit stops.[1] The claimant used $530,321 in Proposition C local return funds to pay for the ongoing mandated trash receptacle maintenance, so the Controller reduced the claims by $530,321.[2]

The Commission finds that the IRC was timely filed within three years of the date the Controller notified the claimant of the reduction.

The Commission also finds that Proposition C local return revenue used by the claimant is offsetting revenue that should have been identified and deducted from the reimbursement claims and thus, the Controller's reduction is correct as a matter of law. Section VIII of the Parameters and Guidelines requires that "reimbursement for this mandate received from any federal, state or *nonlocal source* shall be identified and deducted from this claim" as offsetting revenue.

To understand the meaning of *nonlocal* revenue, the Parameters and Guidelines must be read consistently with the constitutional legal principles underlying the reimbursement of state-mandated costs.[3] The purpose of article XIII B, section 6 is to preclude "the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities *because of the taxing and spending limitations that articles XIII A and XIII B impose*."[4] Thus, the courts have held that article XIII B, section 6 requires reimbursement only when the state-mandated program forces local governments to incur increased actual expenditures of their limited "proceeds of taxes," which are counted against the local governments' spending limit.[5] "Appropriations subject to limitation" for local government means "any authorization to expend during a fiscal year the 'proceeds of taxes levied by or for that entity'.. . . ."[6] Except for state subventions, the items that make up "proceeds of taxes" are charges levied to raise general revenues for the local entity.[7] The expenditure of funds that are not from the entity's proceeds of taxes are not subject to the

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[1] Exhibit A, IRC, filed August 17, 2018, pages 78-80 (Audit Report).

[2] Exhibit A, IRC, filed August 17, 2018, pages 81-82 (Audit Report).

[3] See *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 974, 811 and 812, where the court states that the parameters and guidelines must be read in context, and with the fundamental legal principles underlying state-mandated costs.

[4] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81. Emphasis added. See also, *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

[5] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185; *Redevelopment Agency of the City of San Marcos* v. *Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986-987.

[6] California Constitution, article XIII B, section 8(b) (emphasis added).

[7] Article XIII B, section 8(c), of the California Constitution; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451.

appropriation limit, nor are entities that spend nontax proceeds eligible for reimbursement under article XIII B, section 6.[8] The reference in the Parameters and Guidelines to "nonlocal" funds for a state-mandated program means that the funds used for the program are not the claimant's proceeds of taxes, nor are subject to the claimant's appropriations limit imposed by article XIII B, and entities that spend the nonlocal funds are not eligible for reimbursement under article XIII B, section 6. When used to pay for a state-mandated program, nonlocal funds are required to be identified and deducted from a reimbursement claim as offsetting revenue.

Proposition C is a transactions and use (or sales) tax levied by Metro and subject to Metro's spending limitation. These taxes are not levied by or for the claimant and are not subject to the claimant's appropriation limit.[9] Rather, a portion of Metro's Proposition C tax revenues are distributed to the claimant as "local return" funds for use on eligible transportation projects. The only entity with power and authority to levy the Proposition C sales tax is Metro.[10] In addition, Government Code section 7904 states: "In no event shall the appropriation of the same proceeds of taxes be subject to the appropriations limit of more than one local jurisdiction or the state." Because the Proposition C ordinance establishes an appropriations limit for Metro,[11] section 7904 prohibits the claimant from establishing an appropriations limit on the same Local Return funds. Accordingly, the claimant's local return revenues do not constitute the claimant's proceeds of taxes, nor are they subject to the claimant's appropriation limit, and are, therefore, "nonlocal" sources of revenue. Thus, expenditures from these "nonlocal" Proposition C local return funds should have been identified and deducted as offsetting revenues and the Controller's reduction is correct as a matter of law.

Accordingly, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

09/28/2011	The claimant signed its fiscal year 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010 reimbursement claims.[12]
09/21/2016	The Controller notified the claimant of the desk review.[13]

[8] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185; *Redevelopment Agency of the City of San Marcos* v. *Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986-987.

[9] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d. 24, 32-33.

[10] Public Utilities Code section 130231.

[11] Exhibit E, Los Angeles Metropolitan Transportation Authority, "An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes," November 1990, page 6.

[12] Exhibit A, IRC, filed August 17, 2018, pages 26-47 (Annual Reimbursement Claims).

[13] Exhibit A, IRC, filed August 17, 2018, page 76 (Audit Report cover letter).

