

ITEM 5
INCORRECT REDUCTION CLAIM
PROPOSED DECISION

Los Angeles Regional Quality Control Board Order No. 01-182 Permit CAS004001
Part 4F5c3

Municipal Storm Water and Urban Runoff Discharges

Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007,
2007-2008, 2008-2009, 2009-2010

18-0304-I-01

City of Bellflower, Claimant

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1. Los Angeles Metropolitan Transportation Authority, “An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes,” November 19901-7
2. Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition1-71
3. Los Angeles Regional Water Quality Control Board, Transmittal of Final Order No. R4-2012-0175, December 5, 2012.1-1

1. INCORRECT REDUCTION CLAIM TITLE

City of Bellflower Stormwater and Urban Runoff
Discharges Program Cost Claim

2. CLAIMANT INFORMATION

City of Bellflower
Name of Local Agency or School District
Jeffrey L. Stewart
Claimant Contact
City Manager
Title
16600 Civic Center Drive
Street Address
Bellflower, CA 90706
City, State, Zip
562-804-1424, ext. 2207
Telephone Number
562-925-8660
Fax Number
jstewart@bellflower.org
E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this incorrect reduction claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Bernardo Iniguez
Claimant Representative Name
Public Works Manager
Title
City of Bellflower, Department of Public Works
Organization
16600 Civic Center Drive
Street Address
Bellflower, CA 90706
City, State, Zip
562-804-1424, ext. 2233
Telephone Number
562-925-8660
Fax Number
biniguez@bellflower.org
E-Mail Address

For CSM Use Only	
Filing Date:	<div style="border: 2px solid blue; padding: 10px; text-align: center;"> RECEIVED August 17, 2018 Commission on State Mandates </div>
IRC #:	
18-0304-I-01	

4. IDENTIFICATION OF STATUTES OR EXECUTIVE ORDERS

Please specify the subject statute or executive order that claimant alleges is not being fully reimbursed pursuant to the adopted parameters and guidelines.

Municipal Storm Water and Urban Runoff
Discharges Program (Los Angeles Regional
Water Quality Control Board, Order No. 01-182,
Permit CAS004001, Part 4F5c3)

5. AMOUNT OF INCORRECT REDUCTION

Please specify the fiscal year and amount of reduction. More than one fiscal year may be claimed.

Fiscal Year	Amount of Reduction
02/03	\$66,241.00
03/04	\$66,241.00
04/05	\$66,241.00
05/06	\$66,241.00
06/07	\$66,241.00
07/08	\$66,241.00
08/09	\$66,241.00
09/10	\$66,634.00
TOTAL:	\$530,321.00

6. NOTICE OF INTENT TO CONSOLIDATE

Please check the box below if there is intent to consolidate this claim.

☐ **Yes, this claim is being filed with the intent to consolidate on behalf of other claimants.**

Sections 7 through 11 are attached as follows:

7. Written Detailed

Narrative: pages 1 to 3.

8. Documentary Evidence and Declarations:

pages 4-8
Exhibit A-D.

9. Claiming Instructions:

Exhibit E.

10. Final State Audit Report or Other Written Notice of Adjustment:

Exhibit D.

11. Reimbursement Claims:

Exhibit B.

Sections 7 through 11 shall be included with each incorrect reduction claim submittal.

7. WRITTEN DETAILED NARRATIVE

Under the heading “7. Written Detailed Narrative,” please describe the alleged incorrect reduction(s). The narrative shall include a comprehensive description of the reduced or disallowed area(s) of cost(s).

8. DOCUMENTARY EVIDENCE AND DECLARATIONS

If the narrative describing the alleged incorrect reduction(s) involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by testimonial or documentary evidence and shall be submitted with the claim under the heading “8. Documentary Evidence and Declarations.” All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

9. CLAIMING INSTRUCTIONS

Under the heading “9. Claiming Instructions,” please include a copy of the Office of State Controller's claiming instructions that were in effect during the fiscal year(s) of the reimbursement claim(s).

10. FINAL STATE AUDIT REPORT OR OTHER WRITTEN NOTICE OF ADJUSTMENT

Under the heading “10. Final State Audit Report or Other Written Notice of Adjustment,” please include a copy of the final state audit report, letter, remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.

11. REIMBURSEMENT CLAIMS

Under the heading “11. Reimbursement Claims,” please include a copy of the subject reimbursement claims the claimant submitted to the Office of State Controller.

1 **CITY OF BELLFLOWER STORMWATER AND URBAN RUNOFF DISCHARGES**

2 **PROGRAM COST CLAIM; SECTIONS 7 AND 8**

3 **7. WRITTEN DETAILED NARRATIVE**

4 On December 13, 2001, the California Regional Water Quality Control Board for the Los
5 Angeles Region (“RWQCB”) issued Order Number 01-182 (the “Order”) in connection with
6 National Pollutant Discharge Elimination System (“NPDES”) Permit CAS004001. (See Exh. A.)
7 The Order contained special provisions related to the Public Agency Activities Program, including
8 Public Agency requirements pertaining to storm drain operation and management. (Exh. A, BF_005-
9 BF_006, § 4(F), BF_008-BF_010, § 4(F)(5) [requirements pertaining to storm drain operation].)
10 These provisions required that permittees implement a Public Agency program to minimize storm
11 water pollution impacts from public agency activities; specifically, it requires that permittees which
12 were not subject to a trash Total Maximum Daily Load (“TMDL”), such as the City of Bellflower
13 (“City”), place trash receptacles at all transit stops with shelters in their jurisdictions no later than
14 February 3, 2003, and maintain them as necessary. (Exh. A, BF_009, §4(F)(5)(c)(3).) This
15 requirement is not federally mandated and is thus subject to reimbursement. (See *Dept. of Finance v.*
16 *Commission on State Mandates* (2016) 1 Cal. 5th 749, 771.)

17 The City complied with these provisions, using funds available through the Proposition C
18 Ordinance of the Los Angeles County Metropolitan Transportation Authority (“Metro”) rather than
19 the City’s general fund.¹ (Declaration of Bernardo Iniguez, hereinafter “Iniguez Decl.,” ¶ 3.) All of
20 the costs associated with installing and maintaining trash receptacles pursuant to the Order, aside
21 from overhead costs, were financed through the use of funds raised through the Proposition C tax.
22 (Id.)

23 Twenty percent of the funds raised through the Proposition C tax is designated for the Local
24 Return (“LR”) Program funds to be used by local entities to develop and improve transit and
25 transportation infrastructure. LR funds are allocated and distributed to cities on a “per capita” basis

26 _____
27 ¹ In accordance with *Public Utilities Code* section 130000 et seq., the Los Angeles County
28 Transportation Commission adopted Ordinance No. 49, which imposed a retail transactions and use
tax for public transit purposes. It was later approved through an election held on November 6, 1990.
Metro, established in 1993, is the successor entity to the Commission.

1 every month, and may be applied towards certain eligible expenditures. (See Exh. C, BF_050-
2 BF_064, §§ II(A) II(C).) Eligible uses identified by Metro include new fixed route or flexible
3 destination bus services, extension of bus routes, shuttle services between activity centers, expansion
4 of paratransit services, signal synchronization and traffic management projects, congestion
5 management programs, bikeway construction and management projects, street improvement and
6 maintenance in support of public transit, and the maintenance, improvement, or replacement of
7 pavement management systems. (Id.)

8 On September 28, 2011, Bernardo Iniguez submitted a Claim for Payment to the Office of
9 the State Controller, seeking reimbursement in connection with the purchase, construction, and
10 maintenance of receptacles and pads during the period between Fiscal Year 2002 and Fiscal Year
11 2010. (Iniguez Decl. ¶ 4, Exh. B.) The City claimed \$533,742 in connection with the mandated
12 program. (Id.)

13 In a letter dated October 25, 2016, the State Controller found that only \$3,421 of the claimed
14 funds were allowable. (Exh. D, BF_071-BF_072.) It found that the City “should have offset the
15 [remaining] \$530,321 in Proposition C funding used to pay for the ongoing maintenance of transit
16 stop trash receptacles during the review period.” (Id. at 4.) It further explained that, as per the
17 Controller’s guidelines, “any offsetting revenue the claimant experiences *in the same program as a*
18 *result of the same statutes or executive orders found to contain the mandate* shall be deducted from
19 the costs claimed.” (Id. at BF_072 [emphasis added]; see also Gov. Code § 17556(e).)

20 The State Controller improperly classified the Proposition C funds as “offsetting” revenues.
21 The mandate at issue, which is intended to minimize discharge of waste from municipal storm sewer
22 systems, derives from the *Water Code*, as implemented by the RWQCB through the Order. (Wat.
23 Code § 13000 et seq.; see also *Dept. of Finance*, 1 Cal. 5th 749.)

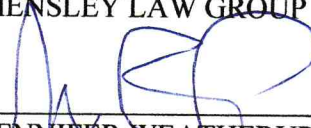
24 By contrast, Proposition C never mandated that the City maintain the trash receptacles; it
25 provided the City with discretionary authority to direct the LR funds towards certain enumerated
26 transit-related projects. Moreover, because the Proposition C funds were expended to comply with
27 the mandate in the Order, the City was unable to apply the LR funds towards other projects, as it
28 would have done if it were not subject to the requirement to install and maintain trash receptacles.

1 These projects, which the City had previously funded with Proposition C funds, included, but were
2 not limited to, street improvements, highway safety improvements, and traffic signal improvements.
3 (Iniguez Decl. ¶ 3.)

4 The so-called "offsetting revenue" was simply not "a result of the same statutes or executive
5 orders found to contain the mandate." For this reason, the Controller's determination that \$530,321
6 of the costs claimed by the City were not eligible for reimbursement was erroneous, and the City
7 should be fully reimbursed for amounts expended in connection with its maintenance of trash
8 receptacles.

