

**ITEM 5**  
**INCORRECT REDUCTION CLAIM**  
**PROPOSED DECISION**

Public Resources Code Sections 40148, 40196.3, 42920-42928; Public Contract Code Sections 12167 and 12167.1; Statutes 1992, Chapter 1116 (AB 3521); Statutes 1999, Chapter 764 (AB 75); State Agency Model Integrated Waste Management Plan (February 2000)

*Integrated Waste Management*

Fiscal Years 1999-2000, 2000-2001, 2003-2004, 2004-2005, and 2005-2006

14-0007-I-10

Redwoods Community College District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This Incorrect Reduction Claim (IRC) addresses reductions by the State Controller's Office (Controller) to reimbursement claims of the Redwoods Community College District (claimant) for fiscal years 1999-2000, 2000-2001 and 2003-2004 through 2005-2006 (the audit period) under the *Integrated Waste Management* program, 00-TC-07. The Controller made the audit reductions because the claimant did not identify and deduct from its reimbursement claims any offsetting savings from solid waste diversion that results in reduced or avoided landfill disposal fees.

Staff finds that the Controller timely initiated the audit of the fiscal year 2003-2004 reimbursement claim, and timely completed the audit of all claims.

Staff further finds, based on the evidence in the record, that the Controller's calculation of offsetting cost savings for all years in the audit period except for the first half of fiscal year 2003-2004 is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

However, the Controller's calculation of offsetting savings for the first half of fiscal year 2003-2004 is incorrect as a matter of law. The Controller allocated the diversion rate for 2003-2004, as it did for the other fiscal years, because the claimant exceeded the mandate. However, the Controller used a 50 percent rate to calculate the allocated diversion, although the test claim statutes required only 25 percent diversion in calendar year 2003.<sup>1</sup> The requirement to divert 50 percent of solid waste did not become operative until January 1, 2004,<sup>2</sup> so the calculation of cost savings for fiscal year 2003-2004 is incorrect.

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<sup>1</sup> Exhibit B, Controller's Late Comments on the IRC, page 82.

<sup>2</sup> Public Resources Code sections 42921; Exhibit A, IRC, page 90 (Parameters and Guidelines).

Applying the Controller's cost savings formula (using the mandated 25 percent rate to calculate the allocated diversion) to the first half of fiscal year 2003-2004, results in offsetting savings of \$2,430 (25 percent divided by 57.68 percent, multiplied by 152.25 tons diverted multiplied by the statewide average landfill disposal fee of \$36.83) rather than \$4,861. Thus, the difference of \$2,431 has been incorrectly reduced and should be reinstated to the claimant.

The claimant also questions the Controller's adjustment of \$5,130, contending that the \$5,130 was offsetting revenues and not offsetting savings. The claimant's reimbursement claims, however, identify the \$5,130 as offsetting savings. Thus, the Controller calculated the total realized offsetting savings by subtracting the offsetting savings reported by the claimant, resulting in an overall reduction of \$38,247 instead of \$43,377.<sup>3</sup> Because this adjustment did not result in a reduction of costs claimed within the meaning of Government Code section 17551(d), the Commission does not have jurisdiction to determine if the adjustment is correct.

#### The Integrated Waste Management Program

The test claim statutes require community college districts<sup>4</sup> to adopt and implement, in consultation with the California Integrated Waste Management Board (CIWMB, now known as CalRecycle), an integrated waste management (IWM) plan to govern the district's efforts to reduce solid waste, reuse materials, recycle recyclable materials and procure products with recycled content in all agency offices and facilities. To implement their plans, community college districts must divert from landfill disposal at least 25 percent of solid waste by January 1, 2002, and at least 50 percent by January 1, 2004. Public Resources Code section 42925, as added by the test claim statutes, further provides that "[a]ny cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency's integrated waste management plan to fund plan implementation and administration costs, in accordance with Sections 12167 and 12167.1 of the Public Contract Code."

On March 24, 2004, the Commission adopted the Test Claim Statement of Decision and found that the test claim statutes impose a reimbursable state mandate on community colleges, and that cost savings under Public Resources Code section 42925 did not result in a denial of the Test Claim because there was no evidence of offsetting savings that would result in no net costs to a community college district. The Parameters and Guidelines were adopted on March 30, 2005, to authorize reimbursement for the activities approved in the Statement of Decision, and did not require claimants to identify and deduct from their reimbursement claims any cost savings. After the Commission adopted the Parameters and Guidelines, the Department of Finance (Finance) and CIWMB challenged the Statement of Decision and Parameters and Guidelines, arguing that the Commission did not properly account for all the offsetting cost savings from avoided disposal costs, or offsetting revenues from the sale of recyclable materials in the Statement of Decision or Parameters and Guidelines. On May 29, 2008, the Sacramento County Superior

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<sup>3</sup> Exhibit A, IRC, pages 31-32 (Final Audit Report).

<sup>4</sup> The test claim statutes apply to "state agencies" but defines them to include "the California Community Colleges" (Pub. Res. Code, § 40196.3). Community college districts are the only local government to which the test claim statutes apply.

Court partially agreed with the petitioners and directed the Commission to amend the Parameters and Guidelines to:

1. [R]equire community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans; and
2. [R]equire community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims all of the revenue generated as a result of implementing their plans, without regard to the limitations or conditions described in sections 12167 and 12167.1 of the Public Contract Code.<sup>5</sup>

In accordance with this court ruling, the Commission amended the Parameters and Guidelines on September 26, 2008.

This program was made optional by Statutes 2010, chapter 724 (AB 1610), section 34, effective October 19, 2010, and has remained so since that time.<sup>6</sup>

### **Procedural History**

The claimant filed its fiscal year 1999-2000, 2000-2001, 2003-2004, and 2004-2005 reimbursement claims on October 7, 2005.<sup>7</sup> The claimant filed its fiscal year 2005-2006 reimbursement claim on January 16, 2007.<sup>8</sup> The Controller notified the claimant of the pending audit adjustment on January 17, 2014.<sup>9</sup> The Controller issued the Final Audit Report on April 11, 2014.<sup>10</sup> The claimant filed the IRC on August 14, 2014.<sup>11</sup> The Controller filed late comments on the IRC on December 30, 2014.<sup>12</sup> The claimant did not file rebuttal comments.

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<sup>5</sup> Exhibit B, Controller's Late Comments on the IRC, page 30 (Judgment Granting Petition for Writ of Administrative Mandamus).

<sup>6</sup> See Government Code section 17581.5.

<sup>7</sup> Exhibit B, Controller's Late Comments on the IRC, page 16. According to Exhibit A, IRC, pages 151-175, these claims were signed on September 30, 2005.

<sup>8</sup> Exhibit B, Controller's Late Comments on the IRC, page 16. According to Exhibit A, IRC, page 177, this claim was signed on January 5, 2007.

<sup>9</sup> Exhibit B, Controller's Late Comments on the IRC, page 25.

<sup>10</sup> Exhibit A, IRC, page 27 (Final Audit Report).

<sup>11</sup> Exhibit A, IRC, page 1.

<sup>12</sup> Exhibit B, Controller's Late Comments on the IRC, page 1. Note that Government Code section 17553(d) states: "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of

Commission staff issued the Draft Proposed Decision on February 16, 2018.<sup>13</sup> The Controller filed comments on the Draft Proposed Decision on February 23, 2018.<sup>14</sup> The claimant did not file comments on the Draft Proposed Decision.

### **Commission Responsibilities**

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 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.<sup>15</sup> 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."<sup>16</sup>

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.<sup>17</sup>

The Commission must also 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.<sup>18</sup> In addition, section

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IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and Proposed Decision.

<sup>13</sup> Exhibit C, Draft Proposed Decision.

<sup>14</sup> Exhibit D, Controller's Comments on the Draft Proposed Decision.

<sup>15</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>16</sup> *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.

<sup>17</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>18</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations requires 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.<sup>19</sup>

### **Claims**

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

<b>Issue</b>	<b>Description</b>	<b>Staff Recommendation</b>
Whether the Controller timely initiated the audit of the fiscal year 2003-2004 reimbursement claim, and timely completed the audit.	The claimant alleges that the Controller failed to timely initiate the audit of the fiscal year 2003-2004 reimbursement claim.  Government Code section 17558.5 requires an audit to be initiated no later than three years after the date the reimbursement claim is filed or last amended, but <i>if no funds are appropriated or no payment is made</i> "to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim."	<i>The audit was timely initiated and completed</i> – The record shows that the Controller first made payment on 2003-2004 reimbursement claim on either January 18, 2011, <sup>20</sup> or January 28, 2011, <sup>21</sup> within three years of the date the audit was initiated on January 17, 2014, <sup>22</sup> so the audit was timely initiated.  The audit was complete for all reimbursement claims when the final audit report was issued April 11, 2014, <sup>23</sup> well before the two-year deadline of January 17, 2016.
Whether the Controller's reductions of costs claimed based on unreported cost savings resulting from implementation of the IWM plan are correct.	Pursuant to the ruling and writ issued in <i>State of California v. Commission on State Mandates</i> , (Super. Ct., Sacramento County, 2008, No. 07CS00355), the amended Parameters and Guidelines	<i>Partially Incorrect</i> – The Controller correctly presumed, absent any evidence to the contrary, that the claimant realized cost savings during the audit period equal to the avoided landfill fee per ton of

<sup>19</sup> 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.

<sup>20</sup> Exhibit A, IRC, page 188.

<sup>21</sup> Exhibit B, Controller's Late Comments on the IRC, pages 10-11, 27-29.

<sup>22</sup> Exhibit B, Controller's Late Comments on the IRC, page 25. Exhibit A, IRC, page 10.

<sup>23</sup> Exhibit A, IRC, page 27 (Final Audit Report).

	<p>require claimants to identify and offset from their claims cost savings realized as a result of implementing their IWM plans, and apply the cost savings to fund plan implementation and administration costs.</p> <p>The test claim statutes presume that by complying with the mandate to divert solid waste through the IWM program, claimants can reduce or avoid landfill fees and realize cost savings. As the court ruled, cost savings may be calculated from the solid waste disposal reduction that community colleges are required to annually report to CIWMB. There is a rebuttable statutory presumption of cost savings. To rebut the presumption, the claimant has the burden to show that cost savings were not realized.</p> <p>The claimant diverted more solid waste than required by law for each year in the audit period. However, the Controller's formula "allocated" the diversion by dividing the percentage of solid waste required to be diverted, either 25% or 50%, by the actual percentage of solid waste diverted as reported by the claimant to CIWMB. The resulting quotient was then multiplied by the tons of solid waste diverted multiplied by the avoided landfill disposal fee</p>	<p>waste required to be diverted. The avoided landfill disposal fee was based on the statewide average disposal fee provided by CIWMB for each year in the audit period. The claimant has not filed any evidence to rebut the statutory presumption of cost savings. Thus, the Controller's finding of cost savings for all years in the audit period, and its reduction of costs claimed for all years in the audit period except for the first half of fiscal year 2003-2004, is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.</p> <p>However, the Controller's calculation of offsetting savings for the first half of fiscal year 2003-2004 is incorrect as a matter of law. The Controller applied a 50% diversion rate to calculate offsetting savings for this period, although the mandate was 25% in 2003. The requirement to divert 50% of solid waste did not become operative until January 1, 2004.<sup>26</sup></p> <p>Applying the Controller's formula to calculate cost savings (using 25% to calculate the allocated diversion) to the first half of fiscal year 2003-2004 results in offsetting cost savings of \$2,430 (25 percent divided by 57.68 percent, multiplied by 152.25 tons diverted multiplied by the</p>
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<sup>26</sup> Public Resources Code sections 42921; Exhibit A, IRC, page 90 (Parameters and Guidelines).

	<p>(based on the statewide average fee). This formula avoids penalizing the claimant for diverting more solid waste than the state-mandated percentage.<sup>24</sup></p> <p>For the first half of fiscal year 2003-2004, the Controller used a 50% rate to allocate cost savings, although only a 25% diversion rate was mandated during this period. The Controller admits that the mandated diversion rate was 25% during 2003.<sup>25</sup></p>	<p>statewide average landfill disposal fee of \$36.83) rather than \$4,861. Therefore, the difference of \$2,431 has been incorrectly reduced and should be reinstated to the claimant.</p>
<p>Whether the Commission has jurisdiction to determine whether the Controller's adjustment of \$5,130 was correct.</p>	<p>The Controller found that the claimant reported offsetting cost savings of \$5,130 during the audit period, but realized total offsetting savings of \$43,377 from implementation of its IWM plan. Thus, the Controller adjusted the offset by deducting \$5,130, resulting in a total reduction of \$38,247.<sup>27</sup></p> <p>The claimant states that \$5,130 identified as reported offsetting savings is <i>not</i> offsetting savings, but actually offsetting revenue from recycling revenues.<sup>28</sup> The claimant requests that the Commission address this adjustment.</p>	<p><i>No Jurisdiction-</i> Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has <i>incorrectly reduced</i> payments to the local agency or school district.</p> <p>The \$5,130 was reported by the claimant as offsetting savings and not offsetting revenues.<sup>29</sup> Thus, the adjustment of \$5,130 decreased the audit reduction, giving more money to the claimant, and did not result in a reduction of costs claimed within the meaning of Government Code section 17551(d).</p>

<sup>24</sup> Exhibit B, Controller's Late Comments on the IRC, page 16.