10/25/2016	The Controller issued the desk review report.[14]
08/17/2018	The claimant filed the IRC.[15]
10/21/2019	The Controller filed late comments on the IRC.[16]
05/14/2021	Commission staff issued the Draft Proposed Decision.[17]
06/03/2021	The Controller filed comments on the Draft Proposed Decision.[18]

II. Background

A. The *Municipal Storm Water and Urban Runoff Discharges* Program

Under the *Municipal Storm Water and Urban Runoff Discharges* mandate, claimants (local agencies in Los Angeles County subject to Order No. 01-182, Permit CAS004001, that are not subject to a trash total maximum daily load (TMDL)) may be reimbursed for installing trash receptacles at transit stops and maintaining the receptacles and pads, including trash disposal no more than three times per week, beginning July 1, 2002. According to the Parameters and Guidelines:

> For each eligible local agency, the following activities are reimbursable:
>
> A. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):
>
> 1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
> 2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
> 3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.
> 4. Purchase or construct receptacles and pads and install receptacles and pads.
> 5. Move (including replacement if required) receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.
>
> B. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):
>
> 1. Collect and dispose of trash at a disposal/recycling facility. *This activity is limited to no more than three times per week.*

[14] Exhibit A, IRC, filed August 17, 2018, pages 76-82 (Audit Report cover letter and Report).

[15] Exhibit A, IRC, filed August 17, 2018, page 1.

[16] Exhibit B, Controller's Late Comments on the IRC, filed October 21, 2019, page 1.

[17] Exhibit C, Draft Proposed Decision, issued May 14, 2021.

[18] Exhibit D, Controller's Comments on the Draft Proposed Decision, filed June 3, 2021.

2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.

3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. *Graffiti removal is not reimbursable.*

4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.[19]

The Parameters and Guidelines for this program also require offsetting revenues to be identified and deducted from reimbursement claims:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or nonlocal source shall be identified and deducted from this claim.[20]

The Test Claim permit expired on December 27, 2012 with the adoption of a new storm water permit.[21]

B. Proposition C Local Return Funds

In 1977, the Legislature created the Los Angeles County Transportation Commission (Transportation Commission) as a countywide transportation improvement agency[22] and authorized the Transportation Commission to levy a transactions and use (or sales) tax throughout Los Angeles County.[23] One such tax levied by the Transportation Commission is the Proposition C sales tax, the purpose of which is to "improve transit service and operations, reduce traffic congestion, improve air quality, efficiently operate and improve the condition of

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[19] Exhibit A, IRC, filed August 17, 2018, page 91 (Parameters and Guidelines). Emphasis in original. The reasonable reimbursement methodology (RRM) reimburses a unit cost of $6.74, during the period of July 1, 2002 to June 30, 2009, for each trash collection or "pickup," multiplied by the annual number of trash collections, subject to the limitation of no more than three pickups per week. Beginning in fiscal year 2009-2010, the RRM shall be adjusted annually by the implicit price deflator as forecast by the Department of Finance.

[20] Exhibit A, IRC, filed August 17, 2018, page 94 (Parameters and Guidelines).

[21] The new permit took effect December 28, 2012. See Exhibit E., Los Angeles Regional Water Quality Control Board, Transmittal of Final Order No. R4-2012-0175, December 5, 2012, https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/la_ms4/Dec5/Transmittal%20memo.pdf (accessed on August 26, 2019).

[22] Public Utilities Code section 130050.

[23] Public Utilities Code sections 130231(a), 130350.

the streets and freeways utilized by public transit, and reduce foreign fuel dependence."[24] The enumerated purposes of the tax include:

(1) Meeting operating expenses; purchasing or leasing supplies, equipment or materials; meeting financial reserve requirements; obtaining funds for capital projects necessary to maintain service within existing service areas;

(2) Increasing funds for existing public transit service programs;

(3) Instituting or increasing passenger or commuter services on rail or highway rights of way;

(4) Continued development of a regional transportation improvement program.[25]

Under the Proposition C Ordinance, tax revenues are allocated as follows:

(1) Forty percent to improve and expand rail and bus transit, including fare subsidies, graffiti prevention and removal, and increased energy-efficiency;

(2) Five percent to improve and expand rail and bus security;

(3) Ten percent to increase mobility and reduce congestion;

(4) Twenty percent to the Local Return Program; and

(5) Twenty-five percent to provide transit-related improvements to freeways and state highways.[26]

In 1993, the Transportation Commission merged with the Southern California Rapid Transit District to form Metro.[27] Since becoming the successor agency to the Transportation Commission, Metro has continued to levy the Transportation Commission taxes, including Proposition C taxes.[28]

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[24] Exhibit E, Los Angeles Metropolitan Transportation Authority, "An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes," November 1990, page 3.