9
10 DATED: July 13, 2018

Respectfully submitted,
HENSLEY LAW GROUP


11
12
13 JENNIFER WEATHERUP, Deputy City Attorney
14 Attorneys for Plaintiff, CITY OF BELLFLOWER ON
15 BEHALF OF THE PEOPLE OF THE STATE OF
16 CALIFORNIA
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1 **8. DOCUMENTARY EVIDENCE AND DECLARATIONS**

2 **A. Declaration of Bernardo Iniguez**

- 3 1. **Exhibit A: Relevant Portions of Order Number 01-182, Issued by the**
4 **California Regional Water Quality Control Board for the Los Angeles**
5 **Region in connection with National Pollutant Discharge Elimination**
6 **System Permit CAS004001 (BF_001-BF_012).**
7 2. **Exhibit B: Claim for Payment submitted to Office of the State Controller,**
8 **dated September 28, 2011 (BF_013-BF_039).**

9 **B. Declaration of Tae Rhee**

- 10 1. **Exhibit C: Relevant Portions of Metro Board Guidelines, Proposition A**
11 **and Proposition C Local Return (2007) (BF_040-BF_064).**
12 2. **Exhibit D: Letter from State Controller's Office to the City of Bellflower**
13 **dated October 25, 2016 and Attached Documents (BF_065-BF_072).**

14 **C. Exhibit E: Office of the State Controller Claiming Instructions, May 31, 2011**

15 DATED: August 16, 2018

16 Respectfully submitted,
17 HENSLEY LAW GROUP

18 
19 JENNIFER WEATHERUP, Deputy City Attorney
20 Attorneys for Plaintiff, CITY OF BELLFLOWER ON
21 BEHALF OF THE PEOPLE OF THE STATE OF
22 CALIFORNIA
23
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DECLARATION OF BERNARDO INIGUEZ

I, BERNARDO INIGUEZ, DO HEREBY DECLARE AS FOLLOWS:

1. I am Public Works Manager for the City of Bellflower ("City"). I have personal knowledge of the facts stated in this Declaration, unless stated on information and belief, in which case, I believe the facts to be true. If called as a witness, could and would testify competently thereto. As to that information which I can state on information and belief, I am informed and believe that such information is true and correct.

2. On December 13, 2001, the California Regional Water Quality Control Board for the Los Angeles Region ("RWQCB") issued Order Number 01-182 (the "Order") in connection with National Pollutant Discharge Elimination System ("NPDES") Permit CAS004001. Among other things, the Order required that permittees which were not subject to a trash Total Maximum Daily Load ("TMDL"), such as the City, place trash receptacles at all transit stops with shelters in their jurisdictions no later than August 1, 2002, and at all other transit stops in their jurisdictions no later than February 3, 2003, and maintain them as necessary. A true and correct copy of relevant portions of the Order has been attached hereto as **Exhibit "A."**

3. The City complied with the requirement to place and maintain trash receptacles at certain transit stops using funds available through the Proposition C Ordinance of the Los Angeles County Metropolitan Transportation Authority ("Proposition C"). All of the costs associated with installing and maintaining trash receptacles pursuant to the Order, aside from overhead costs, were financed through the use of funds raised through the Proposition C tax. Because funds from Proposition C were used to comply with the mandate, the City was not able to apply those Proposition C funds towards other projects the City had previously funded with Proposition C funds including, but not limited to, street improvements, highway safety improvements, and traffic signal improvements.

4. On September 28, 2011, I submitted a Claim for Payment to the Office of the State Controller, seeking reimbursement in connection with the purchase, construction, and maintenance of receptacles and pads during the period between Fiscal Year 2002 and Fiscal Year 2010. A true and correct copy of the Claim has been attached hereto as **Exhibit "B."**

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct and that this declaration was executed on May 16, 2018 in Bellflower, California.

3
4 
Bernardo Iniguez

DECLARATION OF TAE RHEE

I, TAE RHEE, DO HEREBY DECLARE AS FOLLOWS:

1. I am Director of Finance for the City of Bellflower ("City"). I have personal knowledge of the facts stated in this Declaration, unless stated on information and belief, in which case, I believe the facts to be true. If called as a witness, could and would testify competently thereto. As to that information which I can state on information and belief, I am informed and believe that such information is true and correct.

2. The City complied with requirements to place and maintain trash receptacles at certain transit stops by using funds available through the Proposition C Ordinance of the Los Angeles County Metropolitan Transportation Authority ("Proposition C") rather than the City's general fund. Proposition C imposed a retail transactions and use tax for public transit purposes. Twenty percent of the funds raised through the Proposition C tax is designated for the Local Return ("LR") Program funds to be used by local entities to develop and improve transit and transportation infrastructure. LR funds are allocated and distributed to cities on a "per capita" basis every month, and may be applied towards certain eligible expenditures. A true and correct copy of relevant portions of the Metro Board Approved Proposition A and Proposition C Local Return Guidelines has been attached hereto as **Exhibit "C."**

3. On September 28, 2011, the City submitted a Claim for Payment to the Office of the State Controller, seeking reimbursement in connection with the purchase, construction, and maintenance of receptacles and pads. The City claimed \$533,742 in connection with the mandated program, which was calculated based on the Commission on State Mandates' reasonable reimbursement methodology.

4. In or about October 2016, I received a letter dated October 25, 2016 from Jeffrey V. Brownfield from the California State Controller's Office. As set forth in the letter and attached documents, the State Controller found that only \$3,421 of the claimed funds were allowable. It found that the City "should have offset the [remaining] \$530,321 in Proposition C funding used to pay for the ongoing maintenance of transit stop trash receptacles during the review period." A true and correct copy of the letter and attached documents has been attached hereto as **Exhibit "D."**

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct and that this declaration was executed on May 16, 2018 in Bellflower, California.
3
4


5 
Tae Rhee

Exhibit A

STATE OF CALIFORNIA

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

**ORDER NO. 01-182
NPDES PERMIT NO. CAS004001
WASTE DISCHARGE REQUIREMENTS
FOR**

**MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE
COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN,
EXCEPT THE CITY OF LONG BEACH**

December 13, 2001

**(Amended on September 14, 2006 by Order R4-2006-0074; August 9, 2007 by Order R4-
2007-0042; and December 10, 2009 by Order R4-2009-0130; and October 19, 2010 and
April 7, 2011 pursuant to the peremptory writ of mandate in L.A. Superior Court Case No.
BS122724)**

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- f) Require that Treatment Control BMPs be properly operated and maintained to prevent the breeding of vectors.
- 3. Each Permittee shall, no later than November 1, 2002, amend and adopt (if necessary), a Permittee-specific storm water and urban runoff ordinance to enforce all requirements of this permit.
- 4. Each Permittee shall submit no later than December 2, 2002, a new or updated statement by its legal counsel that the Permittee has obtained all necessary legal authority to comply with this Order through adoption of ordinances and/or municipal code modifications.

Part 4. SPECIAL PROVISIONS

Maximum Extent Practicable Standard

This permit, and the provisions herein, are intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the MEP from the permitted areas in the County of Los Angeles to the waters of the State.

A. General Requirements

1. Best Management Practice Substitution

The Regional Board Executive Officer may approve any site-specific BMP substitution upon petition by a Permittee(s), if the Permittee can document that:

- a) The proposed alternative BMP or program will meet or exceed the objective of the original BMP or program in the reduction of storm water pollutants; or
- b) The fiscal burden of the original BMP or program is substantially greater than the proposed alternative and does not achieve a substantially greater improvement in storm water quality; and,
- c) The proposed alternative BMP or program will be implemented within a similar period of time.

B. Public Information and Participation Program (PIPP)

The Principal Permittee shall implement a Public Information and Participation Program (PIPP) that includes, but is not limited to, the requirements listed in this section. The Principal Permittee shall be responsible for developing and implementing the Public Education Program, as described in the SQMP, and shall coordinate with Permittees to implement specific requirements.

The objectives of the PIPP are as follows:

Amended by Orders R4-2006-0074, R4-2007-0042, and R4-2009-0130, and further amended pursuant to L.A. Superior Court Case No. BS122724

- b) Require proof of an NOI and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.
 - c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.
4. GCASP Violation Referrals
- a) Referral of Violations of the SQMP, Regional Board Resolution 98-08, and municipal storm water ordinances:
A Permittee may refer a violation(s) to the Regional Board provided that the Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:
 - Two follow-up inspections within 3 months, and
 - Two warning letters or notices of violation.
 - b) Referral of Violations of GCASP Filing Requirements:
For those projects subject to the GCASP, Permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of making a determination. In making such referrals, Permittees shall include, at a minimum, the following documentation:
 - Project location;
 - Developer;
 - Estimated project size; and
 - Records of communication with the developer regarding filing requirements.
5. Each Permittee shall train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the storm water management program no later than August 1, 2002, and annually thereafter. For Permittees with a population of 250,000 or more (2000 U.S. Census), initial training shall be completed no later than February 3, 2003. Each Permittee shall maintain a list of trained employees.