<sup>25</sup> Exhibit B, Controller's Late Comments on the IRC, page 16.

<sup>27</sup> Exhibit A, IRC, pages 31-32 (Final Audit Report).

<sup>28</sup> Exhibit A, IRC, page 19.

<sup>29</sup> Exhibit A, IRC, page 32 (Final Audit Report); page 152 (fiscal year 1999-2000 reimbursement claim identifying \$75.70 as offsetting savings); page 158 (fiscal year 2000-2001 reimbursement claim identifying \$916.46 as offsetting savings); page 165 (fiscal year 2003-2004 reimbursement claim identifying \$1,326.59 as offsetting savings); and page 172 (fiscal year 2004-2005 reimbursement claim identifying \$2,811.26 as offsetting savings).

## **Staff Analysis**

### **A. The Controller Timely Initiated and Completed the Audit for Fiscal Year 2000-2001, and Timely Completed the Audit of All Claims.**

The Controller timely initiated the audit of the fiscal year 2003-2004 reimbursement claim and timely completed the audit for all claims pursuant to Government Code section 17558.5. Government Code section 17558.5(a) tolls the time to initiate the audit to three years from the date of initial payment on the claim, rather than three years from the date the claim was filed, “if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed.” The record shows that the Controller first made payment on the 2003-2004 reimbursement claim on either January 18, 2011,<sup>30</sup> or January 28, 2011,<sup>31</sup> within three years of the date the audit was initiated on January 17, 2014,<sup>32</sup> so the audit was timely initiated. The audit was complete for all reimbursement claims when the final audit report was issued April 11, 2014,<sup>33</sup> well before the two-year deadline of January 17, 2016.

### **B. The Controller’s Reduction of Costs Claimed Is Generally Correct as a Matter of Law; However, the Calculation of Offsetting Savings for the First Half of Fiscal Year 2003-2004, Based on a 50 Percent Mandated Diversion Rate, Is Incorrect as a Matter of Law.**

The test claim statutes require community college districts to divert from landfill disposal at least 25 percent of generated solid waste by January 1, 2002, and at least 50 percent by January 1, 2004.<sup>34</sup> The test claim statutes also provide that “Any cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency’s integrated waste management plan to fund plan implementation and administration costs . . .”<sup>35</sup>

The statutes, therefore, presume that by complying with the mandate to divert solid waste through the IWM program, landfill fees are reduced or avoided and cost savings are realized. And the amount or value of the cost savings may be determined from the calculations of annual solid waste disposal reduction or diversion, which community colleges are required to annually report to CIWMB.<sup>36</sup>

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<sup>30</sup> Exhibit A, IRC, page 188.

<sup>31</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 10-11, 27-29.

<sup>32</sup> Exhibit B, Controller’s Late Comments on the IRC, page 25. Exhibit A, IRC, page 10.

<sup>33</sup> Exhibit A, IRC, page 27 (Final Audit Report).

<sup>34</sup> Public Resources Code section 42921.

<sup>35</sup> Public Resources Code section 42925(a).

<sup>36</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 36-37 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).



Staff finds that the Controller correctly presumed, consistent with the test claim statutes and the court's interpretation of those statutes, and without evidence to the contrary, that the claimant realized cost savings during the audit period equal to the avoided landfill disposal fee per ton of waste required to be diverted.

Staff also finds, based on the evidence in the record, that the Controller's calculation of offsetting cost savings for all fiscal years in the audit period except the first half of fiscal year 2003-2004 is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant exceeded the mandated diversion rate in all years of the audit period.<sup>37</sup>

For those years the claimant exceeded the mandate, the Controller calculated offsetting savings by allocating the diversion to reflect the mandate. The Controller allocated the diversion by dividing the percentage of solid waste required to be diverted by the test claim statute (either 25 percent or 50 percent) by the actual percentage of solid waste diverted (as annually reported by the claimant to CIWMB). The allocated tonnage of diverted waste was then multiplied by the avoided landfill disposal fee (based on the statewide average fee) to calculate the offsetting savings realized.<sup>38</sup> The formula allocates or reduces cost savings based on the mandated rates of diversion, and is intended to avoid penalizing the claimant for diverting more solid waste than the percentage mandated by law.<sup>39</sup>

However, the Controller's reduction of costs claimed for the first half of fiscal year 2003-2004 is incorrect as a matter of law. The claimant achieved an actual diversion rate of 57.7 percent during calendar year 2003.<sup>40</sup> The Controller allocated the claimant's diversion rate, as it had for the other fiscal years when the claimant exceeded the mandate, but used 50 percent to calculate the allocated diversion rate, although the test claim statutes mandated only 25 percent diversion in 2003.<sup>41</sup> The requirement to divert 50 percent of all solid waste did not become operative until January 1, 2004.<sup>42</sup> Therefore, the Controller's calculation of cost savings, which applied a 50 percent diversion rate to the period from July 1, 2003, through December 31, 2003 instead of the mandated 25 percent diversion rate, is incorrect as a matter of law.

Applying the Controller's cost savings formula (using the mandated 25 percent rate of diversion) to the first half of fiscal year 2003-2004, results in offsetting savings of \$2,430 (25 percent divided by 57.68 percent, multiplied by 152.25 tons diverted multiplied by the statewide average landfill disposal fee of \$36.83) rather than \$4,861. Therefore, the difference of \$2,431 has been incorrectly reduced.

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<sup>37</sup> Exhibit B, Controller's Late Comments on the IRC, pages 16, 82.

<sup>38</sup> Exhibit A, IRC, pages 33; Exhibit B, Controller's Late Comments on the IRC, page 16-18.

<sup>39</sup> Exhibit B, Controller's Late Comments on the IRC, page 16.

<sup>40</sup> Exhibit B, Controller's Late Comments on the IRC, pages 56 (2003 Annual Report), 82. The Controller calculated this diversion at 57.68 percent. See page 82.

<sup>41</sup> Exhibit B, Controller's Late Comments on the IRC, page 82.

<sup>42</sup> Public Resources Code sections 42921; Exhibit A, IRC, page 90 (Parameters and Guidelines).

**C. The Adjustment of \$5,130 Deducted from the Controller's Calculation of Offsetting Savings Did Not Result in a Reduction of Costs Claimed Pursuant to Government Code Section 17551(d), and thus, the Commission Does Not Have Jurisdiction to Determine if the Adjustment Is Correct.**

The Controller found that the claimant reported offsetting savings of \$5,130 during the audit period, but realized total offsetting savings of \$43,377 from implementation of its IWM plan. Thus, the Controller adjusted its calculation of underreported offsetting savings by subtracting the offsetting savings reported by the claimant, resulting in a reduction of \$38,247 instead of \$43,377.<sup>43</sup>

The claimant states that \$5,130 identified as reported offsetting savings is *not* offsetting savings, but actually offsetting recycling revenue.<sup>44</sup> However, as indicated in the Final Audit Report and on the claimant's reimbursement claims, the claimant reported \$5,130 as offsetting savings and not offsetting revenues.<sup>45</sup> Had the \$5,130 not been reported as offsetting savings, the Controller would have reduced the reimbursement claims by the full amount of offsetting savings realized (\$43,377) and not subtracted the cost savings by \$5,130.<sup>46</sup>

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. The adjustment of \$5,130 decreased the audit reduction, giving more money to the claimant, and did not result in a reduction of costs claimed within the meaning of Government Code section 17551(d). Thus, the Commission does not have jurisdiction to determine if the adjustment is correct.

**Conclusion**

Staff finds that:

- The Controller timely initiated the audit of the fiscal year 2003-2004 reimbursement claim, and timely completed the audit of all claims.
- Based on the evidence in the record, the Controller's calculation of offsetting cost savings for all calendar years in the audit period except the first half of fiscal year 2003-2004 is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.
- The calculation of offsetting savings for the first half of fiscal year 2003-2004, based on an incorrect mandated diversion rate, is incorrect as a matter of law. The law and the evidence in the record support offsetting cost savings for the first half of fiscal year 2003-

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<sup>43</sup> Exhibit A, IRC, pages 31-32 (Final Audit Report).

<sup>44</sup> Exhibit A, IRC, page 19.

<sup>45</sup> Exhibit A, IRC, page 32 (Final Audit Report); page 152 (fiscal year 1999-2000 reimbursement claim identifying \$75.70 as offsetting savings); page 158 (fiscal year 2000-2001 reimbursement claim identifying \$916.46 as offsetting savings); page 165 (fiscal year 2003-2004 reimbursement claim identifying \$1,326.59 as offsetting savings); and page 172 (fiscal year 2004-2005 reimbursement claim identifying \$2,811.26 as offsetting savings).

<sup>46</sup> Exhibit B, Controller's Late Comments on the IRC, page 21.

2004 of \$2,430, rather than \$4,861. Therefore, the difference of \$2,431 has been incorrectly reduced and should be reinstated to the claimant.

- The adjustment of \$5,130, which was reported by the claimant as offsetting savings, decreased the audit reduction and did not result in a reduction of costs claimed within the meaning of Government Code section 17551(d). Therefore, the Commission does not have jurisdiction to determine if the adjustment is correct.

### **Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision to partially approve the IRC and request, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate \$2,431 to the claimant. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM  
ON:**

Public Resources Code Sections 40148,  
40196.3, 42920-42928; Public Contract Code  
Sections 12167 and 12167.1; Statutes 1992,  
Chapter 1116 (AB 3521); Statutes 1999,  
Chapter 764 (AB 75); State Agency Model  
Integrated Waste Management Plan  
(February 2000)

Fiscal Years 1999-2000, 2000-2001, 2003-  
2004, 2004-2005, and 2005-2006

Redwoods Community College District,  
Claimant

Case No.: 14-0007-I-10

*Integrated Waste Management*

DECISION PURSUANT TO  
GOVERNMENT CODE SECTION  
17500 ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

*(Adopted May 25, 2018)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on May 25, 2018. [Witness list will be included in the adopted Decision.]

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 section 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the IRC by a vote of [vote count will be included in the adopted Decision] as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the Director of the Department of Finance, Chairperson	

## **Summary of the Findings**

This IRC addresses reductions made by the State Controller's Office (Controller) to reimbursement claims of the Redwoods Community College District (claimant) for fiscal years 1999-2000, 2000-2001 and 2003-2004 through 2005-2006 (the audit period), under the *Integrated Waste Management* program, 00-TC-07. The Controller made the audit reductions because the claimant did not identify and deduct from its reimbursement claims offsetting cost savings from its diversion of solid waste and the associated reduced or avoided landfill disposal fees.

The test claim statutes require community college districts to adopt and implement, in consultation with California Integrated Waste Management Board (CIWMB, which is now the California Department of Resources Recycling and Recovery, or CalRecycle), integrated waste management (IWM) plans to reduce solid waste<sup>47</sup> To implement their plans, districts must divert from landfill disposal at least 25 percent of solid waste by January 1, 2002, and at least 50 percent by January 1, 2004.<sup>48</sup> The test claim statutes also provide that "Any cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency's integrated waste management plan to fund plan implementation and administration costs . . ."<sup>49</sup>

The statutes, therefore, presume that by diverting solid waste through the IWM program, landfill fees are reduced or avoided and cost savings are realized. The amount or value of the cost savings may be determined from the calculations of annual solid waste disposal reduction or diversion, which community colleges are required to annually report to CIWMB.<sup>50</sup>

The Commission finds that the Controller timely initiated the audit of the fiscal year 2003-2004 reimbursement claim and timely completed the audit for all of the reimbursement claims at issue pursuant to Government Code section 17558.5. Government Code section 17558.5(a) tolls the time to initiate the audit to three years from the date of initial payment on the claim, rather than three years from the date the claim was filed, "if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed." The record shows that the Controller first made payment on the 2003-2004 reimbursement claim on either January 18, 2011,<sup>51</sup> or January 28, 2011,<sup>52</sup> within three years of the date the audit was initiated on January 17, 2014,<sup>53</sup> so the audit was timely initiated. The audit was complete for all

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<sup>47</sup> Public Resources Code section 42920(b).

<sup>48</sup> Public Resources Code section 40124.

<sup>49</sup> Public Resources Code section 42925(a).

<sup>50</sup> Exhibit B, Controller's Late Comments on the IRC, pages 36-37 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>51</sup> Exhibit A, IRC, page 188.

<sup>52</sup> Exhibit B, Controller's Late Comments on the IRC, pages 10-11, 27-29.

<sup>53</sup> Exhibit B, Controller's Late Comments on the IRC, pages 25. Exhibit A, IRC, page 10.

reimbursement claims when the final audit report was issued April 11, 2014,<sup>54</sup> well before the two-year deadline of January 17, 2016.

On the merits, the Commission finds that the audit reductions are partially correct.

During the audit period, the claimant diverted solid waste, exceeding the mandated diversion rate in all years. The Controller correctly presumed, consistent with the test claim statutes and the court's interpretation of those statutes, and without any evidence to the contrary, that the claimant realized cost savings during the audit period equal to the avoided landfill disposal fee per ton of waste required to be diverted.