[25] Exhibit E, Los Angeles Metropolitan Transportation Authority, "An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes," November 1990, page 3.

[26] Exhibit E, Los Angeles Metropolitan Transportation Authority, "An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes," November 1990, pages 3-4.

[27] Public Utilities Code sections 130050.2, 130051.13. Section 130050.2 states: "There is hereby created the Los Angeles County Metropolitan Transportation Authority. The authority shall be the single successor agency to the Southern California Rapid Transit District and the Los Angeles County Transportation Commission as provided by the act that enacted this section."

[28] Exhibit E, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 7.

Local jurisdictions receive transportation funding from Metro through the Proposition C local return program. Twenty percent of Proposition C funds are allocated to the local return program for cities and the County for use "in developing and/or improving public transit, paratransit, and the related transportation infrastructure."[29] Metro allocates and distributes local return funds to cities and the County of Los Angeles (for unincorporated areas) each month, on a "per capita" basis.[30]

The Proposition C Ordinance requires that Proposition C local return funds be used to benefit "public transit, paratransit, and related services including to improve and expand supplemental paratransit services to meet the requirements of the Federal Americans With Disabilities Act."[31] Eligible projects include "Congestion Management Programs, bikeways and bike lanes, street improvements supporting public transit service, and Pavement Management System projects."[32]

Amongst the eligible uses of Proposition C local return funds are bus stop improvements and maintenance projects.[33] The Local Return Guidelines provide as follows:

> Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:
>
> - Concrete landings – in street for buses and at sidewalk for passengers
> - Bus turn-outs
> - Benches
> - Shelters
> - *Trash receptacles*
> - Curb cut
> - Concrete or electrical work directly associated with the above items.[34]

Proposition C funds cannot be traded.[35] However, jurisdictions are permitted to use local return funds to advance eligible projects that will be reimbursed by "federal, state, or local grant

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[29] Exhibit E, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 7.

[30] Exhibit E, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 13.

[31] Exhibit E, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 4.

[32] Exhibit E, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 7.

[33] Exhibit E, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 13.

[34] Exhibit E, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 13. Emphasis added.

[35] Exhibit E, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 7.

funding, or private funds."[36] Subsequent reimbursement funds must then be returned to the Proposition C local return fund.[37]

C. The Controller's Audit and Summary of the Issues

The Controller audited reimbursement claims filed by the claimant for fiscal years 2002-2003 through 2009-2010 and found that of the total of $533,742 claimed, $530,321 was unallowable because the claimant used $530,321 of Proposition C revenues, which should have been identified and deducted as offsetting revenues, to pay for the ongoing trash receptacle maintenance.[38]

The Controller's audit in this case was limited to verifying the funding sources used to pay for the mandated activities.[39] The Controller found that the claimant "should have offset $530,321 in Proposition C funding used to pay for the ongoing maintenance of transit stop trash receptacles during the review period."[40] The Controller noted that under Proposition C's Local Return Guidelines, bus stop improvements and maintenance are authorized expenditures, and concluded:

> We confirmed that there were no general fund transfers into the Proposition C Fund during the review period. Therefore, as the city used Proposition C funds authorized to be used on the mandated activities, it did not have to rely on the use of discretionary general funds to pay for the mandated activities.[41]

III. Positions of the Parties

A. City of Bellflower

The claimant admits that it used Proposition C funds to pay for the costs to comply with the mandate, which is permissible under the Proposition C Local Return guidelines.[42] But the claimant alleges that the Controller improperly classified the Proposition C funds as offsetting revenue because Proposition C tax revenue does not conform to the description of offsetting revenue in the Parameters and Guidelines, which state "offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed."[43] In asserting that the

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[36] Exhibit E, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 36.

[37] Exhibit E, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 36.

[38] Exhibit A, IRC, filed August 17, 2018, pages 78-82 (Audit Report).

[39] Exhibit A, IRC, filed August 17, 2018, page 76 (Audit Report cover letter).

[40] Exhibit A, IRC, filed August 17, 2018, page 81 (Audit Report).

[41] Exhibit A, IRC, filed August 17, 2018, page 82 (Audit Report).

[42] Exhibit A, IRC, filed August 17, 2018, pages 3, 7 (Declaration of Bernardo Iniguez, Public Works Director for the City of Bellflower).