F. Public Agency Activities Program

Each Permittee shall implement a Public Agency program to minimize storm water pollution impacts from public agency activities. Public Agency requirements consist of:

- Sewage Systems Maintenance, Overflow, and Spill Prevention
- Public Construction Activities Management
- Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management
- Landscape and Recreational Facilities Management

Amended by Orders R4-2006-0074, R4-2007-0042, and R4-2009-0130, and further amended pursuant to L.A. Superior Court Case No. BS122724

- Storm Drain Operation and Management
 - Streets and Roads Maintenance
 - Parking Facilities Management
 - Public Industrial Activities Management
 - Emergency Procedures
 - Treatment Feasibility Study
1. Sewage System Maintenance, Overflow, and Spill Prevention
 - a) Each Permittee shall implement a response plan for overflows of the sanitary sewer system within their respective jurisdiction, which shall consist at a minimum of the following:
 - (1) Investigation of any complaints received;
 - (2) Upon notification, immediate response to overflows for containment; and
 - (3) Notification to appropriate sewer and public health agencies when a sewer overflows to the MS4.
 - b) In addition to 1.a.1, 1.a.2, and 1.a.3 above, for those Permittees, which own and/or operate a sanitary sewer system, the Permittee shall also implement the following requirements:
 - (1) Procedures to prevent sewage spills or leaks from sewage facilities from entering the MS4; and
 - (2) Identify, repair, and remediate sanitary sewer blockages, exfiltration, overflow, and wet weather overflows from sanitary sewers to the MS4.
 2. Public Construction Activities Management
 - a) Each Permittee shall implement the Development Planning Program requirements (Permit Part 4.D) at public construction projects.
 - b) Each Permittee shall implement the Development Construction Program requirements (Permit Part 4.E) at Permittee owned construction sites.
 - c) Each Permittee shall obtain coverage under the GCASP for public construction sites 5 acres or greater (or part of a larger area of development) except that a municipality under 100,000 in population (1990 U.S. Census) need not obtain coverage under a separate permit until March 10, 2003.
 - d) Each Permittee, no later than March 10, 2003, shall obtain coverage under a statewide general construction storm water permit for public construction sites for projects between one and five acres.

Amended by Orders R4-2006-0074, R4-2007-0042, and R4-2009-0130, and further amended pursuant to L.A. Superior Court Case No. BS122724

3. Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management
 - a) Each Permittee, consistent with the SQMP, shall implement SWPPPs for public vehicle maintenance facilities, material storage facilities, and corporation yards which have the potential to discharge pollutants into storm water.
 - b) Each Permittee shall implement BMPs to minimize pollutant discharges in storm water including but not be limited to:
 - (1) Good housekeeping practices;
 - (2) Material storage control;
 - (3) Vehicle leaks and spill control; and
 - (4) Illicit discharge control.
 - c) Each Permittee shall implement the following measures to prevent the discharge of pollutants to the MS4:
 - (1) For existing facilities, that are not already plumbed to the sanitary sewer, all vehicle and equipment wash areas (except for fire stations) shall either be:
 - (i) Self-contained;
 - (ii) Equipped with a clarifier;
 - (iii) Equipped with an alternative pre-treatment device; or
 - (iv) Plumbed to the sanitary sewer.
 - (2) For new facilities, or during redevelopment of existing facilities (including fire stations), all vehicle and equipment wash areas shall be plumbed to the sanitary sewer and be equipped with a pre-treatment device in accordance with requirements of the sewer agency.

4. Landscape and Recreational Facilities Management

Each Permittee shall implement the following requirements:

- a) A standardized protocol for the routine and non-routine application of pesticides, herbicides (including pre-emergents), and fertilizers;
- b) Consistency with State Board's guidelines and monitoring requirements for application of aquatic pesticides to surface waters (WQ Order No. 2001-12 DWQ);
- c) Ensure no application of pesticides or fertilizers immediately before, during, or immediately after a rain event or when water is flowing off the area to be applied;

Amended by Orders R4-2006-0074, R4-2007-0042, and R4-2009-0130, and further amended pursuant to L.A. Superior Court Case No. BS122724

- d) Ensure that no banned or unregistered pesticides are stored or applied;
 - e) Ensure that staff applying pesticides are certified by the California Department of Food and Agriculture, or are under the direct supervision of a certified pesticide applicator;
 - f) Implement procedures to encourage retention and planting of native vegetation and to reduce water, fertilizer, and pesticide needs;
 - g) Store fertilizers and pesticides indoors or under cover on paved surfaces or use secondary containment;
 - h) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills; and
 - i) Regularly inspect storage areas.
5. Storm Drain Operation and Management
- a) Each Permittee shall designate catch basin inlets within its jurisdiction as one of the following:
 - Priority A: Catch basins that are designated as consistently generating the highest volumes of trash and/or debris.
 - Priority B: Catch basins that are designated as consistently generating moderate volumes of trash and/or debris.
 - Priority C: Catch basins that are designated as generating low volumes of trash and/or debris.
 - b) Permittees subject to a trash TMDL (Ballona Creek WMA) shall continue to implement the requirements listed below until trash TMDL implementation measures are adopted. Thereafter, the subject Permittees shall implement programs in conformance with the TMDL implementation schedule, which shall include an effective combination of measures such as street sweeping, catch basin cleaning, installation of treatment devices and trash receptacles, or other BMPs. Default requirements include:
 - (1) Inspection and cleaning of catch basins between May 1 and September 30 of each year;
 - (2) Additional cleaning of any catch basin that is at least 40% full of trash and/or debris;
 - (3) Record keeping of catch basins cleaned; and
 - (4) Recording of the overall quantity of catch basin waste collected.

Amended by Orders R4-2006-0074, R4-2007-0042, and R4-2009-0130, and further amended pursuant to L.A. Superior Court Case No. BS122724

If the implementation phase for the Los Angeles River and Ballona Creek Trash TMDLs has not begun by October 2003, subject Permittees shall implement the requirements described below in subsection 5(c), until such time programs in conformance with the subject Trash TMDLs are being implemented.

Permittees subject to the Los Angeles River Watershed Trash TMDL shall implement the requirements set forth in Part 7. Total Maximum Daily Load Provisions, subsection 1 "TMDL for Trash in the Los Angeles River Watershed".

c) Permittees not subject to a trash TMDL shall:

(1) Clean catch basins according to the following schedule:

Priority A: A minimum of three times during the wet season and once during the dry season every year.

Priority B: A minimum of once during the wet season and once during the dry season every year.

Priority C: A minimum of once per year.

In addition to the schedule above, between February 1, 2002 and July 1, 2003, Permittees shall ensure that any catch basin that is at least 40% full of trash and/or debris shall be cleaned out. After July 1, 2003, Permittees shall ensure that any catch basin that is at least 25% full of trash and debris shall be cleaned out.

(2) For any special event that can be reasonably expected to generate substantial quantities of trash and litter, include provisions that require for the proper management of trash and litter generated, as a condition of the special use permit issued for that event. At a minimum, the municipality who issues the permit for the special event shall arrange for either temporary screens to be placed on catch basins or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain event.

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

d) Each Permittee shall inspect the legibility of the catch basin stencil or label nearest the inlet. Catch basins with illegible stencils shall be recorded and re-stenciled or re-labeled within 180 days of inspection.

Amended by Orders R4-2006-0074, R4-2007-0042, and R4-2009-0130, and further amended pursuant to L.A. Superior Court Case No. BS122724

- e) Each Permittee shall implement BMPs for Storm Drain Maintenance that include:
 - (1) A program to visually monitor Permittee-owned open channels and other drainage structures for debris at least annually and identify and prioritize problem areas of illicit discharge for regular inspection;
 - (2) A review of current maintenance activities to assure that appropriate storm water BMPs are being utilized to protect water quality;
 - (3) Removal of trash and debris from open channel storm drains shall occur a minimum of once per year before the storm season;
 - (4) Minimize the discharge of contaminants during MS4 maintenance and clean outs; and
 - (5) Proper disposal of material removed.

6. Streets and Roads Maintenance

- a) Each Permittee shall designate streets and/or street segments within its jurisdiction as one of the following:
 - Priority A: Streets and/or street segments that are designated as consistently generating the highest volumes of trash and/or debris.
 - Priority B: Streets and/or street segments that are designated as consistently generating moderate volumes of trash and/or debris.
 - Priority C: Streets and/or street segments that are designated as generating low volumes of trash and/or debris.
- b) Each Permittee shall perform street sweeping of curbed streets according to the following schedule:
 - Priority A: These streets and/or street segments shall be swept at least two times per month.
 - Priority B: Each Permittee shall ensure that each street and/or street segments is swept at least once per month.
 - Priority C: These streets and/or street segments shall be swept as necessary but in no case less than once per year.
- c) Each Permittee shall require that:
 - (1) Sawcutting wastes be recovered and disposed of properly and that in no case shall waste be left on a roadway or allowed to enter the storm drain;

Amended by Orders R4-2006-0074, R4-2007-0042, and R4-2009-0130, and further amended pursuant to L.A. Superior Court Case No. BS122724

- (2) Concrete and other street and road maintenance materials and wastes shall be managed to prevent discharge to the MS4; and
 - (3) The washout of concrete trucks and chutes shall only occur in designated areas and never discharged to storm drains, open ditches, streets, or catch basins.
- d) Each Permittee shall, no later than August 1, 2002, train their employees in targeted positions (whose interactions, jobs, and activities affect storm water quality) regarding the requirements of the storm water management program to:
 - (1) Promote a clear understanding of the potential for maintenance activities to pollute storm water; and
 - (2) Identify and select appropriate BMPs.

For Permittees with a population of 250,000 or more (2000 U.S. Census) training shall be completed no later than February 1, 2003.

7. Parking Facilities Management

Permittee-owned parking lots exposed to storm water shall be kept clear of debris and excessive oil buildup and cleaned no less than 2 times per month and/or inspected no less than 2 times per month to determine if cleaning is necessary. In no case shall a Permittee-owned parking lot be cleaned less than once a month.

8. Public Industrial Activities Management

Each Permittee shall, for any municipal activity considered a discharge of storm water associated with industrial activity, obtain separate coverage under the GIASP except that a municipality under 100,000 in population (1990 U.S. Census) need not file the Notice Of Intent to be covered by said permit until March 10, 2003 (with the exception of power plants, airports, and uncontrolled sanitary landfills).