Based on the evidence in the record, the Commission finds that the Controller's calculation of offsetting cost savings for all years in the audit period except the first half of fiscal year 2003-2004 is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. Because the claimant exceeded the mandate every year of the audit period, the Controller calculated offsetting savings by allocating the diversion to reflect the mandate. To allocate the diversion, the Controller divided the percentage of solid waste required to be diverted by the test claim statute (either 25 percent or 50 percent) by the actual percentage of solid waste diverted (as annually reported by the claimant to the California Integrated Waste Management Board (CIWMB)). The allocated tonnage of solid waste diverted was then multiplied by the avoided landfill disposal fee (based on the statewide average fee) to calculate the offsetting savings realized.<sup>55</sup> The formula allocates cost savings based on the mandated rate of diversion, and is intended to avoid penalizing the claimant for diverting more solid waste than the percentage mandated by law.<sup>56</sup> The claimant has not filed any evidence to rebut the statutory presumption of cost savings or to show that the statewide average disposal fee is incorrect or arbitrary. Thus, the Controller's reduction of costs claimed for these fiscal years is correct.

However, the Controller's calculation of cost savings for the first half of fiscal year 2003-2004, based on an incorrect mandated diversion rate, is incorrect as a matter of law. The Controller allocated the diversion rate for 2003-2004, as it did for the other fiscal years, because the claimant exceeded the mandate. However, the Controller used a 50 percent rate to calculate the allocated diversion rate although the test claim statutes required only 25 percent diversion in calendar year 2003.<sup>57</sup> The requirement to divert 50 percent of solid waste did not become operative until January 1, 2004,<sup>58</sup> so the calculation of cost savings for fiscal year 2003-2004 is incorrect as a matter of law.

Applying the Controller's cost savings formula (using the mandated 25 percent diversion rate to calculate offsetting cost savings) to the first half of fiscal year 2003-2004, results in offsetting savings of \$2,430 (25 percent divided by 57.68 percent, multiplied by 152.25 tons diverted multiplied by the statewide average landfill disposal fee of \$36.83) rather than \$4,861. The

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<sup>54</sup> Exhibit A, IRC, page 27 (Final Audit Report).

<sup>55</sup> Exhibit A, IRC, pages 33; Exhibit B, Controller's Late Comments on the IRC, page 16-18.

<sup>56</sup> Exhibit B, Controller's Late Comments on the IRC, page 16.

<sup>57</sup> Exhibit B, Controller's Late Comments on the IRC, page 82.

<sup>58</sup> Public Resources Code sections 42921; Exhibit A, IRC, page 90 (Parameters and Guidelines).

Commission finds that the difference of \$2,431 has been incorrectly reduced and should be reinstated to the claimant.

The claimant also questions the Controller's adjustment of \$5,130, contending that the \$5,130 was offsetting revenues and not offsetting savings. The claimant's reimbursement claims, however, identify the \$5,130 as offsetting savings. Thus, the Controller calculated the total realized offsetting savings by subtracting the offsetting savings reported by the claimant, resulting in an overall reduction of \$38,247 instead of \$43,377.<sup>59</sup> This adjustment did not result in a reduction of costs claimed within the meaning of Government Code section 17551(d) and thus, the Commission does not have jurisdiction to determine if the adjustment was correct.

Therefore, the Commission partially approves this IRC, and requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate \$2,431 to the claimant.

## COMMISSION FINDINGS

### I. Chronology

- 10/07/2005 The claimant filed its fiscal year 1999-2000, 2000-2001, 2003-2004, and 2004-2005 reimbursement claims.<sup>60</sup>
- 01/16/2007 The claimant filed its 2005-2006 reimbursement claim.<sup>61</sup>
- 01/17/2014 The Controller notified the claimant of the audit.<sup>62</sup>
- 04/11/2014 The Controller issued the Final Audit Report.<sup>63</sup>
- 08/14/2014 The claimant filed this IRC.<sup>64</sup>
- 12/30/2014 The Controller filed late comments on the IRC.<sup>65</sup>

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<sup>59</sup> Exhibit A, IRC, pages 31-32 (Final Audit Report).

<sup>60</sup> Exhibit B, Controller's Late Comments on the IRC, page 16. According to Exhibit A, IRC, pages 151-175, these claims were signed on September 30, 2005.

<sup>61</sup> Exhibit B, Controller's Late Comments on the IRC, page 16. According to Exhibit A, IRC, page 177, this claim was signed on January 5, 2007.

<sup>62</sup> Exhibit B, Controller's Late Comments on the IRC, page 25.

<sup>63</sup> Exhibit A, IRC, page 27 (Final Audit Report).

<sup>64</sup> Exhibit A, IRC, page 1.

<sup>65</sup> Exhibit B, Controller's Late Comments on the IRC, page 1. Note that Government Code section 17553(d) states: "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and Proposed Decision.

02/16/2018 Commission staff issued the Draft Proposed Decision.<sup>66</sup>

02/23/2018 The Controller filed comments on the Draft Proposed Decision.<sup>67</sup>

## **II. Background**

### **A. The *Integrated Waste Management Program***

The test claim statutes require community college districts<sup>68</sup> to adopt and implement, in consultation with CIWMB (which is now the California Department of Resources Recycling and Recovery, or CalRecycle), integrated waste management (IWM) plans to reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content in all agency offices and facilities.<sup>69</sup> To implement their plans, districts must divert from landfill disposal at least 25 percent of generated solid waste by January 1, 2002, and at least 50 percent by January 1, 2004. To divert means to “reduce or eliminate the amount of solid waste from solid waste disposal...”<sup>70</sup>

CIWMB developed and adopted a model IWM plan on February 15, 2000, and the test claim statutes provide that if a district does not adopt an IWM plan, the CIWMB model plan governs the community college.<sup>71</sup> Each district is also required to report annually to CIWMB on its progress in reducing solid waste; and the reports’ minimum contents are specified in statute.<sup>72</sup> The test claim statutes also require a community college, when entering into or renewing a lease, to ensure that adequate areas are provided for and adequate personnel are available to oversee collection, storage, and loading of recyclable materials in compliance with CIWMB’s requirements.<sup>73</sup> Additionally, the test claim statutes added Public Resources Code section 42925(a), which addressed cost savings from IWM plan implementation:

Any cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency’s integrated waste management plan to fund plan implementation and administration costs, in accordance with Sections 12167 and 12167.1 of the Public Contract Code.

The Public Contract Code sections referenced in section 42925(a) require that revenue received as a result of the community college’s IWM plan be deposited in CIWMB’s Integrated Waste Management Account. After July 1, 1994, CIWMB is authorized to spend the revenue upon

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<sup>66</sup> Exhibit C, Draft Proposed Decision.

<sup>67</sup> Exhibit D, Controller’s Comments on the Draft Proposed Decision.

<sup>68</sup> The test claim statutes apply to “state agencies” and define them to include “the California Community Colleges” (Pub. Res. Code, § 40196.3).

<sup>69</sup> Public Resources Code section 42920(b).

<sup>70</sup> Public Resources Code section 40124.

<sup>71</sup> Public Resources Code section 42920(b)(3).

<sup>72</sup> Public Resources Code section 42926.

<sup>73</sup> Public Resources Code section 42924(b).



appropriation by the Legislature to offset recycling program costs. Annual revenue under \$2,000 is to be continuously appropriated for expenditure by the community colleges, whereas annual revenue over \$2,000 is available for expenditures upon appropriation by the Legislature.<sup>74</sup>

On March 24, 2004, the Commission adopted the *Integrated Waste Management* Statement of Decision and determined that the test claim statutes impose a reimbursable state-mandated program on community college districts. The Commission also found that cost savings under Public Resources Code section 42925(a) did not preclude a reimbursable mandate under Government Code section 17556(e) because there was no evidence that offsetting savings would result in no net costs to a community college implementing an IWM plan, nor was there evidence that revenues received from plan implementation would be "in an amount sufficient to fund" the cost of the state-mandated program. The Commission found that any revenues received would be identified as offsetting revenue in the Parameters and Guidelines.

The Parameters and Guidelines were adopted on March 30, 2005, and authorize reimbursement for the increased costs to perform the following activities:

A. One-Time Activities (*Reimbursable starting January 1, 2000*)

1. Develop the necessary district policies and procedures for the implementation of the integrated waste management plan.
2. Train district staff on the requirements and implementation of the integrated waste management plan (one-time per employee). Training is limited to the staff working directly on the plan.

B. Ongoing Activities (*Reimbursable starting January 1, 2000*)

1. Complete and submit to the [Integrated Waste Management] Board the following as part of the State Agency Model Integrated Waste Management Plan (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.):
  - a. state agency or large state facility information form;
  - b. state agency list of facilities;
  - c. state agency waste reduction and recycling program worksheets that describe program activities, promotional programs, and procurement

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<sup>74</sup> Public Contract Code sections 12167 and 12167.1 are part of the State Assistance for Recycling Markets Act, which was originally enacted in 1989 to foster the procurement and use of recycled paper products and other recycled resources in daily state operations (See Pub. Contract Code, §§ 12153, 12160; Stats. 1989, ch. 1094). The Act, including sections 12167 and 12167.1, applies to California community colleges only to the limited extent that these sections are referenced in Public Resources Code section 42925. Community colleges are not defined as state agencies or otherwise subject to the Act's provisions for the procurement and use of recycled products in daily state operations. See Exhibit B, Controller's Late Comments on the IRC, pages 88-89 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355)).

activities, and other questionnaires; and

- d. state agency integrated waste management plan questions.

NOTE: Although reporting on promotional programs and procurement activities in the model plan is reimbursable, implementing promotional programs and procurement activities is not.

- 2. Respond to any Board reporting requirements during the approval process. (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)
- 3. Consult with the Board to revise the model plan, if necessary. (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)
- 4. Designate one solid waste reduction and recycling coordinator for each college in the district to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 – 42928). The coordinator shall implement the integrated waste management plan. The coordinator shall act as a liaison to other state agencies (as defined by section 40196.3) and coordinators. (Pub. Resources Code, § 42920, subd. (c).)
- 5. Divert at least 25 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2002, and at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting activities. Maintain the required level of reduction, as approved by the Board. (Pub. Resources Code, §§ 42921 & 42922, subd. (i).)

C. Alternative Compliance (*Reimbursable from January 1, 2000 – December 31, 2005*)

- 1. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42923 subds. (a) & (c).)
  - a. Notify the Board in writing, detailing the reasons for its inability to comply.
  - b. Request of the Board an alternative to the January 1, 2002 deadline.
  - c. Provide evidence to the Board that the college is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan.
  - d. Provide information that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college.

- e. Submit a plan of correction that demonstrates that the college will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.
2. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2004 deadline to divert 50 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42922, subds. (a) & (b).)
    - a. Notify the Board in writing, detailing the reasons for its inability to comply.
    - b. Request of the Board an alternative to the 50-percent requirement.
    - c. Participate in a public hearing on its alternative requirement.
    - d. Provide the Board with information as to:
      - (i) the community college's good faith efforts to implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and demonstration of its progress toward meeting the alternative requirement as described in its annual reports to the Board;
      - (ii) the community college's inability to meet the 50 percent diversion requirement despite implementing the measures in its plan;
      - (iii) how the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve; and,
      - (iv) the circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.<sup>75</sup>

D. Accounting System (*Reimbursable starting January 1, 2000*)

Developing, implementing, and maintaining an accounting system to enter and track the college's source reduction, recycling and composting activities, the cost of those activities, the proceeds from the sale of any recycled materials, and such other accounting systems which will allow it to make its annual reports to the state and determine waste reduction. Note: only the pro-

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<sup>75</sup> These alternative compliance and time extension provisions in part C were sunset on January 1, 2006, but were included in the adopted Parameters and Guidelines.

rata portion of the costs incurred to implement the reimbursable activities can be claimed.

E. Annual Report (*Reimbursable starting January 1, 2000*)

Annually prepare and submit, by April 1, 2002, and by April 1 each subsequent year, a report to the Board summarizing its progress in reducing solid waste. The information in the report must encompass the previous calendar year and shall contain, at a minimum, the following as outlined in section 42926, subdivision (b): (Pub. Resources Code, §§ 42926, subd. (a) & 42922, subd. (i).)

1. calculations of annual disposal reduction;
2. information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors;
3. a summary of progress made in implementing the integrated waste management plan;
4. the extent to which the community college intends to use programs or facilities established by the local agency for handling, diversion, and disposal of solid waste (If the college does not intend to use those established programs or facilities, it must identify sufficient disposal capacity for solid waste that is not source reduced, recycled or composted.);
5. for a community college that has been granted a time extension by the Board, it shall include a summary of progress made in meeting the integrated waste management plan implementation schedule pursuant to section 42921, subdivision (b), and complying with the college's plan of correction, before the expiration of the time extension;
6. for a community college that has been granted an alternative source reduction, recycling, and composting requirement by the Board pursuant to section 42922, it shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

F. Annual Recycled Material Reports (*Reimbursable starting July 1, 1999*)

Annually report to the Board on quantities of recyclable materials collected for recycling. (Pub. Contract Code, § 12167.1.) (See Section VII. regarding offsetting revenues from recyclable materials.)<sup>76</sup>

The Parameters and Guidelines further require that each claimed reimbursable cost be supported by contemporaneous source documentation.<sup>77</sup>

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<sup>76</sup> Exhibit A, IRC, page 40-43 (Parameters and Guidelines, adopted March 30, 2005).

<sup>77</sup> Exhibit A, IRC, page 40 (Parameters and Guidelines, adopted March 30, 2005).