[43] Exhibit A, IRC, filed August 17, 2018, page 94 (Parameters and Guidelines).

Proposition C revenue and the Stormwater mandate are not "in the same program," the claimant argues:

> The mandate at issue, which is intended to minimize discharge of waste from municipal storm sewer systems, derives from the Water Code, as implemented by the RWQCB [Regional Water Quality Control Board] through the Order. (Wat. Code § 13000 et seq.; see also Dept. of Finance, 1 Cal. 5th 749.)
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> By contrast, Proposition C never mandated that the City maintain the trash receptacles; it provided the City with discretionary authority to direct the LR [Local Return] funds towards certain enumerated transit-related projects. Moreover, because the Proposition C funds were expended to comply with the mandate in the Order, the City was unable to apply the LR funds towards other projects, as it would have done if it were not subject to the requirement to install and maintain trash receptacles.[44]

The claimant did not file comments on the Draft Proposed Decision.

B. State Controller's Office

The Controller maintains that its audit findings are correct and that the claimant's costs were overstated because it did not report any offsetting revenues. The Controller "concluded that the City [claimant] should have reported $530,321 in offsets received from Proposition C Local Return Funds used to pay for the ongoing maintenance of transit stop trash receptacles."[45] According to the Controller:

> The ongoing maintenance costs are recorded in Fund 135 – Proposition C, which is a special revenue fund type. Special revenue funds are used to account for the proceeds of specific revenue sources that are legally restricted to expenditures for specified purposes. During the review, the SCO [Controller] confirmed that there were no General Fund transfers into the Proposition C Local Return Fund during the review period. As the City used only Proposition C funds authorized to be used on the mandated activities, it did not need to rely on the use of discretionary general funds to pay for the mandated activities.[46]

The Controller disagrees with the claimant that its funds were improperly classified as offsetting revenue.[47] In responding to the claimant, the Controller quotes the offsetting revenue section in the Parameters and Guidelines that states "reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim." The Controller "believes that Proposition C is a non-local source, as it is not revenue that the City generated through its own means, such as with unrestricted sales tax. Rather, Proposition C is a

[44] Exhibit A, IRC, filed August 17, 2018, page 4.

[45] Exhibit B, Controller's Late Comments on the IRC, filed October 21, 2019, page 10.

[46] Exhibit B, Controller's Late Comments on the IRC, filed October 21, 2019, page 11.

[47] Exhibit B, Controller's Late Comments on the IRC, filed October 21, 2019, pages 12-14.

special supplementary sales tax that was approved by Los Angeles County voters in 1980 and is restricted in its use."[48]

The Controller also points out that the claimant's IRC itself states that Proposition C provided "discretionary authority" to direct the local return funds to enumerated transit-related projects, and that the claimant used the funds appropriately and at its own discretion as it saw fit.[49] According to the Controller:

> The general premise of mandated costs is that claimants are entitled to reimbursement to the extent that they incur increased costs as the direct result of a mandated program. However, the city did not incur increased costs to the extent that it relied on revenues raised outside of its appropriations limit, which were dedicated to public transit purposes to fund such costs.[50]

The Controller quotes the Commission's Decision in *Two-Way Traffic Control Signal Communication*, CSM-4504 that gas tax funds received by local agencies may be used to fund the cost of obtaining the traffic signal software, but reimbursement is not required to the extent local agencies use their gas tax proceeds to "fund the test claim legislation."[51] The Controller asserts that the same principle applies to the *Municipal Stormwater and Urban Runoff Discharges* program. The claimant used its discretion to apply Proposition C funds to the mandated activities, and reimbursement is not required to the extent Proposition C funds are used to pay for the mandated activities.[52]

The Controller filed comments concurring with the Draft Proposed Decision to deny the IRC.[53]

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes

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[48] Exhibit B, Controller's Late Comments on the IRC, filed October 21, 2019, page 13.

[49] Exhibit B, Controller's Late Comments on the IRC, filed October 21, 2019, pages 13.

[50] Exhibit B, Controller's Late Comments on the IRC, filed October 21, 2019, page 13.

[51] Exhibit B, Controller's Late Comments on the IRC, filed October 21, 2019, page 14.

[52] Exhibit B, Controller's Late Comments on the IRC, filed October 21, 2019, page 14.

[53] Exhibit D, Controller's Comments on the Draft Proposed Decision, filed June 3, 2021.

over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[54] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[55]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[56] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" … "In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support…." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[57]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[58] In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[59]

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[54] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[55] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[56] *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

[57] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[58] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[59] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

A. The Claimant Timely Filed this IRC Within Three Years from the Date the Claimant Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim.