9. Emergency Procedures

Each Permittee shall repair essential public services and infrastructure in a manner to minimize environmental damage in emergency situations such as: earthquakes; fires; floods; landslides; or windstorms. BMPs shall be implemented to the extent that measures do not compromise public health and safety. After initial emergency response or emergency repair activities have been completed, each Permittee shall implement BMPs and programs as required under this Order.

Amended by Orders R4-2006-0074, R4-2007-0042, and R4-2009-0130, and further amended pursuant to L.A. Superior Court Case No. BS122724

10. Treatment Feasibility Study

The Permittees in cooperation with the County Sanitation Districts of Los Angeles County shall conduct a study to investigate the possible diversion of dry weather discharges or the use of alternative Treatment Control BMPs to treat flows from their jurisdiction which may impact public health and safety and/or the environment. The Permittees shall collectively review their individual prioritized lists and create a watershed based priority list of drains for potential diversion or treatment and submit the priority listing to the Regional Board Executive Officer, no later than July 1, 2003.

G. Illicit Connections and Illicit Discharges Elimination Program

Permittees shall eliminate all illicit connections and illicit discharges to the storm drain system, and shall document, track, and report all such cases in accordance with the elements and performance measures specified in the following subsections.

1. General

- a) Implementation: Each Permittee must develop an Implementation Program which specifies how each Permittee is implementing revisions to the IC/ID Program of the SQMP. This Implementation Program must be documented, and available for review and approval by the Regional Board Executive Officer, upon request.
- b) Tracking: All Permittees shall, no later than February 3, 2003, develop and maintain a listing of all permitted connections to their storm drain system. All Permittees shall map at a scale and in a format specified by the Principal Permittee all illicit connections and discharges on their baseline maps, and shall transmit this information to the Principal Permittee. No later than February 3, 2003, the Principal Permittee shall use this information as well as results of baseline and priority screening for illicit connections (as set forth in subsection 2 below) to start an annual evaluation of patterns and trends of illicit connections and illicit discharges, with the objectives of identifying priority areas for elimination of illicit connections and illicit discharges.
- c) Training: All Permittees shall train all targeted employees who are responsible for identification, investigation, termination, cleanup, and reporting of illicit connections and discharges. For Permittees with a population of less than 250,000 (2000 U.S. Census), training shall be completed no later than August 1, 2002. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003. Furthermore, all Permittees shall conduct refresher training on an annual basis thereafter.

Amended by Orders R4-2006-0074, R4-2007-0042, and R4-2009-0130, and further amended pursuant to L.A. Superior Court Case No. BS122724

Exhibit B

The City of Bellflower

Families. Businesses. Futures.

16600 Civic Center Drive, Bellflower, CA 90706

Tel 562.804.1424 Fax 562.925.8660 www.bellflower.org



September 28, 2011

Certified No. 7011 0110 0000 5656 2638
Return Receipt Requested

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

**Re: Municipal Storm Water and Urban Runoff Discharges Claim for Payment
For Fiscal Years 2002 through 2010**

Dear Local Reimbursements Section Staff:

Enclosed you will find the City of Bellflower's Claim for Payment (Form FAM-27 for Program 314) for Fiscal Years 2002 through 2010. If you have any questions regarding this submittal or need any additional information, you may contact me via telephone at (562) 804-1424, ext. 2233 or via e-mail at biniguez@bellflower.org.

Sincerely,

Bernardo Iniguez
Environmental Services Manager

Enclosures

Doc 248068

Scott A. Larsen
Mayor

Dan Koops
Mayor Pro Tem

Randy Bomgaars
Council Member

Raymond Dunton
Council Member

Sonny Santa Ines
Council Member

USPS- GMF STATION
 LONG BEACH, California
 908099355
 0544850015 -0094
 09/28/2011 (562)494-2296 06:46:35 PM

Sales Receipt		
Product Description	Sale Unit Qty Price	Final Price
SACRAMENTO CA 94250		\$1.88
Zone-4 First-Class		
Large Env		
5.20 oz.		
Expected Delivery: Sat 10/01/11		
Return Rcpt (Green Card)		\$2.30
Certified		\$2.85
Label #:	70110110000056562638	
Issue PVI:		\$7.03

Total: \$7.03

Paid by: Cash \$10.00
 Change Due: -\$2.97

 BRIGHTEN SOMEONE'S MAILBOX. Greeting cards available for purchase at select Post Offices.

Order stamps at usps.com/shop or call 1-800-Stamp24. Go to usps.com/clicknship to print shipping labels with postage. For other information call 1-800-ASK-USPS.

 Get your mail when and where you want it with a secure Post Office Box. Sign up for a box online at usps.com/poboxes.

Bill#: 1000603757047
 Clerk: 06

All sales final on stamps and postage
 Refunds for guaranteed services only
 Thank you for your business

HELP US SERVE YOU BETTER
 Go to: <https://postalexperience.com/Pos>
 TELL US ABOUT YOUR RECENT POSTAL EXPERIENCE
 YOUR OPINION COUNTS

Customer Copy

7011 0110 0000 5656 2638

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$1.88
Certified Fee	\$2.85
Return Receipt Fee (Endorsement Required)	\$2.30
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total	\$7.03

Office of the State Controller
 Attn: Local Reimbursements Section
 Division of Accounting and Reporting
 P.O. Box 942850
 Sacramento, CA 94250


Sent To: _____
 Street, Apt. or PO Box _____
 City, State _____

PS Form 3800, August 2006 See Reverse for Instructions

Form FAM-27 (New 05/11)


PROGRAM 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM SUMMARY						Form 1	
(01) Claimant City of Bellflower				(02) Fiscal Year 2002/2003				
(03) Department		Public Works						
Direct Costs		Object Accounts						
(04) Reimbursable Activities		(a) Salaries	(b) Benefits	(c) Materials and Supplies	(d) Contract Services	(e) Fixed Assets	(f) Travel	(g) Total
A. One-time Activities								
1. Identification of locations that are required to have a trash receptacle								
2. Selection/evaluation/and preparation of specifications and drawings								
3. Preparation of contracts/specification review process/advertise/review and award bids								
4. Purchase or construction and installation of receptacles and pads				3,421.17				3,421.17
5. Moving/restoration at old location/and installation at new location								
(05) Total One-time Costs				3,421.17				3,421.17
Reasonable Reimbursement Methodology (RRM).								
B. Ongoing Activity: Maintain Trash Receptacles and Pads								
(06) Annual number of trash collections (Refer to claiming instructions)								9,828
(07) Total Ongoing Costs Line (06) x RRM rate								66,240.72
Indirect Costs								
(08) Indirect Cost Rate for A. One-time Activities [From ICRP or 10%]								%
(09) Total Indirect Costs for A. One-time Activities Line (05)(a) x 10% or [Refer to Claiming Instructions for ICRP over 10%]								
(10) Total Direct and Indirect Costs Line (05)(g) + line (07) + line (09)								69,661.89
(11) Less: Offsetting Revenues								
(12) Less: Other Reimbursements								
(13) Total Claimed Amount [Line (10) - {line (11) + line (12)}]								69,661.89

Program 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES ACTIVITY COST DETAIL						Form 2	
(01) Claimant City of Bellflower			(02) Fiscal Year 2002/2003					
(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.								
A. One-time Activities								
<input type="checkbox"/> 1. Identification of locations that are required to have a trash receptacle			<input checked="" type="checkbox"/> 4. Purchase or construction and installation of receptacles and pads					
<input type="checkbox"/> 2. Selection/evaluation and preparation of specifications and drawings			<input type="checkbox"/> 5. Moving/restoration at old location/and installation at new location					
<input type="checkbox"/> 3. Preparation of contracts/specification review process/advertisement/review and award of bids								
(04) Description of Expenses			Object Accounts					
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Materials and Supplies	(g) Contract Services	(h) Fixed Assets	(i) Travel
Purchase of trash receptacles	77.17	40			3,421.17			
(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/> Page: 1 of 1			3,421.17					

MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM FOR PAYMENT			For State Controller Use Only		PROGRAM
			(19) Program Number 00314 (20) Date Filed (21) LRS Input		314
(01) Claimant Identification Number 3790			Reimbursement Claim Data		
(02) Claimant Name City of Bellflower			(22) FORM-1, (04) A.1.(g)		
County of Location Los Angeles County			(23) FORM-1, (04) A.2.(g)		
Street Address or P.O. Box 16600 Civic Center Drive Suite			(24) FORM-1, (04) A.3.(g)		
City Bellflower State CA Zip Code 90706			(25) FORM-1, (04) A.4.(g)		
Type of Claim (03) (09) Reimbursement <input checked="" type="checkbox"/> (04) (10) Combined <input type="checkbox"/> (05) (11) Amended <input type="checkbox"/>			(26) FORM-1, (04) A.5.(g)		
			(27) FORM-1, (06)		9,828
			(28) FORM-1, (07)		66,240.72
			(29) FORM-1, (08)		
Fiscal Year of Cost (06)			(12) 2003/2004		(30) FORM-1, (11)
Total Claimed Amount (07)			(13) 66,240.72		(31) FORM-1, (12)
Less: (refer to attached Instructions)			(14)		(32)
Less: Prior Claim Payment Received			(15) 0		(33)
Net Claimed Amount			(16) 66,240.72		(34)
Due from State (08)			(17) 66,240.72		(35)
Due to State			(18)		(36)
(37) CERTIFICATION OF CLAIM In accordance with the provisions of Government Code Sections 17560 and 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Article 4, Chapter 1 of Division 4 of Title 1 Government Code. I further certify that there was no application other than from the claimant, nor any grants or payments received for reimbursement of costs claimed herein and claimed costs are for a new program or increased level of services of an existing program. All offsetting revenues and reimbursements set forth in the parameters and guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant. The amount for this reimbursement is hereby claimed from the State for payment of actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> Signature of Authorized Officer  Bernardo Iniguez, Environmental Services Manager Type or Print Name and Title of Authorized Signatory </div> <div style="width: 45%;"> Date Signed 09/28/11 Telephone Number 562-804-1424, ext. 2233 E-mail Address biniguez@bellflower.org </div> </div>					
(38) Name of Agency Contact Person for Claim			Telephone Number 562-804-1424, ext. 2233		
Bernardo Iniguez, Environmental Services Manager			E-mail Address biniguez@bellflower.org		
Name of Consulting Firm / Claim Preparer			Telephone Number		
			E-mail Address		