And as originally adopted, the Parameters and Guidelines required community college districts to identify and deduct from their reimbursement claims all of the offsetting revenues received from the sale of recyclable materials, limited by the provisions of Public Resources Code section 42925 and Public Contract Code section 12167.1. The original Parameters and Guidelines did not require community colleges to identify and deduct from their claims any offsetting cost savings resulting from the solid waste diversion activities required by the test claim statutes.<sup>78</sup>

### **B. Superior Court Decision on Cost Savings and Offsets Under the Program**

After the Parameters and Guidelines were adopted, the Department of Finance (Finance) and CIWMB filed a petition for writ of mandate requesting the court to direct the Commission to set aside the Test Claim Statement of Decision and Parameters and Guidelines and to issue a new Decision and Parameters and Guidelines that give full consideration to the cost savings and offsetting revenues community college districts will achieve by complying with the test claim statutes, including all cost savings realized from avoided landfill disposal fees and revenues received from the collection and sale of recyclable materials. The petitioners further argued that Public Contract Code sections 12167 and 12167.1 do not require community college districts to deposit revenues received from the collection and sale of recyclable materials into the Integrated Waste Management Account, as determined by the Commission, but instead allow community college districts to retain all revenues received. The petitioners argued that such revenues must be identified as offsetting revenues and applied to the costs of the program, without the community college district obtaining the approval of the Legislature or CIWMB.

On May 29, 2008, the Sacramento County Superior Court granted the petition for writ of mandate, finding that the Commission's treatment of cost savings and revenues in the Parameters and Guidelines was erroneous and required that the Parameters and Guidelines be amended. The court said:

There is no indication in the administrative record or in the legal authorities provided to the court that, as respondent [Commission] argues, a California Community College might not receive the full reimbursement of its actual increased costs required by section 6 if its claims for reimbursement of IWM plan costs were offset by realized cost savings and all revenues received from the plan activities.<sup>79</sup>

Instead, the court recognized that community colleges are “*likely* to experience costs savings in the form of reduced or avoided costs of landfill disposal” as a result of the mandated activities in Public Resources Code section 42921 because reduced or avoided costs “are a direct result and an integral part of the IWM plan mandated under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste and associated landfill

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<sup>78</sup> Exhibit A, IRC, pages 37-46 (Parameters and Guidelines, adopted March 30, 2005).

<sup>79</sup> Exhibit B, Controller's Late Comments on the IRC, page 36, footnote 1 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter, Footnote 1).

disposal costs are reduced or avoided.”<sup>80</sup> The court noted that “diversion is defined in terms of landfill disposal for purposes of the IWM plan mandates” and cited the statutory definition of diversion: “activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division [i.e., division 30, including § 42920 et seq.]” as well as the statutory definition of disposal: “the management of solid waste through landfill disposal or transformation at a permitted solid waste facility.”<sup>81</sup> The court explained:

[R]eduction or avoidance of landfill fees resulting from solid waste diversion activities under § 42920 et seq. represent savings *which must be offset* against the costs of the diversion activities to determine the reimbursable costs of the IWM plan implementation . . . The amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(l) of Public Resources Code section 42926.<sup>82</sup>

The court harmonized section 42925(a) with Public Contract Code sections 12167 and 12167.1:

By requiring the redirection of cost savings from state agency IWM plans to fund plan implementation and administration costs “in accordance with Sections 12167 and 12167.1 of the Public Contract Code,” section 42925 assures that cost savings realized from state agencies’ IWM plans are handled in a manner consistent with the handling of revenues received from state agencies’ recycling plans under the State Assistance for Recycling Markets Act. Thus, in accordance with section 12167, state agencies, along with California Community Colleges which are defined as state agencies for purposes of IWM plan requirements in Public Resources Code section 42920 et seq. [citations omitted], must deposit cost savings resulting from IWM plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the Integrated Waste Management Board for the purpose of offsetting IWM plan costs. In accordance with section 12167.1 and notwithstanding section 12167, cost savings from the IWM plans of the agencies

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<sup>80</sup> Exhibit B, Controller’s Late Comments on the IRC, page 36 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter). Emphasis added.

<sup>81</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 36-37 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>82</sup> Exhibit B, Controller’s Late Comments on the IRC, page 37 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter). Emphasis added.

and colleges that do not exceed \$2000 annually are continuously appropriated for expenditure by the agencies and colleges for the purpose of offsetting IWM plan implementation and administration costs; cost savings resulting from IWM plans in excess of \$2000 annually are available for such expenditure by the agencies and colleges when appropriated by the Legislature.<sup>83</sup>

The court issued a writ of mandate directing the Commission to amend the Parameters and Guidelines to require community college districts claiming reimbursable costs of an IWM plan to:

1. Identify and offset from their claims, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans; and
2. Identify and offset from their claims all of the revenue generated as a result of implementing their plans, without regard to the limitations or conditions described in sections 12167 and 12167.1 of the Public Contract Code.<sup>84</sup>

### **C. Parameters and Guidelines Amendment Pursuant to the Writ**

In compliance with the writ, the Commission amended the Parameters and Guidelines on September 26, 2008 to add section VIII. Offsetting Cost Savings, which states:

Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1. Pursuant to these statutes, community college districts are required to deposit cost savings resulting from their Integrated Waste Management plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the California Integrated Waste Management Board for the purpose of offsetting Integrated Waste Management plan costs. Subject to the approval of the California Integrated Waste Management Board, cost savings by a community college that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting Integrated Waste Management program costs. Cost savings exceeding two thousand dollars (\$2,000) annually may be available for expenditure by the community college only when appropriated by the Legislature. To the extent so approved or appropriated and applied to the college, these

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<sup>83</sup> Exhibit B, Controller's Late Comments on the IRC, pages 30-39 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter)).

<sup>84</sup> Exhibit B, Controller's Late Comments on the IRC, page 45 (Judgment Granting Petition for Writ of Administrative Mandamus).

amounts shall be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan.<sup>85</sup>

Section VII. of the Parameters and Guidelines, on Offsetting Revenues, was amended as follows (amendments in strikeout and underline):

Reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds allocated to any service provided under this program, shall be identified and ~~deducted~~ offset from this claim. Offsetting revenue shall include all revenues generated from implementing the Integrated Waste Management Plan. ~~the revenues cited in Public Resources Code section 42925 and Public Contract Code sections 12167 and 12167.1.~~

~~Subject to the approval of the California Integrated Waste Management Board, revenues derived from the sale of recyclable materials by a community college that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting recycling program costs. Revenues exceeding two thousand dollars (\$2,000) annually may be available for expenditure by the community college only when appropriated by the Legislature. To the extent so approved or appropriated and applied to the college, these amounts are a reduction to the recycling costs mandated by the state to implement Statutes 1999, chapter 764.~~

In addition, revenue from a building-operating fee imposed pursuant to Education Code section 76375, subdivision (a) if received by a claimant and the revenue is applied to this program, shall be deducted from the costs claimed.<sup>86</sup>

All other requirements in the Parameters and Guidelines remained the same.

CIWMB requested additional amendments to the Parameters and Guidelines at this September 2008 hearing, including a request to alter the offsetting savings provision to require community college districts to provide offsetting savings information *whether or not* the offsetting savings generated in a fiscal year exceeded the \$2,000 continuous appropriation required by Public Contract Code sections 12167 and 12167.1. The Commission denied the request because the proposed language went beyond the scope of the court's judgment and writ.<sup>87</sup>

CIWMB also requested adding a requirement for community college districts to analyze specified categories of potential cost savings when filing their reimbursement claims. The Commission found that the court determined that the amount or value of cost savings is already available from the annual reports the community college districts provide to CIWMB pursuant to Public Resources Code section 42926(b). This report is required to include the district's "calculations of annual disposal reduction" and "information on the changes in waste generated

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<sup>85</sup> Exhibit A, IRC page 58 (Amended Parameters and Guidelines, adopted Sept. 26, 2008).

<sup>86</sup> Exhibit A, IRC, pages 45, 58-59 (Amended Parameters and Guidelines, adopted Sept. 26, 2008).

<sup>87</sup> Exhibit E, Commission on State Mandates, Excerpt from the Minutes for the September 26, 2008 Meeting.



or disposed of due to increases or decreases in employees, economics, or other factors.” Thus, the Commission denied CIWMB’s request and adopted the staff analysis finding that the request was beyond the scope of the court’s writ and judgment. The Commission also noted that the request was the subject of separate pending request filed by CIWMB to amend the Parameters and Guidelines and would therefore be further analyzed for that matter.

#### **D. Subsequent Request by CIWMB to Amend the Parameters and Guidelines to Require Detailed Reports on Cost Savings and Revenues**

CIWMB filed a request to amend the Parameters and Guidelines to require community college districts to submit with their reimbursement claims a separate worksheet and report analyzing the costs incurred and avoided and any fees received relating to staffing, overhead, materials, storage, transportation, equipment, the sale of commodities, avoided disposal fees, and any other revenue received relating to the mandated program as specified by CIWMB. At its January 30, 2009 meeting, the Commission denied the request for the following reasons: there is no requirement in statute or regulation that community college districts perform the analysis specified by CIWMB; the Commission has no authority to impose additional requirements on community college districts regarding this program; the offsetting cost savings paragraph in the Parameters and Guidelines already identifies the offsetting savings consistent with the language of Public Resources Code section 42925(a), Public Contract Code sections 12167 and 12167.1, and the court’s judgment and writ; and information on cost savings is already available in the community colleges’ annual reports submitted to CIWMB, as required by Public Resources Code section 42926(b)(1).<sup>88</sup>

#### **E. The *Integrated Waste Management* Program Made Optional**

This program was made optional by Statutes 2010, chapter 724 (AB 1610), section 34, effective October 19, 2010 and has remained so since that time.<sup>89</sup>

#### **F. The Controller’s Audit**

The Controller audited the claimant’s reimbursement claims for fiscal years 1999-2000, 2000-2001 and 2003-2004 through 2005-2006. The claims for fiscal years 2001-2002 and 2002-2003 were not audited because the Controller stated that the statute of limitations to initiate the review had expired for those years.<sup>90</sup>

Of the \$230,988 claimed during the audit period, the Controller found that \$192,741 is allowable and \$38,247 is unallowable because the claimant did not report offsetting savings from implementation of its IWM plan.<sup>91</sup> The Controller found that the claimant reported offsetting savings of \$5,130 during the audit period, but realized total offsetting savings of \$43,377 from

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<sup>88</sup> Exhibit E, Commission on State Mandates, Item 9, Final Staff Analysis of Proposed Amendments to the Parameters and Guidelines for *Integrated Waste Management*, 05-PGA-16, January 30, 2009, pages 2-3.

<sup>89</sup> See Government Code section 17581.5.

<sup>90</sup> Exhibit A, IRC, page 27 (Final Audit Report).

<sup>91</sup> Exhibit A, IRC, page 27 (Final Audit Report). Exhibit B, Controller’s Late Comments on the IRC, page 23.

implementation of its IWM plan. Thus, the claimant understated offsetting savings by \$38,247 (the difference between \$43,377 and \$5,130), which the Controller reduced.<sup>92</sup>

The Controller's audit finding is based on the court's ruling, which states, "the amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California community colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(1) of Public Resources Code section 42926,"<sup>93</sup> the resulting amendment to the Parameters and Guidelines, and the claimant's annual reports to CIWMB.

The Controller determined that the claimant diverted more solid waste than the percentage mandated by the test claim statute each year of the audit period.<sup>94</sup> Thus, the Controller found that the claimant realized cost savings in each year of the audit period.

For the years the claimant exceeded the diversion mandate, the Controller calculated offsetting cost savings by allocating the diversion to reflect the mandate. To allocate the diversion, the Controller divided the percentage of solid waste required to be diverted (either 25 or 50 percent) by the actual percentage of solid waste diverted (as reported by the claimant to CIWMB). The allocated diversion was then multiplied by the avoided landfill disposal fee (based on the statewide average fee) to calculate the offsetting savings realized in those years.<sup>95</sup>

$$\begin{array}{ccccc} & \text{Allocated Diversion \%} & & & \\ & \text{┌───────────┐} & & & \\ & \text{Maximum} & & & \text{Avoided} \\ & \text{Allowable} & & & \text{Landfill} \\ \text{Offsetting} & = & \frac{\text{Diversion \%}}{\text{Actual}} & \times & \text{Disposal Fee} \\ \text{Savings} & & \text{Diversion \%} & \times & \text{(per Ton)} \\ \text{Realized} & & & \text{Tonnage} & \\ & & & \text{Diverted} & \end{array}$$

The Controller provided an example of how the formula works. For calendar year 2005, the claimant reported diversion of 248 tons of solid waste and disposal of 223.4 tons generated that year. Diverting 248 tons out of the 223.4 tons of waste generated results in a diversion rate of 52.61 percent (exceeding the 50 percent required).<sup>96</sup> To avoid penalizing the claimant for diverting more solid waste than the percentage mandated,<sup>97</sup> the Controller allocated the diversion by dividing the diversion rate mandated by the test claim statute (50 percent) by the actual diversion rate (52.61 percent), which equals 95.04 percent. The 95.04 percent allocated diversion is then multiplied by the 248 tons diverted that year, which equals 235.7 tons of

<sup>92</sup> Exhibit A, IRC, pages 31-32 (Final Audit Report).

<sup>93</sup> Exhibit B, Controller's Late Comments on the IRC, page 37 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>94</sup> Exhibit B, Controller's Late Comments on the IRC, page 82.