Government Code section 17561 authorizes the Controller to audit the reimbursement claims and records of a local government to verify the actual amount of the mandated costs, and to reduce any claim that the Controller determines is excessive or unreasonable. If the Controller reduces a claim on a state-mandated program, the Controller is required by Government Code section 17558(c) to notify the claimant in writing, specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment.[60] The claimant may then file an IRC with the Commission "pursuant to regulations adopted by the Commission" contending that the Controller's reduction was incorrect and to request that the Controller reinstate the amounts reduced to the claimant.[61]

In this case, the Audit Report, dated October 25, 2016, specifies the claim components and amounts adjusted, and the reasons for the adjustments and thus, complies with the notice requirements in Government Code section 17558.5(c).[62]

The Commission's regulations require that an IRC be timely filed within three years of the date the claimant is provided notice of a reduction, which complies with Government Code section 17558.5(c), as follows:

> All incorrect reduction claims shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reasons for the adjustment.[63]

Because the claimant filed the IRC on August 17, 2018,[64] within three years of the October 25, 2016 Audit Report, the IRC was timely filed.

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[60] Government Code section 17558.5(c).

[61] Government Code sections 17551(d), 17558.7; California Code of Regulations, title 2, sections 1185.1, 1185.9.

[62] Exhibit A, IRC, filed August 17, 2018, pages 76-82 (Audit Report cover letter and Audit Report).

[63] California Code of Regulations, title 2, sections 1185.1(c), 1185.2(a), as amended operative October 1, 2016.

[64] Exhibit A, IRC, filed August 17, 2018, page 1.

B. The Controller's Reduction, Based on the Determination that Proposition C Local Return Funds Are Offsetting Revenue that Should Have Been Identified and Deducted from the Reimbursement Claims, Is Correct as a Matter Of Law.

The Controller determined that the claimant received tax revenues from Metro's Proposition C local return program and used those funds to perform the mandated activities of installing and maintaining transit-stop trash receptacles. The claimant concurs with this finding.[65] However, the claimant did not identify and deduct the Proposition C local return funds as offsetting revenues in its reimbursement claims.[66] The claimant alleges that the Controller improperly designated the Proposition C local return funds as offsetting revenue because the revenue did not come from the mandated program, as the claimant argues is required by the Parameters and Guidelines. The claimant asserts that Proposition C is not in "the same program" as the mandated program because Proposition C does not require the claimant to maintain the trash receptacles. Rather, Proposition C provides the claimant with discretionary authority to apply Local Return funds to specified transit-related purposes.[67]

The Commission finds that the Controller's reduction of costs claimed, based on the designation of Proposition C funds as offsetting revenues, is correct as a matter of law.

1. Proposition C local return funds constitute reimbursement from a nonlocal source, within the meaning of the Parameters and Guidelines, which are required to be identified and deducted from reimbursement claims as offsetting revenue.

Section VIII of the Parameters and Guidelines states:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or *nonlocal* source shall be identified and deducted from this claim.[68]

Thus, the Parameters and Guidelines identify two types of offsetting revenues that are required to be identified and deducted from a reimbursement claim: revenues received from the mandated program, and "reimbursement . . . received from any federal, state or *nonlocal* source" used to pay for the mandated costs. As described below, the second type of offsetting revenues (specifically, revenues received from nonlocal sources) is at issue here. To understand the

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[65] Exhibit A, IRC, filed August 17, 2018, page 3, 7 (Declaration of Bernardo Iniguez, Public Works Director for the City of Bellflower).

[66] Exhibit A, IRC, filed August 17, 2018, pages 81-82 (Audit Report).

[67] Exhibit A, IRC, filed August 17, 2018, page 4.

[68] Exhibit A, IRC, filed August 17, 2018, page 94 (Parameters and Guidelines). Emphasis added.

meaning of this phrase, the Parameters and Guidelines must be read consistently with the constitutional legal principles underlying the reimbursement of state-mandated costs.[69]

The courts have made it clear that the reimbursement requirement in article XIII B, section 6 of the California Constitution must be interpreted in the context of articles XIII A and XIII B, which "work in tandem, together restricting California governments' power both to levy and to spend taxes for public purposes."[70] In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution to impose a limit on state and local power to adopt and levy taxes.[71]