PROGRAM 314		MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM SUMMARY					Form 1	
(01) Claimant City of Bellflower		(02) Fiscal Year 20032004						
(03) Department Public Works								
Direct Costs		Object Accounts						
(04) Reimbursable Activities		(a) Salaries	(b) Benefits	(c) Materials and Supplies	(d) Contract Services	(e) Fixed Assets	(f) Travel	(g) Total
A. One-time Activities								
1. Identification of locations that are required to have a trash receptacle								
2. Selection/evaluation/and preparation of specifications and drawings								
3. Preparation of contracts/specification review process/advertise/review and award bids								
4. Purchase or construction and installation of receptacles and pads								
5. Moving/restoration at old location/and installation at new location								
(05) Total One-time Costs								
Reasonable Reimbursement Methodology (RRM).								
B. Ongoing Activity: Maintain Trash Receptacles and Pads								
(06) Annual number of trash collections (Refer to claiming instructions)								9,828
(07) Total Ongoing Costs Line (06) x RRM rate								66,240.72
Indirect Costs								
(08) Indirect Cost Rate for A. One-time Activities [From ICRP or 10%]								%
(09) Total Indirect Costs for A. One-time Activities Line (05)(a) x 10% or [Refer to Claiming Instructions for ICRP over 10%]								
(10) Total Direct and Indirect Costs Line (05)(g) + line (07) + line (09)								66,240.72
(11) Less: Offsetting Revenues								
(12) Less: Other Reimbursements								
(13) Total Claimed Amount [Line (10) - {line (11) + line (12)}]								66,240.72

Program 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES ACTIVITY COST DETAIL	Form 2
(01) Claimant City of Bellflower		(02) Fiscal Year 2003/2004
(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.		
A. One-time Activities		
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> 1. Identification of locations that are required to have a trash receptacle </div> <div style="width: 50%;"> <input type="checkbox"/> 4. Purchase or construction and installation of receptacles and pads </div> <div style="width: 50%;"> <input type="checkbox"/> 2. Selection/evaluation and preparation of specifications and drawings </div> <div style="width: 50%;"> <input type="checkbox"/> 5. Moving/restoration at old location/and installation at new location </div> <div style="width: 50%;"> <input type="checkbox"/> 3. Preparation of contracts/specification review process/advertisement/review and award of bids </div> </div>		
(04) Description of Expenses		
Object Accounts		
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity
(d) Salaries	(e) Benefits	(f) Materials and Supplies
(g) Contract Services	(h) Fixed Assets	(i) Travel
(05) Total <input type="checkbox"/> Subtotal <input type="checkbox"/> Page: <u>1</u> of <u>1</u>		

MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM FOR PAYMENT		For State Controller Use Only		PROGRAM 314
		(19) Program Number 00314 (20) Date Filed (21) LRS Input		
(01) Claimant Identification Number 3790		Reimbursement Claim Data		
(02) Claimant Name City of Bellflower		(22) FORM-1, (04) A.1.(g)		
County of Location Los Angeles County		(23) FORM-1, (04) A.2.(g)		
Street Address or P.O. Box 16600 Civic Center Drive Suite		(24) FORM-1, (04) A.3.(g)		
City Bellflower State CA Zip Code 90706		(25) FORM-1, (04) A.4.(g)		
		Type of Claim		
(03)		(09) Reimbursement <input checked="" type="checkbox"/>	(27) FORM-1, (06)	9,828
(04)		(10) Combined <input type="checkbox"/>	(28) FORM-1, (07)	66,240.72
(05)		(11) Amended <input type="checkbox"/>	(29) FORM-1, (08)	
Fiscal Year of Cost		(06)	(12) 2004/2005	(30) FORM-1, (11)
Total Claimed Amount		(07)	(13) 66,240.72	(31) FORM-1, (12)
Less: (refer to attached Instructions)		(14)	(32)	
Less: Prior Claim Payment Received		(15) 0	(33)	
Net Claimed Amount		(16) 66,240.72	(34)	
Due from State		(08)	(17) 66,240.72	(35)
Due to State		(18)	(36)	
(37) CERTIFICATION OF CLAIM				
In accordance with the provisions of Government Code Sections 17560 and 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Article 4, Chapter 1 of Division 4 of Title 1 Government Code.				
I further certify that there was no application other than from the claimant, nor any grants or payments received for reimbursement of costs claimed herein and claimed costs are for a new program or increased level of services of an existing program. All offsetting revenues and reimbursements set forth in the parameters and guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.				
The amount for this reimbursement is hereby claimed from the State for payment of actual costs set forth on the attached statements.				
I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.				
Signature of Authorized Officer 		Date Signed 09/28/11		
_____ Bernardo Iniguez, Environmental Services Manager		Telephone Number 562-804-1424, ext. 2233		
Type or Print Name and Title of Authorized Signatory		E-mail Address biniguez@bellflower.org		
(38) Name of Agency Contact Person for Claim		Telephone Number 562-804-1424, ext. 2233		
Bernardo Iniguez, Environmental Services Manager		E-mail Address biniguez@bellflower.org		
Name of Consulting Firm / Claim Preparer		Telephone Number		
		E-mail Address		

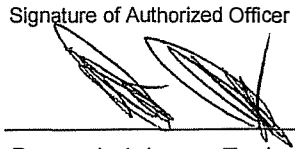
PROGRAM <div style="font-size: 24pt; font-weight: bold;">314</div>	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM SUMMARY	Form <div style="font-size: 24pt; font-weight: bold;">1</div>
(01) Claimant City of Bellflower		(02) Fiscal Year <div style="text-align: right;">2004/2005</div>
(03) Department Public Works		
Direct Costs	Object Accounts	
(04) Reimbursable Activities	(a) Salaries	(b) Benefits
	(c) Materials and Supplies	(d) Contract Services
	(e) Fixed Assets	(f) Travel
	(g) Total	
A. One-time Activities		
1. Identification of locations that are required to have a trash receptacle		
2. Selection/evaluation/and preparation of specifications and drawings		
3. Preparation of contracts/specification review process/advertise/review and award bids		
4. Purchase or construction and installation of receptacles and pads		
5. Moving/restoration at old location/and installation at new location		
(05) Total One-time Costs		
Reasonable Reimbursement Methodology (RRM).		
B. Ongoing Activity: Maintain Trash Receptacles and Pads		
(06) Annual number of trash collections (Refer to claiming instructions)	9,828	
(07) Total Ongoing Costs	Line (06) x RRM rate 66,240.72	
Indirect Costs		
(08) Indirect Cost Rate for A. One-time Activities	[From ICRP or 10%] %	
(09) Total Indirect Costs for A. One-time Activities	Line (05) (a) x 10% or [Refer to Claiming Instructions for ICRP over 10%]	
(10) Total Direct and Indirect Costs	Line (05)(g) + line (07) + line (09) 66,240.72	
(11) Less: Offsetting Revenues		
(12) Less: Other Reimbursements		
(13) Total Claimed Amount	[Line (10) - {line (11) + line (12)}] 66,240.72	

Program 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES ACTIVITY COST DETAIL						Form 2		
(01) Claimant City of Bellflower				(02) Fiscal Year 2004/2005					
(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.									
A. One-time Activities									
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> 1. Identification of locations that are required to have a trash receptacle </div> <div style="width: 50%;"> <input type="checkbox"/> 4. Purchase or construction and installation of receptacles and pads </div> <div style="width: 50%;"> <input type="checkbox"/> 2. Selection/evaluation and preparation of specifications and drawings </div> <div style="width: 50%;"> <input type="checkbox"/> 5. Moving/restoration at old location/and installation at new location </div> <div style="width: 50%;"> <input type="checkbox"/> 3. Preparation of contracts/specification review process/advertisement/review and award of bids </div> </div>									
(04) Description of Expenses				Object Accounts					
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Materials and Supplies	(g) Contract Services	(h) Fixed Assets	(i) Travel	
(05) Total <input type="checkbox"/> Subtotal <input type="checkbox"/> Page: <u>1</u> of <u>1</u>									