<sup>95</sup> Exhibit A, IRC, pages 33 (Final Audit Report).

<sup>96</sup> Exhibit B, Controller's Late Comments on the IRC, pages 16, 82 (Controller's calculation of offsetting savings).

<sup>97</sup> Exhibit B, Controller's Late Comments on the IRC, page 16.

diverted solid waste, instead of the 248 tons actually diverted. The allocated 235.7 tons of diverted waste is then multiplied by the statewide average disposal fee per ton, which in calendar year 2005 was \$39, resulting in “offsetting cost savings” for calendar year 2005 of \$9,192.<sup>98</sup>

The Controller pointed out in the audit report that the claimant did not provide documentation supporting different disposal fees to calculate offsetting cost savings.<sup>99</sup>

### **III. Positions of the Parties**

#### **A. Redwoods Community College District**

The claimant maintains that the audit reductions are incorrect and requests the reinstatement of the \$38,247 reduced.

The claimant first argues that the three-year deadline to initiate the audit had expired for fiscal year 2003-2004 when the Controller commenced the audit. According to the claimant: “Pursuant to Chapter 724, Statutes of 2010, an appropriation was made to the District by January 14, 2011, for FY 2003-2004 for \$6,088. The date of payment is a matter of record not available to the District but that can be produced by the Controller.”<sup>100</sup> The claimant cites the audit report that states that the claimant was first contacted by the Controller on January 17, 2014 regarding the audit, which is more than three years after the January 14, 2011 appropriation for the 2003-2004 claim, so the Controller did not have jurisdiction to audit fiscal year 2003-2004.<sup>101</sup>

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<sup>98</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 16, 82 (Controller’s calculations of offsetting savings). Page 16 of the Controller’s Late Comments on the IRC describe the calculation differently than the formula identified in the audit report, but the result is the same. The Controller states that cost savings can be calculated by multiplying the total tonnage generated (solid waste diverted + disposed) by the mandated diversion percentage (25 or 50 percent), times the avoided landfill disposal fee:

For example, in calendar 2005, the district reported to CalRecycle that it diverted 248 tons of solid waste and disposed of 223.40 tons, which results in an overall diversion percentage of 52.61 % (Tab 7). Since the district was required to divert 50% for that year to meet the mandated requirements and comply with the Public Resources Code, it needed to have diverted 235.70 tons (471.4 total tonnage generated x 50%) in order to satisfy the 50% requirement. Therefore, we adjusted our calculation to compute offsetting savings based on 235.70 tons of diverted solid waste rather than 248 tons.

Using this formula also results in cost savings for calendar year 2005 of \$47,832 (471.4 tons generated x 50 percent = 235.7 tons x \$39 = \$9,192).

<sup>99</sup> Exhibit A, IRC, page 34 (Final Audit Report).

<sup>100</sup> Exhibit A, IRC, page 9.

<sup>101</sup> Exhibit A, IRC, page 10.

The claimant next alleges that it did not realize any cost savings as a result of the mandate and quotes the Superior Court decision (discussed above) that cost savings will “most likely” occur as a result of reduced or avoided costs of landfill disposal, arguing:

The court presupposes a previous legal requirement for districts to incur landfill disposal fees to divert solid waste. Thus, potentially relieved of the need to incur new or additional landfill fees for increased waste diversion, a cost savings would occur. There is no finding of fact or law in the court decision or from the Commission Statement of Decision for the test claim for this assumed duty to use landfills.<sup>102</sup>

The claimant further argues that the offsetting savings provision in the Parameters and Guidelines does not assume that the cost savings occurred, but instead requires that the cost savings be *realized*. For the savings to be realized, the claimant contends that the following chain of events are required:

[T]he cost savings must exist (avoided landfill costs); be converted to cash; amounts in excess of \$2,000 per year deposited in the state fund; and, these deposits by the districts appropriated by the Legislature to districts for purposes of mitigating the cost of implementing the plan. None of those prerequisite events occurred so no cost savings were "realized" by the District. Regardless, the adjustment cannot be applied to the District since no state appropriation of the cost savings was made to the District.<sup>103</sup>

The claimant also argues that the Parameters and Guidelines are silent as to how to calculate the avoided costs, but that the court provided two alternative methods, either disposal reduction or diversion reported by districts. The Controller used the diversion percentage, which assumes, without findings of fact, that all diversion tonnage is landfill disposal tonnage reduction. The claimant contends that the Controller’s calculation of cost savings is wrong because: (1) the formula is a standard of general application that was not adopted pursuant to the Administrative Procedure Act and is therefore an unenforceable underground regulation; (2) the Controller’s formula assumes facts not in evidence, such as applying the diversion percentage reported by the claimant, and assumes that all tonnage diverted would have been disposed in a landfill, although some waste may have been composted or may not apply to the mandate (e.g. paint); and (3) the landfill disposal fee, a statewide average calculated by CIWMB, does not include the data used to generate the average fee amounts, so the average is unknown and unsupported by the audit findings.<sup>104</sup>

The claimant further contends that application of the cost savings formula is incorrect, alleging that:

The District did not claim landfill costs, so there are none to be offset. The adjustment method does not match or limit the landfill costs avoided to landfill costs, if any, actually claimed. Instead, the total adjustment amount for avoided

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<sup>102</sup> Exhibit A, IRC, pages 8-10.

<sup>103</sup> Exhibit A, IRC, pages 13-14. Emphasis in original.

<sup>104</sup> Exhibit A, IRC, pages 14-17.

landfill costs is applied to the total annual claim amounts and thus reduces unrelated salary and benefit costs....<sup>105</sup>

Moreover, the Controller's calculation method prevents the claimant from receiving full reimbursement for its actual increased program costs. The claimant contends, using audit results for 26 other claimants under the *Integrated Waste Management* program, the application of the Controller's formula has arbitrary results because the percentages of allowed costs for those claimants ranges from zero to 83.4 percent.<sup>106</sup>

According to the claimant, the audit report erroneously recognized \$5,130 as reported offsetting savings, when in fact, that amount is offsetting recycling revenue.<sup>107</sup> The claimant therefore contends that it "properly reported the recycling income as a reduction of total claimed cost[s] and also not subject to state appropriation in the form of cost savings."<sup>108</sup> The claimant requests that the Commission make a finding on this adjustment.<sup>109</sup>

Finally, the claimant argues: (1) the Controller used the wrong standard of review in that the claimed costs were not found to be excessive or unreasonable, as required by Government Code section 17561(d)(2); and (2) the Controller has the burden of proof as to the propriety of its audit findings "because it bears the burden of going forward and because it is the party with the power to create, maintain, and provide evidence regarding its auditing methods and procedures, as well as the specific facts relied upon for its audit findings."<sup>110</sup>

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

## **B. State Controller's Office**

The Controller maintains that the audit findings are correct. The Controller first argues that it complied with the three-year audit deadline in Government Code section 17558.5, in that it paid the claimant for the fiscal year 2003-2004 reimbursement claim on January 28, 2011, and notified the district of payments made pursuant to Chapter 724, Statutes 2010, totaling \$101,410. Because it initiated the audit on January 17, 2014, within the three-year deadline, the Controller had jurisdiction to audit the claim for fiscal year 2003-2004.<sup>111</sup>

The Controller states that the claimant understated offsetting cost savings of \$38,247 from implementation of its IWM plan.<sup>112</sup>

Regarding the claimant's statement that there is only a presumption to incur landfill disposal fees to dispose of solid waste, the Controller notes that the claimant does not indicate "that it disposed

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<sup>105</sup> Exhibit A, IRC, page 17.

<sup>106</sup> Exhibit A, IRC, pages 17-18.

<sup>107</sup> Exhibit A, IRC, page 19.

<sup>108</sup> Exhibit A, IRC, page 20.

<sup>109</sup> Exhibit A, IRC, page 22.

<sup>110</sup> Exhibit A, IRC, page 21.

<sup>111</sup> Exhibit B, Controller's Late Comments on the IRC, pages 10-11.

<sup>112</sup> Exhibit B, Controller's Late Comments on the IRC, page 11.

of its solid waste at any location other than a landfill or used any other methodology to dispose of its waste rather than to contract with a commercial waste hauler. Therefore, comments relating to legal requirements regarding alternatives for the disposal of solid waste are irrelevant.”<sup>113</sup> The Controller cites some of the claimant’s annual reports to indicate that it disposed of solid waste and contracted with a waste hauler during the audit period.<sup>114</sup> The Controller also found that the claimant’s website referred to diversion from a landfill.<sup>115</sup> As the Controller points out:

Unless the district had an undisclosed arrangement with its contract waste hauler, the district did not dispose of its solid waste at a landfill for no cost. As noted by the district in its reports to CalRecycle (**Tab 7**) and on its website (**Tab 8**), the district realized savings as a direct result of its IWM plan. For example, two of the district’s campus sites are located in Eureka, California. An internet search for landfill fees revealed that the Hawthorne Street Transfer Station in Eureka, California, currently charges \$154.28 per ton to dispose of solid waste (**Tab 9**). Therefore, the higher the rate of diversion, the less trash that is disposed at a landfill, resulting in cost savings to the district.<sup>116</sup>

The Controller also pointed to a statement on the claimant’s website in which the claimant acknowledged cost savings from its diversion activities, noting: “the district states ‘With the advent of AB 939 and the continuous increase of costs at the landfill, the College realized that reduction in waste to the landfill also equated to a reduction in budgetary costs.’”<sup>117</sup>

As to the claimant not remitting cost savings from the implementation of its IWM plan into the Integrated Waste Management Account in compliance with the Public Contract Code, the Controller asserts that the claimant is not precluded from the requirement to do so, as indicated in the Parameters and Guidelines and the court ruling. The Controller says the claimant’s statements support that the claimant realized cost savings from implementing its IWM plan.<sup>118</sup>

The Controller disagrees with the claimant’s argument that the formula is a standard of general application that is an underground regulation because it used a “court approved methodology” to determine the “required offset.” The Controller also states that the claimant did not amend any of its reimbursement claims after the Parameters and Guidelines were amended in September 2008. According to the Controller: “We believe that this ‘court identified’ approach provides a reasonable methodology to identify the applicable offsets.”<sup>119</sup>

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<sup>113</sup> Exhibit B, Controller’s Late Comments on the IRC, page 14.

<sup>114</sup> Exhibit B, Controller’s Late Comments on the IRC, page 14.

<sup>115</sup> Exhibit B, Controller’s Late Comments on the IRC, page 14.

<sup>116</sup> Exhibit B, Controller’s Late Comments on the IRC, page 14.

<sup>117</sup> Exhibit B, Controller’s Late Comments on the IRC, page 14.

<sup>118</sup> Exhibit B, Controller’s Late Comments on the IRC, page 15.

<sup>119</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 15-16.

The Controller also states that it “allocated” the offsetting savings to avoid penalizing the claimant for diverting more than the minimum rate of diversion required during the audit period.<sup>120</sup> According to the Controller:

Since there is no State mandate to exceed solid waste diversion greater than 25% for calendar years 2002 and 2003 or greater than 50% for calendar year 2004 and beyond, there is no basis for calculating offsetting savings realized for actual diversion percentages that exceeded the levels set by statute.<sup>121</sup>

The Controller also responded to the claimant’s argument against the assumption that all tonnage diverted would have been disposed in a landfill, even though some waste may have been composted or may not apply to the mandate. The Controller states,

We believe that the district is stating that they have always composted green waste and would not incur a cost to dispose of this waste at the landfill; therefore, to include the composted tonnage in the offsetting savings calculation is incorrect. We disagree. As a result of this mandated program, the district is claiming approximately \$9,000 in salaries and benefits for its gardeners to ‘divert solid waste from landfill disposal or transformation facilities - composting.’ **(Tab 13)** Therefore, it seems reasonable that the correlated landfill fees that the district did not incur for the composted materials resulted in savings to the district.<sup>122</sup>

The Controller also states that the claimant’s reference to paint disposal is irrelevant because hazardous waste is not included in the diversion amounts that the claimant reported, and therefore, are not included in the Controller’s offsetting savings calculation.<sup>123</sup>

Regarding the data for the statewide disposal fee, the Controller states the information was provided by CIWMB, is included in the record, and is based on private surveys of a large percentage of landfills across California. The Controller cites its internet search for landfill fees that revealed that “the Hawthorne Street Transfer Station in Eureka, California, currently charges \$154.28 per ton to dispose of solid waste **(Tab 9)**. Therefore, we believe that the \$36 to \$46 ‘statewide average disposal fee’ used to calculate the offsetting savings realized by the district is reasonable.”<sup>124</sup> The Controller also notes that “the district did not provide any information, such as its contract with or invoices received from its commercial waste hauler (Eel River Disposal) to support either the landfill fees actually incurred by the district or to confirm that the statewide average landfill fee was greater than landfill fees incurred by the district.”<sup>125</sup>

In response to the claimant’s argument that it did not claim landfill costs, so there are none to offset, the Controller answers that the mandated program does not reimburse claimants for landfill costs incurred to dispose of solid waste, so none would be claimable. Rather, the

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<sup>120</sup> Exhibit B, Controller’s Late Comments on the IRC, page 16.

<sup>121</sup> Exhibit B, Controller’s Late Comments on the IRC, page 16.

<sup>122</sup> Exhibit B, Controller’s Late Comments on the IRC, page 17.