Article XIII B was adopted by the voters in 1979 as Proposition 4, and was called "the next logical step to Proposition 13."[72] Article XIII B imposes a limit on the amount of tax revenues or "proceeds of taxes" a government entity may spend each year. Thus, article XIII B established an "appropriations limit" on the "proceeds of taxes" for each "entity of local government" beginning in fiscal year 1980-1981.[73] Section 1 of article XIII B defines the appropriations limit as:

> The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article.[74]

Local governments may not make "appropriations subject to limitation" in excess of their appropriation limits, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.[75]

"Appropriations subject to limitation" for local government means "any authorization to expend during a fiscal year the '*proceeds of taxes levied by or for that entity*' and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes."[76] "To levy taxes by or for an entity," as used in article XIII B, section 8(b),

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[69] See *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 974, 811 and 812, where the court states that the parameters and guidelines must be read in context, and with the fundamental legal principles underlying state-mandated costs.

[70] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 [quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81].

[71] California Constitution, article XIII A, section 1 (adopted June 6, 1978).

[72] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

[73] California Constitution, article XIII B, section 8(d), (h) (adopted Nov. 6, 1979; amended by Proposition 111, June 5, 1990).

[74] See also Government Code section 7901(a) and (b).

[75] California Constitution, article XIII B, section 2 (adopted Nov. 6, 1979; amended by Proposition 111, June 5, 1990).

[76] California Constitution, article XIII B, section 8(b). Emphasis added.

means that the entity for whom the taxes are levied has the authority to levy the tax itself. As the court in *Bell Community Redevelopment Agency v. Woosley* explained:

> The phrase "to levy taxes by or for an entity" has a special meaning of long-standing. The concept of one entity levying taxes for another dates back to at least 1895 (stats. 1895, p. 219) and the adoption of an act providing for the levy of taxes "by or for" municipal corporations. This act allowed general law and charter cities to continue to exercise their taxing power directly or, if they so desired, to have the county levy and collect their taxes for them. [Citations omitted.] The legal effect of this arrangement, as explained by case law, was that the taxing power exercised was that of the city, and it remained in the city. The county officers in levying taxes for the city became ex-officio officers of the city and exercised the city's taxing power. [Citations omitted.] In levying taxes for the city the county was levying "municipal taxes" through the ordinary county machinery. [Citation omitted.]
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> Thus, the necessary characteristics of one entity levying taxes "by or for" another entity are: (1) the entity for whom the taxes are levied has the taxing power; (2) the levying officers of the county exercise the taxing power of the entity for whom they are levying; (3) they exercise such power as ex-officio officers of that entity, and (4) the taxes collected are those of the "levied for" entity.[77]

Except for state subventions, the items that make up "proceeds of taxes" are charges levied to raise general revenues for the local entity.[78] "Proceeds of taxes," is defined to include "all tax revenues," as well as "proceeds ... from ... regulatory licenses, user charges, and user fees [only] to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product or service...."[79] These "excess" regulatory or user fees are considered taxes that raise general revenue for the entity.[80]

Article XIII B does not impose spending limits on revenues that do *not* constitute the entity's "proceeds of taxes."[81] In addition, article XIII B, section 9 identifies appropriations that are expressly excluded from the appropriations limit, including appropriations required to comply with a federal mandate.

Section 6 was included in article XIII B to require that "[w]henever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service…" The purpose of section 6 is to preclude "the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities *because of the taxing and*

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[77] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d. 24, 32-33.

[78] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451.

[79] California Constitution, article XIII B, section 8(c).

[80] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451.

[81] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

spending limitations that articles XIII A and XIII B impose."[82] In this respect, the courts have held that reimbursement under article XIII B, section 6 is required only when the mandated program forces local government to incur "increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit."[83]

Thus, courts have focused on the source of funds used to pay for programs for which mandate reimbursement is sought, and have analyzed the source of funds to determine if they are proceeds of taxes that are subject to the local agency's appropriations limit.[84] For example, in *County of Fresno v. State*, the California Supreme Court determined that Government Code section 17556(d) (which provides there are no costs mandated by the state and reimbursement is not required when the local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program) is facially constitutional and consistent with the purpose of article XIII B, section 6.[85] "Considered within its context, the section [section 6] effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes."[86]

Similarly, in *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* and *City of El Monte v. Commission on State Mandates*, the courts focused on the source of funds used by redevelopment agencies to pay for activities required by state law to find that funds received through tax increment financing were not subject to the appropriations limit because the funds are not the "proceeds of taxes" and therefore, are not reimbursable under article XIII B, section 6.[87]

> Because of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any "proceeds of taxes." Nor do they raise, through tax increment financing, "general revenues for the local entity." [Citation omitted.][88]

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[82] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81. Emphasis added. See also, *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

[83] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

[84] See, *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 984-985, where the court disagrees with the argument by a redevelopment agency that the source of funds used was not relevant to the determination of reimbursement under article XIII B, section 6.