BF 025

PROGRAM 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM SUMMARY						Form 1	
(01) Claimant City of Bellflower				(02) Fiscal Year 2005/2006				
(03) Department		Public Works						
Direct Costs		Object Accounts						
		(a)	(b)	(c)	(d)	(e)	(f)	(g)
(04) Reimbursable Activities		Salaries	Benefits	Materials and Supplies	Contract Services	Fixed Assets	Travel	Total
A. One-time Activities								
1. Identification of locations that are required to have a trash receptacle								
2. Selection/evaluation/and preparation of specifications and drawings								
3. Preparation of contracts/specification review process/advertise/review and award bids								
4. Purchase or construction and installation of receptacles and pads								
5. Moving/restoration at old location/and installation at new location								
(05) Total One-time Costs								
Reasonable Reimbursement Methodology (RRM).								
B. Ongoing Activity: Maintain Trash Receptacles and Pads								
(06) Annual number of trash collections (Refer to claiming instructions)								9,828
(07) Total Ongoing Costs Line (06) x RRM rate								66,240.72
Indirect Costs								
(08) Indirect Cost Rate for A. One-time Activities [From ICRP or 10%]								%
(09) Total Indirect Costs for A. One-time Activities Line (05)(a) x 10% or [Refer to Claiming Instructions for ICRP over 10%]								
(10) Total Direct and Indirect Costs Line (05)(g) + line (07) + line (09)								66,240.72
(11) Less: Offsetting Revenues								
(12) Less: Other Reimbursements								
(13) Total Claimed Amount [Line (10) - {line (11) + line (12)}]								66,240.72

Program 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES ACTIVITY COST DETAIL						Form 2		
(01) Claimant City of Bellflower				(02) Fiscal Year 2005/2006					
(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.									
A. One-time Activities									
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> 1. Identification of locations that are required to have a trash receptacle </div> <div style="width: 50%;"> <input type="checkbox"/> 4. Purchase or construction and installation of receptacles and pads </div> <div style="width: 50%;"> <input type="checkbox"/> 2. Selection/evaluation and preparation of specifications and drawings </div> <div style="width: 50%;"> <input type="checkbox"/> 5. Moving/restoration at old location/and installation at new location </div> <div style="width: 50%;"> <input type="checkbox"/> 3. Preparation of contracts/specification review process/advertisement/review and award of bids </div> </div>									
(04) Description of Expenses				Object Accounts					
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Materials and Supplies	(g) Contract Services	(h) Fixed Assets	(i) Travel	
(05) Total <input type="checkbox"/> Subtotal <input type="checkbox"/> Page: <u> 1 </u> of <u> 1 </u>									

MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM FOR PAYMENT			For State Controller Use Only		PROGRAM 314
			(19) Program Number 00314 (20) Date Filed (21) LRS Input		
(01) Claimant Identification Number 3790			Reimbursement Claim Data		
(02) Claimant Name City of Bellflower			(22) FORM-1, (04) A.1.(g)		
County of Location Los Angeles County			(23) FORM-1, (04) A.2.(g)		
Street Address or P.O. Box 16600 Civic Center Drive Suite			(24) FORM-1, (04) A.3.(g)		
City Bellflower State CA Zip Code 90706			(25) FORM-1, (04) A.4.(g)		
Type of Claim (03) (09) Reimbursement <input checked="" type="checkbox"/> (04) (10) Combined <input type="checkbox"/> (05) (11) Amended <input type="checkbox"/>			(26) FORM-1, (04) A.5.(g)		
			(27) FORM-1, (06)		9,828
			(28) FORM-1, (07)		66,240.72
			(29) FORM-1, (08)		
Fiscal Year of Cost (06)			(12) 2006/2007		(30) FORM-1, (11)
Total Claimed Amount (07)			(13) 66,240.72		(31) FORM-1, (12)
Less: (refer to attached Instructions)			(14)		(32)
Less: Prior Claim Payment Received			(15) 0		(33)
Net Claimed Amount			(16) 66,240.72		(34)
Due from State (08)			(17) 66,240.72		(35)
Due to State			(18)		(36)
(37) CERTIFICATION OF CLAIM					
<p>In accordance with the provisions of Government Code Sections 17560 and 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Article 4, Chapter 1 of Division 4 of Title 1 Government Code.</p> <p>I further certify that there was no application other than from the claimant, nor any grants or payments received for reimbursement of costs claimed herein and claimed costs are for a new program or increased level of services of an existing program. All offsetting revenues and reimbursements set forth in the parameters and guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.</p> <p>The amount for this reimbursement is hereby claimed from the State for payment of actual costs set forth on the attached statements.</p> <p>I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p>					
Signature of Authorized Officer  _____ Bernardo Iniguez, Environmental Services Manager Type or Print Name and Title of Authorized Signatory			Date Signed 09/28/11 Telephone Number 562-804-1424, ext. 2233 E-mail Address biniguez@bellflower.org		
(38) Name of Agency Contact Person for Claim Bernardo Iniguez, Environmental Services Manager Name of Consulting Firm / Claim Preparer			Telephone Number 562-804-1424, ext. 2233 E-mail Address biniguez@bellflower.org Telephone Number E-mail Address		

PROGRAM <div style="font-size: 24pt; font-weight: bold;">314</div>	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM SUMMARY	Form <div style="font-size: 24pt; font-weight: bold;">1</div>					
(01) Claimant City of Bellflower		(02) Fiscal Year <div style="text-align: right;">2006/2007</div>					
(03) Department Public Works							
Direct Costs	Object Accounts						
(04) Reimbursable Activities	(a) Salaries	(b) Benefits	(c) Materials and Supplies	(d) Contract Services	(e) Fixed Assets	(f) Travel	(g) Total
A. One-time Activities							
1. Identification of locations that are required to have a trash receptacle							
2. Selection/evaluation/and preparation of specifications and drawings							
3. Preparation of contracts/specification review process/advertise/review and award bids							
4. Purchase or construction and installation of receptacles and pads							
5. Moving/restoration at old location/and installation at new location							
(05) Total One-time Costs							
Reasonable Reimbursement Methodology (RRM).							
B. Ongoing Activity: Maintain Trash Receptacles and Pads							
(06) Annual number of trash collections (Refer to claiming instructions)							9,828
(07) Total Ongoing Costs Line (06) x RRM rate							66,240.72
Indirect Costs							
(08) Indirect Cost Rate for A. One-time Activities [From ICRP or 10%]							%
(09) Total Indirect Costs for A. One-time Activities Line (05)(a) x 10% or [Refer to Claiming Instructions for ICRP over 10%]							
(10) Total Direct and Indirect Costs Line (05)(g) + line (07) + line (09)							66,240.72
(11) Less: Offsetting Revenues							
(12) Less: Other Reimbursements							
(13) Total Claimed Amount [Line (10) - {line (11) + line (12)}]							66,240.72

Program 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES ACTIVITY COST DETAIL						Form 2		
(01) Claimant City of Bellflower				(02) Fiscal Year 2006/2007					
(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.									
A. One-time Activities									
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> 1. Identification of locations that are required to have a trash receptacle </div> <div style="width: 50%;"> <input type="checkbox"/> 4. Purchase or construction and installation of receptacles and pads </div> <div style="width: 50%;"> <input type="checkbox"/> 2. Selection/evaluation and preparation of specifications and drawings </div> <div style="width: 50%;"> <input type="checkbox"/> 5. Moving/restoration at old location/and installation at new location </div> <div style="width: 50%;"> <input type="checkbox"/> 3. Preparation of contracts/specification review process/advertisement/review and award of bids </div> </div>									
(04) Description of Expenses				Object Accounts					
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Materials and Supplies	(g) Contract Services	(h) Fixed Assets	(i) Travel	
(05) Total <input type="checkbox"/> Subtotal <input type="checkbox"/> Page: <u>1</u> of <u>1</u>									

MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM FOR PAYMENT			For State Controller Use Only		PROGRAM	
			(19) Program Number 00314 (20) Date Filed (21) LRS Input		314	
(01) Claimant Identification Number 3790			Reimbursement Claim Data			
(02) Claimant Name City of Bellflower			(22) FORM-1, (04) A.1.(g)			
County of Location Los Angeles County			(23) FORM-1, (04) A.2.(g)			
Street Address or P.O. Box 16600 Civic Center Drive Suite			(24) FORM-1, (04) A.3.(g)			
City Bellflower State CA Zip Code 90706			(25) FORM-1, (04) A.4.(g)			
Type of Claim (03) (09) Reimbursement <input checked="" type="checkbox"/> (04) (10) Combined <input type="checkbox"/> (05) (11) Amended <input type="checkbox"/>			(26) FORM-1, (04) A.5.(g)			
			(27) FORM-1, (06)		9,828	
			(28) FORM-1, (07)		66,240.72	
(06) (12) 2007/2008			(29) FORM-1, (08)			
(07) (13) 66,240.72			(30) FORM-1, (11)			
(14)			(31) FORM-1, (12)			
Less: (refer to attached Instructions)			(32)			
Less: Prior Claim Payment Received 0			(33)			
(16) 66,240.72			(34)			
(08) (17) 66,240.72			(35)			
(18)			(36)			
(37) CERTIFICATION OF CLAIM In accordance with the provisions of Government Code Sections 17560 and 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Article 4, Chapter 1 of Division 4 of Title 1 Government Code. I further certify that there was no application other than from the claimant, nor any grants or payments received for reimbursement of costs claimed herein and claimed costs are for a new program or increased level of services of an existing program. All offsetting revenues and reimbursements set forth in the parameters and guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant. The amount for this reimbursement is hereby claimed from the State for payment of actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signature of Authorized Officer <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 20px;"> <div style="width: 45%;">  <u>Bernardo Iniguez, Environmental Services Manager</u> Type or Print Name and Title of Authorized Signatory </div> <div style="width: 45%;"> Date Signed <u>09/28/11</u> Telephone Number <u>562-804-1424, ext. 2233</u> E-mail Address <u>biniguez@bellflower.org</u> </div> </div>						
(38) Name of Agency Contact Person for Claim			Telephone Number		<u>562-804-1424, ext. 2233</u>	
<u>Bernardo Iniguez, Environmental Services Manager</u>			E-mail Address		<u>biniguez@bellflower.org</u>	
Name of Consulting Firm / Claim Preparer			Telephone Number			
			E-mail Address			