<sup>123</sup> Exhibit B, Controller’s Late Comments on the IRC, page 17.

<sup>124</sup> Exhibit B, Controller’s Late Comments on the IRC, page 17.

<sup>125</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 17-18.

program reimburses claimants' costs to divert solid waste from disposal, which according to the Controller, results in both a reduction of solid waste going to a landfill and the associated costs of having the waste hauled there, which creates offsetting savings that the claimant is required to identify in its mandated cost claims.<sup>126</sup>

In response to the claimant's argument that "the adjustment method does not match or limit the landfill costs avoided to landfill costs, if any, actually claimed," the Controller quotes Public Resources Code section 42925 which provides that "cost savings realized as a result of the IWM plan are to "fund plan *implementation and administration costs*." <sup>127</sup> The Controller argues that offsetting savings applies to the whole program and is not limited to solid waste diversion activities. The Controller also cites the reimbursable activities in the Parameters and Guidelines that refer to "implementation of the IWM plan," concluding that it is reasonable that offsetting savings from implementing the plan be offset against direct costs to implement the plan.<sup>128</sup>

The Controller also commented on the claimant's allegation that the audit report erroneously recognized \$5,130 as the claimed offsetting recycling revenues, although \$7,941 of offsetting revenue and other reimbursements was reported and offset by the District. The Controller states:

The district's statement that the review report recognized \$5,130 as offsetting recycling revenues is incorrect. The review report (Exhibit A page 30 of 190) shows \$2,811 of offsetting revenues and reimbursements and \$5,130 as offsetting savings on page 2 of the report's Summary of Program Costs schedule (Attachment 1). In addition, the report identifies \$5,130 as offsetting savings reported by the district in the report's Finding and Recommendation (Attachment 3). ... In its response, the district states that the total amount of \$7,941 (\$5,130 plus \$2,811) was entirely related to recycling revenues. If that is the case, then the district did not properly follow SCO's Claiming Instructions (**Exhibit C**) for reporting offsetting savings and other reimbursements. The district did not provide any evidence in its claims or in its IRC filing supporting the amounts that it realized as recycling revenues.<sup>129</sup>

Finally, the Controller disagrees with claimant's argument that the Controller used the wrong standard of review. The Controller cites the statute that authorizes it to audit the claimant's records to verify actual mandate-related costs *and* reduce any claim that is excessive or unreasonable. In this case, the claims were excessive because the claimant's "mandated cost claims exceeded the proper amount based on the reimbursable costs allowable per statutory language and the program's parameters and guidelines."<sup>130</sup> As to the burden of proof, the

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<sup>126</sup> Exhibit B, Controller's Late Comments on the IRC, page 18.

<sup>127</sup> Public Resources Code section 42925. Emphasis added.

<sup>128</sup> Exhibit B, Controller's Late Comments on the IRC, pages 18-19.

<sup>129</sup> Exhibit B, Controller's Late Comments on the IRC, pages 20-21.

<sup>130</sup> Exhibit B, Controller's Late Comments on the IRC, page 22.



Controller states that it used data from the claimant's annual reports to CIWMB from implementing its IWM program.<sup>131</sup>

In comments on the Draft Proposed Decision, the Controller agreed with the conclusions that the audit was initiated and completed on time, and that the reductions for all years in the audit period were correct except for the first half of fiscal year 2003-2004. The Controller also agreed to reinstate \$2,431 to the claimant for the first half of year 2003-2004, "the reduction of which the Commission concluded was incorrect as a matter of law."<sup>132</sup>

#### **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.<sup>133</sup> 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."<sup>134</sup>

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.<sup>135</sup> 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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<sup>131</sup> Exhibit B, Controller's Late Comments on the IRC, pages 22.

<sup>132</sup> Exhibit D, Controller's Comments on the Draft Proposed Decision.

<sup>133</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>134</sup> *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.

<sup>135</sup> *Johnston 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 judgment 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.]’ ”<sup>136</sup>

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.<sup>137</sup> 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.<sup>138</sup>

**A. The Controller Timely Initiated the Audit for Fiscal Year 2003-2004 and Timely Completed the Audit of All Claims.**

Government Code section 17558.5 requires an audit to be initiated no later than three years after the date the reimbursement claim is filed or last amended. However, section 17558.5 also provides that *if no funds are appropriated or no payment is made* “to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.”<sup>139</sup> “In any case,” section 17558.5 requires the audit to be completed no later than two years after it is commenced.<sup>140</sup>

**1. The audit of the 2003-2004 reimbursement claim was timely initiated.**

The claimant signed its 2003-2004 reimbursement claim on September 30, 2005,<sup>141</sup> and filed the reimbursement claim with the State Controller’s Office on October 7, 2005.<sup>142</sup> However, the State did not apportion funds or pay the 2003-2004 reimbursement claim until January 2011. The claimant alleges that appropriations were made to the claimant by January 14, 2011 for the 2003-2004 reimbursement claim, and that the Controller initiated the audit more than three years

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<sup>136</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>137</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>138</sup> 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.

<sup>139</sup> Government Code section 17558.5 (as amended, Stats. 2002, ch. 1128 (AB 2834)).

<sup>140</sup> Government Code section 17558.5 (as amended, Stats. 2004, ch. 890 (AB 2856)).

<sup>141</sup> Exhibit A, IRC, page 164.

<sup>142</sup> Exhibit B, Controller’s Late Comments on the IRC, page 16.

later on January 17, 2014, according to the final audit report. Therefore, the claimant asserts that the Controller did not timely initiate the audit.<sup>143</sup>

Government Code section 17558.5(a) tolls the time to initiate the audit to three years from the date of initial payment on the claim, rather than three years from the date the claim was filed, “if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed,” as follows:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run *from the date of initial payment of the claim*. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.<sup>144</sup>

Although the Controller agrees that payment was first made on the 2003-2004 claim in January 2011, the parties dispute the date of payment. The claimant alleges:

Pursuant to Chapter 724, Statutes of 2010, appropriations were made to the District by January 14, 2011, for FY 2003-2004 for \$6,088. The date of payment is a matter of record not available to the District but that can be produced by the Controller.<sup>145</sup>

There is no evidence in the record, however, to support the claimant’s assertion that payment was made on January 14, 2011. Rather, the record supports a finding that payment was first made on the 2000-2001 reimbursement claims on either January 18, 2011, or January 28, 2011.

The claimant filed, as part of its IRC, a copy of a notice from the Controller to the claimant dated April 18, 2014 (following the audit), showing the audit adjustment to the 2003-2004 reimbursement claim, and noting a payment on this reimbursement claim on *January 18, 2011* by “Schedule No. AP00123A” of \$6,088. The letter states in pertinent part:

FIELD AUDIT FINDINGS	-	8,625.00
TOTAL ADJUSTMENTS		<u>- 8,625.00</u>
LESS PRIOR PAYMENT: SCHEDULE NO. AP00123A		
<b>PAID 01-18-2011</b>		<u>- 6,088.00</u>
AMOUNT DUE CLAIMANT		- 47,101.00 <sup>146</sup>

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<sup>143</sup> Exhibit A, IRC, pages 9-10.

<sup>144</sup> Emphasis added. This is the current version of section 17558.5, and the version in effect when these reimbursement claim was filed in October 2005 (Exhibit A, IRC, p. 171).

<sup>145</sup> Exhibit A, IRC, page 9.

<sup>146</sup> Exhibit A, IRC, page 188. Emphasis added.

The Controller asserts that payment was first made on the reimbursement claims on *January 28, 2011*, pursuant to Statutes of 2010, chapter 724 (AB 1610, eff. Oct. 19, 2010).<sup>147</sup> That statute appropriated funds to offset the outstanding balance of the State’s minimum funding obligation under Proposition 98 to school districts and community college districts, and required that funds first be paid in satisfaction of any outstanding claims for reimbursement of state-mandated costs. The Controller filed a copy of a remittance advice showing payments to the claimant under AB 1610 for several state-mandated programs, including \$6,088 for the *Integrated Waste Management* program for fiscal year 2003-2004 in “CLAIM SCHEDULE NUMBER: 1000149A, PAYMENT ISSUE DATE: 01/28/2011.”<sup>148</sup>

The Controller has not explained the discrepancy between the notice indicating payment of \$6,088 for the 2003-2004 reimbursement claim on January 18, 2011 by “Schedule No. AP00123A,” and the remittance advice indicating payment for the 2003-2004 reimbursement claims on January 28, 2011 by “Schedule Number: 1000149A.” Nevertheless, the Controller issued both documents that support a finding that payment was first made on the 2003-2004 reimbursement claim on either January 18, 2011, or January 28, 2011.

As indicated above, Government Codes section 17558.5(a) tolls the time to initiate the audit of a claim “if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed,” to three years from the date of initial payment on the claim. Therefore, using the earlier of the two dates in documents showing payment on the 2003-2004 reimbursement claim on January 18, 2011, the Controller had until January 18, 2014 to initiate the audit of the 2003-2004 reimbursement claim.

The Legislature has not specifically defined the event that initiates the audit and, unlike other auditing agencies,<sup>149</sup> the Controller has not adopted formal regulations (which can be viewed as the controlling interpretation of a statute), to clarify when the audit of a mandate reimbursement claim begins. Therefore, the Commission cannot, as a matter of law, state the event that initiates an audit in all cases, but must determine when the audit was initiated based on evidence in the record. Initiating an audit requires a unilateral act of the Controller. In this respect, Government Code section 17558.5(a) can be characterized as a statute of repose because it provides a period during which an audit has been commenced, and after which claimants may enjoy repose, dispose of evidence to support their claims, and assert a defense that the audit is not timely and therefore void.<sup>150</sup> Since the Controller’s authority to audit must be exercised within a specified time, it must be within the Controller’s exclusive control to meet or fail to meet the deadline.

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<sup>147</sup> Exhibit A, IRC, pages 29, 30 footnote 3 (Final Audit Report – “Payment from funds appropriated under Chapter 724, Statutes of 2010.”). Exhibit B, Controller’s Late Comments on the IRC, page 11 (“The SCO sent a remittance advice to the district dated January 28, 2011 (Tab 4), notifying the district of payments made on that date pursuant to Chapter 724, Statutes 2010 (Assembly Bill No. 1610) totaling \$101,410.”)

<sup>148</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 28-30.

<sup>149</sup> See, e.g., regulations adopted by the California Board of Equalization (title 18, section 1698.5, stating that an “audit engagement letter” is a letter “used by Board staff to confirm the start of an audit or establish contact with the taxpayer”).

<sup>150</sup> *Giest v. Sequoia Ventures, Inc.* (2000) 83 Cal.App.4th 300, 305.

The Controller has the burden of proof on this issue and must show with evidence in the record that the claimant was notified that an audit was being initiated by the statutory deadline to ensure that the claimant does not dispose of any evidence or documentation to support its claim for reimbursement.

The Controller asserts that the audit began on January 17, 2014, before the January 18, 2014 deadline. In support, the Controller filed a declaration by Jim Spano (Chief, Mandated Cost Audits Bureau, Division of Audits), stating under penalty of perjury that “a review of the claims . . . commenced on January 17, 2014, . . . .”<sup>151</sup> The Controller also filed a copy of an email dated January 17, 2014, from an audit manager at the Controller’s Office to the claimant, as evidence of the Controller’s initial contact with the claimant about the audit. The email states in relevant part:

I am contacting you because the State Controller’s Office will be adjusting the district’s Integrated Waste Management claims for FY 1999-2000 through FY 2000-01, and FY 2003-04 through FY 2005-06 because the district did not offset any savings (e.g. avoided landfill disposal fees) received as a result of implementing the districts’ IWM Plan.

I will notify you, via email, of the exact adjustment amount later next week. Also, included in this email, will be documentation to support the adjustment.<sup>152</sup>

The claimant concurs that the audit was initiated by the Controller’s initial contact on January 17, 2014.<sup>153</sup>

Accordingly, the Commission finds that the Controller timely initiated the audit of the fiscal year 2003-2004 reimbursement claim, pursuant to Government Code section 17558.5(a), on January 17, 2014.

## 2. The audit was timely completed.

Government Code section 17558.5 provides that an audit must be completed “not later than two years after the date that the audit is commenced.”<sup>154</sup> As indicated above, the audit was initiated on January 17, 2014, the date of the Controller’s initial contact with the claimant about the audit and thus, had to be completed no later than January 17, 2016. An audit is completed when the Controller issues the final audit report to the claimant. The final audit report constitutes the Controller’s final determination on the subject claims and provides the claimant with written notice of the claim components adjusted, the amounts adjusted, and the reasons for the adjustment.<sup>155</sup> This notice enables the claimant to file an IRC. Here, the final audit report was issued April 11, 2014, well before the January 17, 2016 deadline.<sup>156</sup>

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<sup>151</sup> Exhibit B, Controller’s Late Comments on the IRC, page 5.

<sup>152</sup> Exhibit B, Controller’s Late Comments on the IRC, page 25. Emphasis in original.

<sup>153</sup> Exhibit A, IRC, page 25.

<sup>154</sup> Government Code section 17558.5 (Stats. 2004, ch. 890).

<sup>155</sup> Government Code section 17558(c).

<sup>156</sup> Exhibit A, IRC, page 27 (Final Audit Report).

Therefore, the Commission finds that the Controller's audit of all reimbursement claims in the audit period was timely completed in accordance with Government Code section 17558.5.