[85] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

[86] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

[87] *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 984-986; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 280-282.

[88] *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986.

Accordingly, reimbursement under article XIII B, section 6 is required only when the mandated program forces local government to incur increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit.[89] Expenditures of funds that are not from the entity's proceeds of taxes are not subject to the appropriation limit, nor are entities that spend non-tax revenue eligible for reimbursement under article XIII B, section 6.

In this case, the offsetting revenue language in Section VIII of the Parameters and Guidelines, which requires that "reimbursement for this mandate received from any federal, state or nonlocal source shall be identified and deducted from this claim," is consistent with these constitutional principles.[90] "Nonlocal" revenue used for a state-mandated program means that the funds used for the program are not the claimant's proceeds of taxes nor are they subject to the claimant's appropriations limit imposed by article XIII B. Thus, nonlocal sources of funding used by a local agency for the state-mandated program are required to be identified and deducted from reimbursement claims as offsetting revenue.

2. The Proposition C local return funds that the claimant used for the mandated activities are not the claimant's "proceeds of taxes" within the meaning of article XIII B of the California Constitution because the taxes were not levied by or for the claimant nor are they subject to the claimant's appropriations limit; thus, the Controller's finding that expenditures of these funds are required to be identified and deducted as offsetting revenues is correct as a matter of law.

The power of a local government to tax is derived from the Constitution, upon the Legislature's authorization.[91] "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."[92] In other words, a local government's taxing authority is derived from statute.

Metro, as the successor to the Los Angeles County Transportation Commission, is authorized by statute to levy the Proposition C transactions and use tax throughout Los Angeles County.[93] Under the Proposition C ordinance, twenty percent of Proposition C taxes are allocated to the local return program funds for cities and the County to use for public transit purposes.[94] As discussed in the Background above, local jurisdictions are then permitted to use those funds on

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[89] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

[90] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 974, 811 and 812.

[91] California Constitution, article XIII, section 24(a).

[92] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450 ("Taxes are levied by the Legislature, or by counties and municipalities under their delegated power, for the support of the state, county, or municipal government").

[93] Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

[94] Los Angeles Metropolitan Transportation Authority, "An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes," November 1990, pages 3-4.

public transit projects as prescribed by the Local Return Guidelines.[95] Permissible uses include bus stop improvements and maintenance projects, which include the installation, replacement and maintenance of trash receptacles,[96] as specified in the ordinance:

> …[The] Local Return Program [is] to be used by cities and the County for public transit, paratransit, and related services including to improve and expand supplemental paratransit services to meet the requirements of the Federal Americans With Disabilities Act. At the option of each city and of the County funds can be used consistent with the County's Congestion Management Program to increase safety and improve road conditions by repairing and maintaining streets heavily used by public transit. Transportation system and demand management programs are also eligible.[97]

The parties agree that the claimant is authorized to use the local return funds for the mandated program and they do not dispute than a portion of the claimant's local return funds were used for the mandated activities.[98] Nonetheless, the claimant disputes the reduction, arguing that the Proposition C funds were not "specifically intended" to fund the mandated program.[99]

However, Proposition C transactions and use taxes are non-local revenues because they are *not* the claimant's "local taxes" in that they are neither levied by nor for the claimants. As the Court of Appeal explained:

> The phrase "to levy taxes by or for an entity" has a special meaning of long-standing. The concept of one entity levying taxes for another dates back to at least 1895 (stats. 1895, p. 219) and the adoption of an act providing for the levy of taxes "by or for" municipal corporations. This act allowed general law and charter cities to continue to exercise their taxing power directly or, if they so desired, to have the county levy and collect their taxes for them. (*Griggs v. Hartzoke* (1910) 13 Cal.App. 429, 430–432, 109 P. 1104; *County of Los Angeles v. Superior Court* (1941) 17 Cal.2d 707, 710–711, 112 P.2d 10.) The legal effect

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[95] Exhibit E, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, pages 7, 11-16.

[96] Exhibit E, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 13.

[97] Exhibit E, Los Angeles Metropolitan Transportation Authority, "An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes," November 1990, pages 3-5. Other uses of Proposition C funds include: improving and expanding rail and bus transit on a County-wide basis (40 percent), improve and expand rail and bus security (5 percent), commuter rail and building transit centers, park-and-ride lots, and freeway bus stops (10 percent), and essential County-wide transit-related improvements to freeways and state highways (25 percent).