PROGRAM 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM SUMMARY						Form 1	
(01) Claimant City of Bellflower						(02) Fiscal Year <u>20072008</u>		
(03) Department		Public Works						
Direct Costs		Object Accounts						
		(a)	(b)	(c)	(d)	(e)	(f)	(g)
(04) Reimbursable Activities		Salaries	Benefits	Materials and Supplies	Contract Services	Fixed Assets	Travel	Total
A. One-time Activities								
1. Identification of locations that are required to have a trash receptacle								
2. Selection/evaluation/and preparation of specifications and drawings								
3. Preparation of contracts/specification review process/advertise/review and award bids								
4. Purchase or construction and installation of receptacles and pads								
5. Moving/restoration at old location/and installation at new location								
(05) Total One-time Costs								
Reasonable Reimbursement Methodology (RRM).								
B. Ongoing Activity: Maintain Trash Receptacles and Pads								
(06) Annual number of trash collections (Refer to claiming instructions)								9,828
(07) Total Ongoing Costs Line (06) x RRM rate								66,240.72
Indirect Costs								
(08) Indirect Cost Rate for A. One-time Activities [From ICRP or 10%]								%
(09) Total Indirect Costs for A. One-time Activities Line (05)(a) x 10% or [Refer to Claiming Instructions for ICRP over 10%]								
(10) Total Direct and Indirect Costs Line (05)(g) + line (07) + line (09)								66,240.72
(11) Less: Offsetting Revenues								
(12) Less: Other Reimbursements								
(13) Total Claimed Amount [Line (10) - {line (11) + line (12)}]								66,240.72

Program 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES ACTIVITY COST DETAIL						Form 2		
(01) Claimant City of Bellflower				(02) Fiscal Year 2007/2008					
(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.									
A. One-time Activities									
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> 1. Identification of locations that are required to have a trash receptacle </div> <div style="width: 50%;"> <input type="checkbox"/> 4. Purchase or construction and installation of receptacles and pads </div> <div style="width: 50%;"> <input type="checkbox"/> 2. Selection/evaluation and preparation of specifications and drawings </div> <div style="width: 50%;"> <input type="checkbox"/> 5. Moving/restoration at old location/and installation at new location </div> <div style="width: 50%;"> <input type="checkbox"/> 3. Preparation of contracts/specification review process/advertisement/review and award of bids </div> </div>									
(04) Description of Expenses				Object Accounts					
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Materials and Supplies	(g) Contract Services	(h) Fixed Assets	(i) Travel	
(05) Total <input type="checkbox"/> Subtotal <input type="checkbox"/> Page: <u>1</u> of <u>1</u>									

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PROGRAM 314		MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM SUMMARY					Form 1	
(01) Claimant City of Bellflower		(02) Fiscal Year 20082009						
(03) Department	Public Works							
Direct Costs		Object Accounts						
(04) Reimbursable Activities		(a) Salaries	(b) Benefits	(c) Materials and Supplies	(d) Contract Services	(e) Fixed Assets	(f) Travel	(g) Total
A. One-time Activities								
1. Identification of locations that are required to have a trash receptacle								
2. Selection/evaluation/and preparation of specifications and drawings								
3. Preparation of contracts/specification review process/advertise/review and award bids								
4. Purchase or construction and installation of receptacles and pads								
5. Moving/restoration at old location/and installation at new location								
(05) Total One-time Costs								
Reasonable Reimbursement Methodology (RRM).								
B. Ongoing Activity: Maintain Trash Receptacles and Pads								
(06) Annual number of trash collections (Refer to claiming instructions)								9,828
(07) Total Ongoing Costs Line (06) x RRM rate								66,240.72
Indirect Costs								
(08) Indirect Cost Rate for A. One-time Activities [From ICRP or 10%]								%
(09) Total Indirect Costs for A. One-time Activities Line (05)(a) x 10% or [Refer to Claiming Instructions for ICRP over 10%]								
(10) Total Direct and Indirect Costs Line (05)(g) + line (07) + line (09)								66,240.72
(11) Less: Offsetting Revenues								
(12) Less: Other Reimbursements								
(13) Total Claimed Amount [Line (10) - {line (11) + line (12)}]								66,240.72

Program 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES ACTIVITY COST DETAIL						Form 2		
(01) Claimant City of Bellflower				(02) Fiscal Year 2008/2009					
(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.									
A. One-time Activities									
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> 1. Identification of locations that are required to have a trash receptacle </div> <div style="width: 50%;"> <input type="checkbox"/> 4. Purchase or construction and installation of receptacles and pads </div> <div style="width: 50%;"> <input type="checkbox"/> 2. Selection/evaluation and preparation of specifications and drawings </div> <div style="width: 50%;"> <input type="checkbox"/> 5. Moving/restoration at old location/and installation at new location </div> <div style="width: 50%;"> <input type="checkbox"/> 3. Preparation of contracts/specification review process/advertisement/review and award of bids </div> </div>									
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(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Materials and Supplies	(g) Contract Services	(h) Fixed Assets	(i) Travel	
(05) Total <input type="checkbox"/> Subtotal <input type="checkbox"/> Page: <u>1</u> of <u>1</u>									

MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM FOR PAYMENT			For State Controller Use Only		PROGRAM
			(19) Program Number 00314 (20) Date Filed (21) LRS Input		314
(01) Claimant Identification Number 3790			Reimbursement Claim Data		
(02) Claimant Name City of Bellflower			(22) FORM-1, (04) A.1.(g)		
County of Location Los Angeles County			(23) FORM-1, (04) A.2.(g)		
Street Address or P.O. Box 16600 Civic Center Drive Suite			(24) FORM-1, (04) A.3.(g)		
City Bellflower State CA Zip Code 90706			(25) FORM-1, (04) A.4.(g)		
Type of Claim (03) (09) Reimbursement <input checked="" type="checkbox"/> (04) (10) Combined <input type="checkbox"/> (05) (11) Amended <input type="checkbox"/>			(26) FORM-1, (04) A.5.(g)		
			(27) FORM-1, (06)		9,828
			(28) FORM-1, (07)		66,633.84
			(29) FORM-1, (08)		
Fiscal Year of Cost (06)			(12) 2009/2010		(30) FORM-1, (11)
Total Claimed Amount (07)			(13) 66,633.84		(31) FORM-1, (12)
Less: (refer to attached Instructions)			(14)		(32)
Less: Prior Claim Payment Received			(15) 0		(33)
Net Claimed Amount			(16) 66,633.84		(34)
Due from State (08)			(17) 66,633.84		(35)
Due to State			(18)		(36)
(37) CERTIFICATION OF CLAIM In accordance with the provisions of Government Code Sections 17560 and 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Article 4, Chapter 1 of Division 4 of Title 1 Government Code. I further certify that there was no application other than from the claimant, nor any grants or payments received for reimbursement of costs claimed herein and claimed costs are for a new program or increased level of services of an existing program. All offsetting revenues and reimbursements set forth in the parameters and guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant. The amount for this reimbursement is hereby claimed from the State for payment of actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> Signature of Authorized Officer  Bernardo Iniguez, Environmental Services Manager Type or Print Name and Title of Authorized Signatory </div> <div style="width: 45%;"> Date Signed 09/28/11 Telephone Number 562-804-1424, ext. 2233 E-mail Address biniguez@bellflower.org </div> </div>					
(38) Name of Agency Contact Person for Claim			Telephone Number 562-804-1424, ext. 2233		
Bernardo Iniguez, Environmental Services Manager			E-mail Address biniguez@bellflower.org		
Name of Consulting Firm / Claim Preparer			Telephone Number		
			E-mail Address		

PROGRAM 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM SUMMARY						Form 1	
(01) Claimant City of Bellflower						(02) Fiscal Year 20092010		
(03) Department		Public Works						
Direct Costs		Object Accounts						
(04) Reimbursable Activities		(a) Salaries	(b) Benefits	(c) Materials and Supplies	(d) Contract Services	(e) Fixed Assets	(f) Travel	(g) Total
A. One-time Activities								
1. Identification of locations that are required to have a trash receptacle								
2. Selection/evaluation/and preparation of specifications and drawings								
3. Preparation of contracts/specification review process/advertise/review and award bids								
4. Purchase or construction and installation of receptacles and pads								
5. Moving/restoration at old location/and installation at new location								
(05) Total One-time Costs								
Reasonable Reimbursement Methodology (RRM).								
B. Ongoing Activity: Maintain Trash Receptacles and Pads								
(06) Annual number of trash collections (Refer to claiming instructions)								9,828
(07) Total Ongoing Costs Line (06) x RRM rate								66,633.84
Indirect Costs								
(08) Indirect Cost Rate for A. One-time Activities [From ICRP or 10%]								%
(09) Total Indirect Costs for A. One-time Activities Line (05)(a) x 10% or [Refer to Claiming Instructions for ICRP over 10%]								
(10) Total Direct and Indirect Costs Line (05)(g) + line (07) + line (09)								66,633.84
(11) Less: Offsetting Revenues								
(12) Less: Other Reimbursements								
(13) Total Claimed Amount [Line (10) - {line (11) + line (12)}]								66,633.84

Program 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES ACTIVITY COST DETAIL	Form 2
(01) Claimant City of Bellflower		(02) Fiscal Year 2009/2010
(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.		
A. One-time Activities		
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> 1. Identification of locations that are required to have a trash receptacle </div> <div style="width: 50%;"> <input type="checkbox"/> 4. Purchase or construction and installation of receptacles and pads </div> <div style="width: 50%;"> <input type="checkbox"/> 2. Selection/evaluation and preparation of specifications and drawings </div> <div style="width: 50%;"> <input type="checkbox"/> 5. Moving/restoration at old location/and installation at new location </div> <div style="width: 50%;"> <input type="checkbox"/> 3. Preparation of contracts/specification review process/advertisement/review and award of bids </div> </div>		
(04) Description of Expenses		
Object Accounts		
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity
(d) Salaries	(e) Benefits	(f) Materials and Supplies
(g) Contract Services	(h) Fixed Assets	(i) Travel
(05) Total <input type="text"/> Subtotal <input type="text"/> Page: <u>1</u> of <u>1</u>		