**B. The Controller's Reduction of Costs Claimed Is Generally Correct as a Matter of Law; However, the Calculation of Offsetting Savings for the First Half of Fiscal Year 2003-2004, Based on a 50 Percent Mandated Diversion Rate, Is Incorrect as a Matter of Law.**

1. The test claim statutes presume that by complying with the mandate to divert solid waste through the IWM program, landfill fees are reduced or avoided and cost savings are realized.

The test claim statute added Public Resources Code section 42925(a), which provides: "Any cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency's integrated waste management plan to fund plan implementation and administration costs, in accordance with Sections 12167 and 12167.1 of the Public Contract Code."

The court's Ruling on Submitted Matter states that community colleges are "likely to experience costs savings in the form of reduced or avoided costs of landfill disposal" as a result of the mandated activities in Public Resources Code section 42921 because reduced or avoided costs "are a direct result and an integral part of the IWM plan mandated under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste and associated landfill disposal costs are reduced or avoided." The court noted that "diversion is defined in terms of landfill disposal for purposes of the IWM plan mandates." The statutory definition of diversion provides that "activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division." And the statutory definition of disposal is "the management of solid waste through landfill disposal or transformation at a permitted solid waste facility."<sup>157</sup> The court explained:

[R]eduction or avoidance of landfill fees resulting from solid waste diversion activities under § 42920 et seq. represent savings *which must be offset* against the costs of the diversion activities to determine the reimbursable costs of the IWM plan implementation . . . The amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(l) of Public Resources Code section 42926.<sup>158</sup>

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<sup>157</sup> Public Resources Code sections 40124 and 40192(b). Exhibit B, Controller's Late Comments on the IRC, pages 36-37 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>158</sup> Exhibit B, Controller's Late Comments on the IRC, page 37 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates,*

The court harmonized section 42925(a) with Public Contract Code sections 12167 and 12167.1:

By requiring the redirection of cost savings from state agency IWM plans to fund plan implementation and administration costs “in accordance with Sections 12167 and 12167.1 of the Public Contract Code,” section 42925 assures that cost savings realized from state agencies’ IWM plans are handled in a manner consistent with the handling of revenues received from state agencies’ recycling plans under the State Assistance for Recycling Markets Act. Thus, in accordance with section 12167, state agencies, along with California Community Colleges which are defined as state agencies for purposes of IWM plan requirements in Public Resources Code section 42920 et seq. [citations omitted], must deposit cost savings resulting from IWM plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the Integrated Waste Management Board for the purpose of offsetting IWM plan costs. In accordance with section 12167.1 and notwithstanding section 12167, cost savings from the IWM plans of the agencies and colleges that do not exceed \$2000 annually are continuously appropriated for expenditure by the agencies and colleges for the purpose of offsetting IWM plan implementation and administration costs; cost savings resulting from IWM plans in excess of \$2000 annually are available for such expenditure by the agencies and colleges when appropriated by the Legislature.<sup>159</sup>

Thus, the court found that offsetting savings are, by statutory definition, likely to occur as a result of implementing the mandated activities. Reduced or avoided costs “are a direct result and an integral part of the IWM plan mandated under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste and associated landfill disposal costs are reduced or avoided.”<sup>160</sup> As the court held, “landfill fees and costs resulting from solid waste diversion activities under § 42920 et seq. represent savings *which must be offset* against the costs of the diversion activities to determine the reimbursable costs. . . .”<sup>161</sup>

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*et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter). Emphasis added.

<sup>159</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 38-39 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter)).

<sup>160</sup> Exhibit B, Controller’s Late Comments on the IRC, page 36 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter)).

<sup>161</sup> Exhibit B, Controller’s Late Comments on the IRC, page 37 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter)). Emphasis added.

The statutes, therefore, presume that by complying with the mandate to divert solid waste through the IWM program, landfill fees are reduced or avoided and cost savings are realized. As indicated in the court's ruling, the amount or value of the cost savings may be determined from the calculations of annual solid waste disposal reduction or diversion, which community colleges are required to annually report to CIWMB. The amount of cost savings realized must be identified by the claimant and used to offset the costs incurred to comply with IWM plan implementation and administration activities approved for reimbursement in the Parameters and Guidelines. Accordingly, the court's ruling requires claimants to report in their reimbursement claims the costs incurred to comply with the reimbursable activities (which includes the activities and costs to divert at least 25 or 50 percent of all solid waste from landfill disposal) and the cost savings from the avoided landfill disposal fees, for a reimbursement claim of the net increased costs.

The Parameters and Guidelines are consistent with the court's ruling and require in Section IV. that "[t]he claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate."<sup>162</sup> Section VIII. requires that "[r]educed or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1."<sup>163</sup> The court's decision and the amended Parameters and Guidelines are binding.<sup>164</sup>

2. During the audit period, the claimant exceeded the mandated solid waste diversion rate, but has filed no evidence to rebut the presumption that cost savings were realized. Thus, the Controller's finding that the claimant realized cost savings is correct as a matter of law.

In this case, the claimant asserts that no cost savings were realized, but does not explain why.<sup>165</sup>

The mandate requires community colleges to divert at least 25 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities, and at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004.<sup>166</sup> The record shows that the claimant exceeded the mandated diversion rate in each year of the audit period. The claimant's annual reports to CIWMB for the audit period report diversion percentages that range from 52.22 percent to 83.99 percent of the total waste generated.<sup>167</sup>

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<sup>162</sup> Exhibit A, IRC, page 53 (Parameters and Guidelines).

<sup>163</sup> Exhibit A, IRC, page 58 (Parameters and Guidelines).

<sup>164</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

<sup>165</sup> Exhibit A, IRC, page 10.

<sup>166</sup> Public Resources Code sections 42921. Exhibit A, IRC, pages 50 and 54 (Parameters and Guidelines, section IV.(B)(5)).

<sup>167</sup> Exhibit B, Controller's Late Comments on the IRC, pages 48-73 and 82.



The record shows that the claimant's solid waste that was not diverted was disposed of at a landfill by a waste hauler. The claimant's annual reports filed with CIWMB during the audit period identify the total tonnage of waste disposed<sup>168</sup> and the use of a waste hauler.<sup>169</sup> For example, in its 2000 report, the claimant states: "The contract with the waste hauler contains language that provides recycling bins for free, and hauling of the recycled materials is also free."<sup>170</sup> The annual reports also mention, in response to the question regarding calculation of tonnage of waste disposed and diverted, that the claimant relied on quarterly reports from its waste hauler.<sup>171</sup> Reports from 2003 forward state that claimant collaborated with a waste hauler.<sup>172</sup>

The claimant also mentions landfill diversion in its reports, stating: "to lower costs and decrease the amount of waste being disposed into landfills, College of the Redwoods has instituted waste reduction programs at all CR campuses"<sup>173</sup> Additionally, statements from the claimant's website indicate the use of a landfill. For example, after beginning its recycling program, "the College reduced waste to the landfill by 60%."<sup>174</sup> The website also speaks of seeking ways to "reduce, recycle, and re-use material that in the past have normally gone to the landfill."<sup>175</sup>

The avoided landfill disposal fee was based on the statewide average disposal fee provided by CIWMB for each fiscal year in the audit period, since the claimant did not provide any information to the Controller regarding the landfill fees it was charged.<sup>176</sup>

Based on this documentation, the Controller correctly presumed, consistent with the presumption in the test claim statutes and the court's interpretation of those statutes and with no evidence to the contrary, that the claimant realized cost savings during the audit period equal to the avoided landfill fee per ton of waste required to be diverted.

The statutory presumption of cost savings controls unless the claimant files evidence to rebut the presumption and shows that cost savings were not realized.<sup>177</sup> The claimant has the burden of

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<sup>168</sup> Exhibit B, Controller's Late Comments on the IRC, pages 48-73.

<sup>169</sup> Exhibit B, Controller's Late Comments on the IRC, pages 50, 52, 57, 61, 66, 71.

<sup>170</sup> Exhibit B, Controller's Late Comments on the IRC, pages 50.

<sup>171</sup> Exhibit B, Controller's Late Comments on the IRC, pages 52, 57, 61, 66, 71.

<sup>172</sup> Exhibit B, Controller's Late Comments on the IRC, pages 56, 60, 65, 70.

<sup>173</sup> Exhibit B, Controller's Late Comments on the IRC, pages 56, 61, 66, 71.

<sup>174</sup> Exhibit B, Controller's Late Comments on the IRC, page 75.

<sup>175</sup> Exhibit B, Controller's Late Comments on the IRC, page 77.

<sup>176</sup> Exhibit B, Controller's Late Comments on the IRC, pages 17-18, 101-123.

<sup>177</sup> Government Code section 17559, which requires that the Commission's decisions be supported by substantial evidence in the record. See also, *Coffy v. Shiimoto* (2015) 60 Cal.4th 1198, 1209, a case interpreting the rebuttable presumption in Vehicle Code section 23152 that if a person had 0.08 percent or more, by weight, of alcohol in the blood at the time of testing, then it is presumed by law that he or she had 0.08 percent or more, by weight, of alcohol in the blood at the time of driving, unless he or she files evidence to rebut the presumption. The court states

proof on this issue. Under the mandates statutes and regulations, the claimant is required to show that it has incurred increased costs mandated by the state when submitting a reimbursement claim to the Controller's Office, and the burden to show that any reduction made by the Controller is incorrect.<sup>178</sup> The Parameters and Guidelines, as amended pursuant to the court's writ, also require claimants to show the costs incurred to divert solid waste and to perform the administrative activities, and *to report and identify* the costs saved or avoided by diverting solid waste: "Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans *shall be* identified and offset from this claim as cost savings."<sup>179</sup> Thus, the claimant has the burden to rebut the statutory presumption and to show, with substantial evidence in the record, that the costs of complying with the mandate exceed any cost savings realized by diverting solid waste.

The Commission finds that since the claimant has not filed any evidence to rebut the statutory presumption of cost savings, the Controller's finding that cost savings have been realized is correct as a matter of law.

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that unless and until evidence is introduced that would support a finding that the presumption does not exist, the statutory presumption that the person was driving over the legal limit remains the finding of fact.

<sup>178</sup> Evidence Code section 500, which states: "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." See also, *Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 24, where the court recognized that "the general principle of Evidence Code 500 is that a party who seeks a court's action in his favor bears the burden of persuasion thereon." This burden of proof is recognized throughout the architecture of the mandates statutes and regulations. Government Code section 17551(a) requires the Commission to hear and decide a claim filed by a local agency or school district that it is entitled to reimbursement under article XIII B, section 6. Section 17551(d) requires the Commission to hear and decide a claim by a local agency or school district that the Controller has incorrectly reduced payments to the local agency or school district. In these claims, the claimant must show that it has incurred increased costs mandated by the state. (Gov. Code, §§ 17514 [defining "costs mandated by the state"], 17560(a) ["A local agency or school district may . . . file an annual reimbursement claim that details the costs actually incurred for that fiscal year."]; 17561 [providing that the issuance of the Controller's claiming instructions constitutes a notice of the right of local agencies and school districts to file reimbursement claims based upon the parameters and guidelines, and authorizing the Controller to audit the records of any local agency or school district to "verify the actual amount of the mandated costs."]; 17558.7(a) ["If the Controller reduces a claim approved by the commission, the claimant may file with the commission an incorrect reduction claim pursuant to regulations adopted by the commission."]. By statute, only the local agency or school district may bring these claims, and the local entity must present and prove its claim that it is entitled to reimbursement. (See also, Cal. Code Regs., tit. 2, §§ 1185.1, et seq., which requires that the IRC contain a narrative that describes the alleged incorrect reductions, and be signed under penalty of perjury.)

<sup>179</sup> Exhibit A, IRC, page 58 (Amended Parameters and Guidelines). Emphasis added.

3. For all years of the audit period except the first half of fiscal year 2003-2004, the Controller's calculation of cost savings is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller correctly determined that during the audit period, the claimant diverted solid waste, as mandated by the test claim statute, and exceeded the minimum required diversion rate every year of the audit period.<sup>180</sup> Because the claimant exceeded the mandate, the Controller calculated offsetting savings by allocating the diversion to reflect the mandate. The Controller allocated the diversion by dividing the percentage of solid waste required to be diverted by the test claim statute (either 25 percent or 50 percent) by the actual percentage of solid waste diverted (as annually reported by the claimant to CIWMB). The allocated diversion was then multiplied by the avoided landfill disposal fee (based on the statewide average fee) to calculate the offsetting savings realized.<sup>181</sup>

$$\begin{array}{c}
 \text{Offsetting} \\
 \text{Savings} \\
 \text{Realized}
 \end{array}
 = \overbrace{\frac{\text{Maximum Allowable Diversion \%}}{\text{Actual Diversion \%}}}^{\text{Allocated Diversion \%}} \times \text{Tonnage Diverted} \times \text{Avoided Landfill Disposal Fee (per Ton)}$$

The formula allocates or reduces cost savings based on the mandated rate, and is intended to avoid penalizing the claimant for diverting more solid waste than the percentage mandated by law.<sup>182</sup>

This formula is consistent with the statutory presumption of cost savings, as interpreted by the court for this program, and the requirements in the Parameters and Guidelines. The court found that the test claim statutes require that reduced or avoided landfill fees represent savings that must be offset against the cost of diversion. The court stated: “The amount or value of the [offsetting cost] savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report” to CIWMB.<sup>183</sup> The Parameters and Guidelines state: “Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings . . . .”<sup>184</sup> Thus, the Controller's formula correctly presumes, based on the record and without any evidence to the contrary, that the claimant realized cost savings during the audit period equal to the avoided landfill fee per ton of

<sup>180</sup> Exhibit B, Controller's Late Comments on the IRC, page 82.