[98] Exhibit A, IRC, filed August 17, 2018, pages 3, 7 (Declaration of Bernardo Iniguez, Public Works Director for the City of Bellflower). Exhibit A, IRC, filed August 17, 2018, page 82 (Audit Report).

[99] Exhibit A, IRC, filed August 17, 2018, pages 4-5.

> of this arrangement, as explained by case law, was that the taxing power exercised was that of the city, and it remained in the city. The county officers in levying taxes for the city became ex-officio officers of the city and exercised the city's taxing power. (*Madary v. City of Fresno* (1912) 20 Cal.App. 91, 93–94, 128 P. 340.) In levying taxes for the city the county was levying "municipal taxes" through the ordinary county machinery. (*Griggs*, *supra*, 13 Cal.App. at p. 432, 109 P. 1104.)
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> Thus, the salient characteristics of one entity levying taxes "for" another entity are: (1) the entity for whom the taxes are levied has the taxing power; (2) the levying officers of the county exercise the taxing power of the entity for whom they are levying; (3) they exercise such power as ex-officio officers of that entity, and (4) the taxes collected are those of the "levied for" entity.[100]

Similar to the redevelopment agency in *Bell Community Redevelopment Agency v. Woosley*, the claimant here does not have the power to levy the Proposition C taxes.[101] Therefore, Metro is not levying the Proposition C taxes "for" the claimant. The claimant's receipt and use of Proposition C tax revenues through the local return program does not change the nature of those funds as Metro's "proceeds of taxes" and subject to Metro's appropriations limit.

Article XIII B does not limit a local government's ability to expend tax revenues that are not the claimant's "proceeds of taxes."[102] Where a tax is neither levied by nor for the local government claiming reimbursement, the resulting revenue is not the local government's "proceeds of taxes" and is therefore not the local government's "appropriations subject to limitation."[103] Reimbursement under article XIII B, section 6 is only required to the extent that a local government must incur "increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit."[104] Because the Proposition C local return funds are not the claimants' "proceeds of taxes levied by or for that entity," they are not part of the claimants' "appropriations subject to limitation."[105] The Proposition C Ordinance provides that the Proposition C funds are included in Metro appropriations limit:

> 3-10-080 Appropriations Limit. A [Los Angeles County Transportation] Commission appropriations limit is hereby established equal to the revenues

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[100] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32.

[101] See *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 27 [Because redevelopment agency did not have the authority to levy a tax to fund its efforts, allocation and payment of tax increment funds to redevelopment agency by county, a government taxing agency, were not "proceeds of taxes levied by or for" the redevelopment agency and therefore were not subject to the appropriations limit of Article XIII B].

[102] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

[103] California Constitution, article XIII B, section 8.

[104] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

[105] California Constitution, article XIII B, section 8.

> collected and allocated during the 1990/91 fiscal year plus an amount equal to one and a half times the taxes that would be levied or allocated on a one-half of one percent transaction and use tax in the first full fiscal year following enactment and implementation of this Ordinance.[106]

In addition, Government Code section 7904 states that: "In no event shall the appropriation of the same proceeds of taxes be subject to the appropriations limit of more than one local jurisdiction or the state." Because the Proposition C ordinance establishes an appropriations limit for Metro for the proposition C funds,[107] section 7904 prohibits the claimant from establishing an appropriations limit on the same proceeds of taxes.

Reimbursement under article XIII B, section 6 is required only when the mandated program forces local government to incur increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit.[108] Local agencies cannot accept the benefits of revenue that is not subject to their appropriations limits, while asserting an entitlement to reimbursement under article XIII B, section 6.[109] The Proposition C local return revenue is not the claimant's proceeds of taxes, nor is it subject to the claimant's appropriation limit. Therefore, the reduction of costs claimed, based on the Controller's finding that the Proposition C local return funds should have been identified and deducted as offsetting revenues, is correct as a matter of law.

V. Conclusion

Based on the forgoing, the Commission concludes that the Controller's reduction of costs is correct as a matter of law. Accordingly, the IRC is denied.

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[106] Exhibit E, Los Angeles Metropolitan Transportation Authority, "An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes," November 1990, page 6.

[107] Exhibit E, Los Angeles Metropolitan Transportation Authority, "An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes," November 1990, page 6.

[108] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

[109] *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.