<sup>181</sup> Exhibit A, IRC, pages 33; Exhibit B, Controller's Late Comments on the IRC, page 16.

<sup>182</sup> Exhibit B, Controller's Late Comments on the IRC, pages 16.

<sup>183</sup> Exhibit B, Controller's Late Comments on the IRC, page 37 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>184</sup> Exhibit A, IRC page 58 (Amended Parameters and Guidelines, adopted Sept. 26, 2008).

waste required to be diverted. And when the claimant exceeded the mandated diversion rates, the Controller's formula limited the offset to reflect the mandated rate.

The claimant raises several arguments, unsupported by the law or evidence in the record, that the Controller's calculation of cost savings is incorrect.

The claimant first alleges that cost savings cannot be realized because the chain of events required by Public Contract Code sections 12167 and 12167.1 did not occur: that savings have to be converted to cash, and amounts in excess of \$2,000 per year must be deposited in the state fund and appropriated back by the Legislature to mitigate the costs.<sup>185</sup> It is undisputed that the claimant did not remit to the state any savings realized from the implementation of the IWM plan.<sup>186</sup> However, as indicated above, cost savings are presumed by the statutes and the claimant has not filed evidence to rebut that presumption. Thus, the claimant should have deposited the cost savings into the state's account as required by the test claim statutes, and the claimant's failure to comply with the law does not make the Controller's calculations of cost savings incorrect as a matter of law, or arbitrary or capricious. Since cost savings are presumed by the statutes, the claimant has the burden to show increased costs mandated by the state. As the court stated: "[r]eimbursement is not available under section 6 and section 17514 to the extent that a local government or school district is able to provide the mandated program or increased level of service without actually incurring increased costs."<sup>187</sup>

The claimant next asserts that the Controller's formula is an underground regulation.<sup>188</sup> The Commission disagrees. Government Code section 11340.5 provides that no state agency shall enforce or attempt to enforce a rule or criterion which is a regulation, as defined in section 11342.600, unless it has been adopted pursuant to the Administrative Procedures Act. As discussed above, however, the formula is consistent with the statutory presumption of cost savings, as interpreted by the court for this program. Interpretations that arise in the course of case-specific adjudications are not regulations.<sup>189</sup>

The claimant also argues that using landfill fees in the calculation of offsetting savings is not relevant because "[t]he District did not claim landfill costs, so there are none to be offset."<sup>190</sup> The claimant's interpretation of the cost savings requirement is not correct. The cost of disposing waste at a landfill is not eligible for reimbursement. Reimbursement is authorized to *divert* solid waste from the landfill through source reduction, recycling, and composting activities.<sup>191</sup> As explained by the court:

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<sup>185</sup> Exhibit A, IRC, pages 13-14.

<sup>186</sup> Exhibit B, Controller's Late Comments on the IRC, page 15.

<sup>187</sup> Exhibit B, Controller's Late Comments on the IRC, page 36 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>188</sup> Exhibit A, IRC, page 15.

<sup>189</sup> *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.

<sup>190</sup> Exhibit A, IRC, page 17.

<sup>191</sup> Exhibit A, IRC, page 54 (Parameters and Guidelines).

In complying with the mandated solid waste diversion requirements of Public Resources Code section 42921, California Community Colleges are likely to experience cost savings in the form of reduced or avoided costs of landfill disposal. The reduced or avoided costs are a direct result and an integral part of the mandated IWM plan ....

Such reduction or avoidance of landfill fees and costs resulting from solid waste diversion activities under § 42920 et seq. represent savings which must be offset against the costs of the diversion activities to determine the reimbursable costs of IWM plan implementation -- i.e., the actual increased costs of diversion -- under section 6 and section 17514.<sup>192</sup>

The court also noted that diversion is defined as “activities which reduce or eliminate the amount of solid waste from solid waste disposal.”<sup>193</sup>

In addition, the claimant argues that the formula assumes facts without evidence in the record. For example, the claimant questions the Controller’s assumption that all diverted waste would have been disposed in a landfill, and that the statewide average cost to dispose of waste at a landfill actually applied to the claimant.<sup>194</sup>

The Controller’s assumptions, however, are supported by evidence in the record and the claimant has filed no evidence to rebut them.

The Controller obtained the statewide average cost for landfill disposal fees from CIWMB. The fees were based on a private survey of a large percentage of landfills across California.<sup>195</sup> The Controller’s audit report indicates that the claimant did not provide documentation to support a different disposal fee.<sup>196</sup> In addition, the Controller states:

[A]n internet search for landfill fees revealed that the Hawthorne Street Transfer Station in Eureka, California, currently charges \$154.28 per ton to dispose of solid waste (Tab 9). Therefore, we believe that the \$36 to \$46 "statewide average disposal fee" used to calculate the offsetting savings realized by the district is reasonable. In addition, the district did not provide any information, such as its contract with or invoices received from its commercial waste hauler (Eel River Disposal) to support either the landfill fees actually incurred by the district or to

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<sup>192</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 36-37 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>193</sup> Public Resources Code section 40124. Exhibit B, Controller’s Late Comments on the IRC, page 36 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>194</sup> Exhibit A, IRC, pages 15-17.

<sup>195</sup> Exhibit B, Controller’s Late Comments on the IRC, page 17.

<sup>196</sup> Exhibit A, IRC, page 34.

confirm that the statewide average landfill fee was greater than landfill fees incurred by the district.<sup>197</sup>

On these audit issues, the Commission may not reweigh the evidence or substitute its judgment for that of the Controller. The Commission must only ensure that the Controller's decision is not arbitrary, capricious, or entirely lacking in evidentiary support, and adequately considered all relevant factors.<sup>198</sup> There is no evidence that the Controller's assumptions are wrong or arbitrary or capricious with regard to the statewide average landfill fee.

The claimant also points to the Controller's audits of other community college districts, arguing that the Controller's audit results in those cases vary and are arbitrary.<sup>199</sup> The Controller's audits of other community college district reimbursement claims are not relevant to the Controller's audit here. Each audit depends on the documentation and evidence provided by the claimant to show increased costs mandated by the state.

Accordingly, the Controller's calculation of cost savings for all years of the audit period except the first half of fiscal year 2003-2004 is correct as a matter of law, and is not arbitrary, capricious, or entirely lacking in evidentiary support.

4. The Controller's calculation of offsetting cost savings for the first half of fiscal year 2003-2004, based on an incorrect mandated diversion rate, is incorrect as a matter of law.

The claimant achieved an actual diversion rate of 57.7 percent in the first half of fiscal year 2003-2004.<sup>200</sup> The Controller allocated the diversion rate, as it did for the other fiscal years, because the claimant exceeded the mandate. However, the Controller used a 50 percent mandated rate to calculate the allocated diversion rate although the test claim statutes required only 25 percent diversion in calendar year 2003.<sup>201</sup> The requirement to divert 50 percent of solid waste did not become operative until January 1, 2004,<sup>202</sup> so the calculation of cost savings for the first half of fiscal year 2003-2004 using a 25 percent diversion rate is incorrect.

As indicated in the Parameters and Guidelines, the mandate is to divert at least 25 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2002, and at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting activities.<sup>203</sup> Thus, from July 1, 2003,

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<sup>197</sup> Exhibit B, Controller's Late Comments on the IRC, pages 17-18.

<sup>198</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>199</sup> Exhibit A, IRC, pages 17-18.

<sup>200</sup> Exhibit B, Controller's Late Comments on the IRC, page 56 (2003 Annual Report). The Controller did not round this figure and calculated it at 57.68 percent. See page 82.

<sup>201</sup> Exhibit B, Controller's Late Comments on the IRC, page 16.

<sup>202</sup> Public Resources Code sections 42921; Exhibit A, IRC, page 90 (Parameters and Guidelines).

<sup>203</sup> Exhibit A, IRC, page 90 (Parameters and Guidelines). This is based on Public Resources Code sections 42921.

through December 31, 2003, community college districts were mandated to achieve diversion rates of only 25 percent. The Controller admits that, “[s]ince there is no state mandate to exceed solid waste diversion greater than 25% for calendar years 2002 and 2003 or greater than 50% for calendar year 2004 and beyond, there is no basis for calculating offsetting savings realized for actual diversion percentages that exceeded the levels set by statute.”<sup>204</sup>

The Controller’s calculation of offsetting cost savings, using a 50 percent diversion rate from July 1, 2003 through December 31, 2003, instead of the mandated 25 percent diversion rate, is incorrect as a matter of law.<sup>205</sup> As discussed above, the Controller’s formula for offsetting cost savings, which allocates the diversion based on the mandated rate, is consistent with the test claim statutes and the court’s decision on this program.

Applying the Controller’s cost savings formula (that allocates cost savings for years the claimant exceeded the mandate) to the first half of fiscal year 2003-2004, results in offsetting savings of \$2,430 (25 percent divided by 57.68 percent, multiplied by 152.25 tons diverted multiplied by the statewide average landfill disposal fee of \$36.83) rather than \$4,861. Therefore, the difference of \$2,431 (\$4,861 - \$2,430) has been incorrectly reduced.

Accordingly, the Commission finds that the difference of \$2,431 (\$4,861 - \$2,430) reduced from costs claimed for the first half of fiscal year 2003-2004 is incorrect as a matter of law.

**C. The Adjustment of \$5,130 Deducted From the Controller’s Calculation of Offsetting Savings Did Not Result in a Reduction of Costs Pursuant to Government Code Section 17551(d), and thus, the Commission Does Not Have Jurisdiction to Determine if the Adjustment Is Correct.**

As indicated in the Background, the Controller found that the claimant reported offsetting savings of \$5,130 during the audit period, but realized total offsetting savings of \$43,377 from implementation of its IWM plan. Thus, the Controller calculated the total realized offsetting savings by subtracting the offsetting savings reported by the claimant, resulting in an overall reduction of \$38,247 instead of \$43,377.<sup>206</sup>

The claimant states that \$5,130 identified as reported offsetting savings is *not* offsetting savings, but actually offsetting recycling revenue.<sup>207</sup> The claimant therefore contends that it “properly reported the recycling income as a reduction of total claimed cost[s] and also not subject to state appropriation in the form of cost savings.”<sup>208</sup> The claimant requests that the Commission make a finding on “each and every adjustment made by the Controller.”<sup>209</sup>

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<sup>204</sup> Exhibit B, Controller’s Late Comments on the IRC, page 16.

<sup>205</sup> Exhibit B, Controller’s Late Comments on the IRC, page 82.

<sup>206</sup> Exhibit A, IRC, pages 31-32 (Final Audit Report).

<sup>207</sup> Exhibit A, IRC, page 19.

<sup>208</sup> Exhibit A, IRC, page 20.

<sup>209</sup> Exhibit A, IRC, page 22.

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. The \$5,130 adjustment does not result in a reduction of the claimant's payment.

As indicated in the Final Audit Report and on the claimant's reimbursement claims, \$5,130 was reported by the claimant as offsetting savings and not offsetting revenues.<sup>210</sup> Had the \$5,130 not been reporting as offsetting savings, the Controller would have reduced the reimbursement claims by the full amount of offsetting savings realized (\$43,377) and not subtracted the cost savings by \$5,130.<sup>211</sup>

Thus, the adjustment of \$5,130 decreased the audit reduction, giving more money to the claimant, and did not result in a reduction of costs claimed within the meaning of Government Code section 17551(d). Accordingly, the Commission does not have jurisdiction to determine if the adjustment is correct.

## **V. Conclusion**

Based on the foregoing, the Commission finds that the Controller timely initiated the audit of the fiscal year 2003-2004 reimbursement claim, and timely completed the audit of all claims.

The Commission concludes that the Controller's reduction of costs claimed for all years in the audit period except the first half of fiscal year 2003-2004 is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

The Commission further concludes that the Controller's calculation of offsetting savings for the first half of fiscal year 2003-2004, based on an incorrect mandated diversion rate, is incorrect as a matter of law. The law and the record support offsetting cost savings for this time period of \$2,430 rather than \$4,861. Therefore, the difference of \$2,431 has been incorrectly reduced and should be reinstated to claimant.

Finally, the Commission finds that the adjustment of \$5,130, which was reported by the claimant as offsetting savings, decreased the audit reduction, and did not result in a reduction of costs claimed within the meaning of Government Code section 17551(d). Therefore, the Commission does not have jurisdiction to determine if the adjustment is correct.

Accordingly, the Commission partially approves this IRC and requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate \$2,431 to the claimant.

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<sup>210</sup> Exhibit A, IRC, page 32 (Final Audit Report); page 152 (fiscal year 1999-2000 reimbursement claim identifying \$75.70 as offsetting savings); page 158 (fiscal year 2000-2001 reimbursement claim identifying \$916.46 as offsetting savings); page 165 (fiscal year 2003-2004 reimbursement claim identifying \$1,326.59 as offsetting savings); and page 172 (fiscal year 2004-2005 reimbursement claim identifying \$2,811.26 as offsetting savings).

<sup>211</sup> Exhibit B, Controller's Late Comments on the IRC, page 21.