Exhibit C

GUIDELINES

Proposition A and Proposition C LOCAL RETURN



Metro

Metro Board Approved
FY 2006-07

PROPOSITION A AND PROPOSITION C DISTRIBUTION

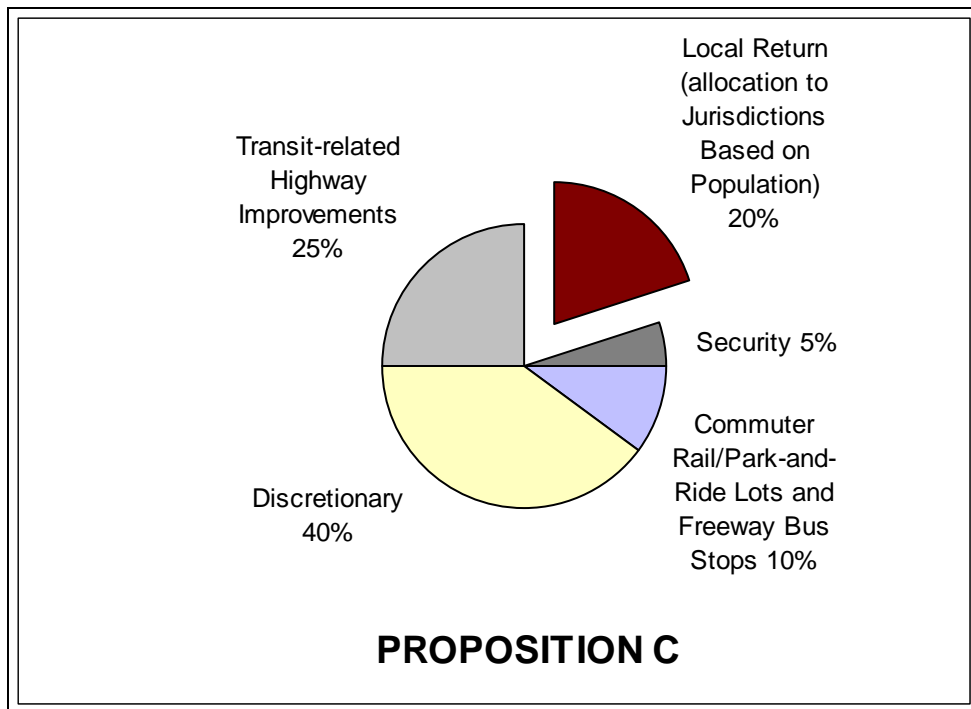
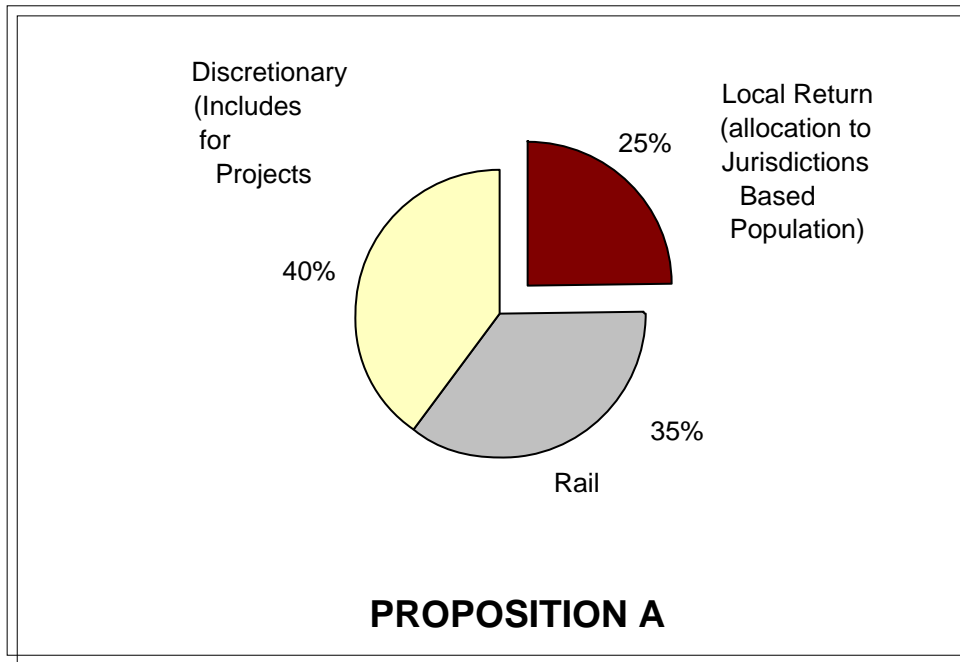


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I. PROGRAM SUMMARY

A. INTRODUCTION

The Proposition A and Proposition C Programs are funded by two 1/2 cent sales tax measures approved by Los Angeles County voters to finance a Transit Development Program. The Proposition A tax measure was approved in 1980 and the Proposition C tax measure was approved in 1990. Collection of the taxes began on July 1, 1982, and April 1, 1991, respectively.

Twenty-five percent of the Proposition A tax and twenty percent of the Proposition C tax is designated for the Local Return (LR) Program funds to be used by cities and the County (Jurisdictions) in developing and/or improving public transit, paratransit, and the related transportation infrastructure.

LR funds are allocated and distributed monthly to Jurisdictions on a "per capita" basis by the Los Angeles County Metropolitan Transportation Authority (Metro).

1. PROPOSITION A LOCAL RETURN FUNDS

The Proposition A Ordinance requires that LR funds be used exclusively to benefit public transit. Expenditures related to fixed route and paratransit services, Transportation Demand Management, Transportation Systems Management and fare subsidy programs that exclusively benefit transit are all eligible uses of Proposition A LR funds. Proposition A LR funds may also be traded to other Jurisdictions in exchange for general or other funds.

2. PROPOSITION C LOCAL RETURN FUNDS

The Proposition C Ordinance directs that the LR funds also be used to benefit public transit, as described above, but provides an expanded list of eligible project expenditures including, Congestion Management Programs, bikeways and bike lanes, street improvements supporting public transit service, and Pavement Management System projects. Proposition C funds cannot be traded.

The tables in Appendix I, page 36, summarize the Proposition A and Proposition C LR Programs and the respective eligible project expenditures.

B. GENERAL PROVISIONS CONCERNING PROPOSITION A AND PROPOSITION C LOCAL RETURN EXPENDITURES

Jurisdictions are required to use LR funds for developing and/or improving public transit service. As a general rule, an expenditure that is eligible for funding under one or more existing state or federal transit funding programs would also be an eligible LR fund expenditure provided that the project does not duplicate an existing regional or municipal transit service, project or program.

Allocation of LR funds to and expenditure by Jurisdictions shall be subject to the following conditions:

1. **TIMELY USE OF FUNDS**

Metro will enforce regulations to insure the timely use of LR funds. Under the Proposition A and Proposition C Ordinances, Jurisdictions have three years to expend LR funds. Funds must be expended within three years of the last day of the fiscal year in which funds were originally allocated. Therefore, by method of calculation, each Jurisdiction has the Fiscal Year of allocation plus three years to expend Proposition A and/or Proposition C funds. For example, a Jurisdiction receiving funds during FY 2005-06 must expend those funds, and any interest or other income earned from Proposition A and/or Proposition C projects, by June 30, 2009.

2. **AUDIT OF PROPOSITION A AND PROPOSITION C FUNDS**

Jurisdictions shall annually account, through a fiscal and compliance audit, to Metro on the use of LR funds. The Audit Section, (Section V, page 33), details Project Expenditure Criteria, Allowable Costs, Audit Deliverables, and Administrative Accounting Procedures.

3. **INELIGIBLE USE OF FUNDS**

If LR funds have been expended prior to Metro approval and/or used for ineligible purposes, Jurisdictions will be required to reimburse their Proposition A or C LR account, including interest and/or earned income, as indicated in the Audit Section (page 33).

Stand alone projects, such as, lighting, landscaping, traffic signals, storm drains, or Transportation Planning projects unrelated to an eligible project, are not eligible.

4. **STANDARD ASSURANCES**

If a new Jurisdiction is formed within Los Angeles County, Metro will require that a Standard Assurances and Understanding agreement be submitted prior to participation in the LR Program. A sample Standard Assurance and Understanding Agreement form is included as Appendix II (see page 37).

C. **PROPOSITION A AND PROPOSITION C FORMS AND SUBMITTAL REQUIREMENTS**

To maintain eligibility and meet LR Program compliance requirements, Jurisdictions shall submit a Project Description (Form A) as required, an Annual Project Update (Form B) and Annual Expenditure Report (Form C). Form submittal information is detailed in the Administrative Process section, page 21. Sample forms along with instructions for their completion are included as Appendix VIII (page 49). An electronic version is available on the website @www.Metro.net (under Projects/Programs; Local Return Program).

Project Description Form (Form A)

Jurisdictions shall submit for approval a Project Description Form prior to the expenditure of funds for: 1) a new project; 2) a new route; 3) a 25 percent change (increase or decrease) in route or revenue vehicle miles for an established LR funded transit service; 4) a 0.75 miles or greater service change that duplicates/overlays an existing transit service; or 5) a 25 percent or greater change in an approved LR project budget or scope on all operating or capital LR projects.

Annual Project Update (Form B)

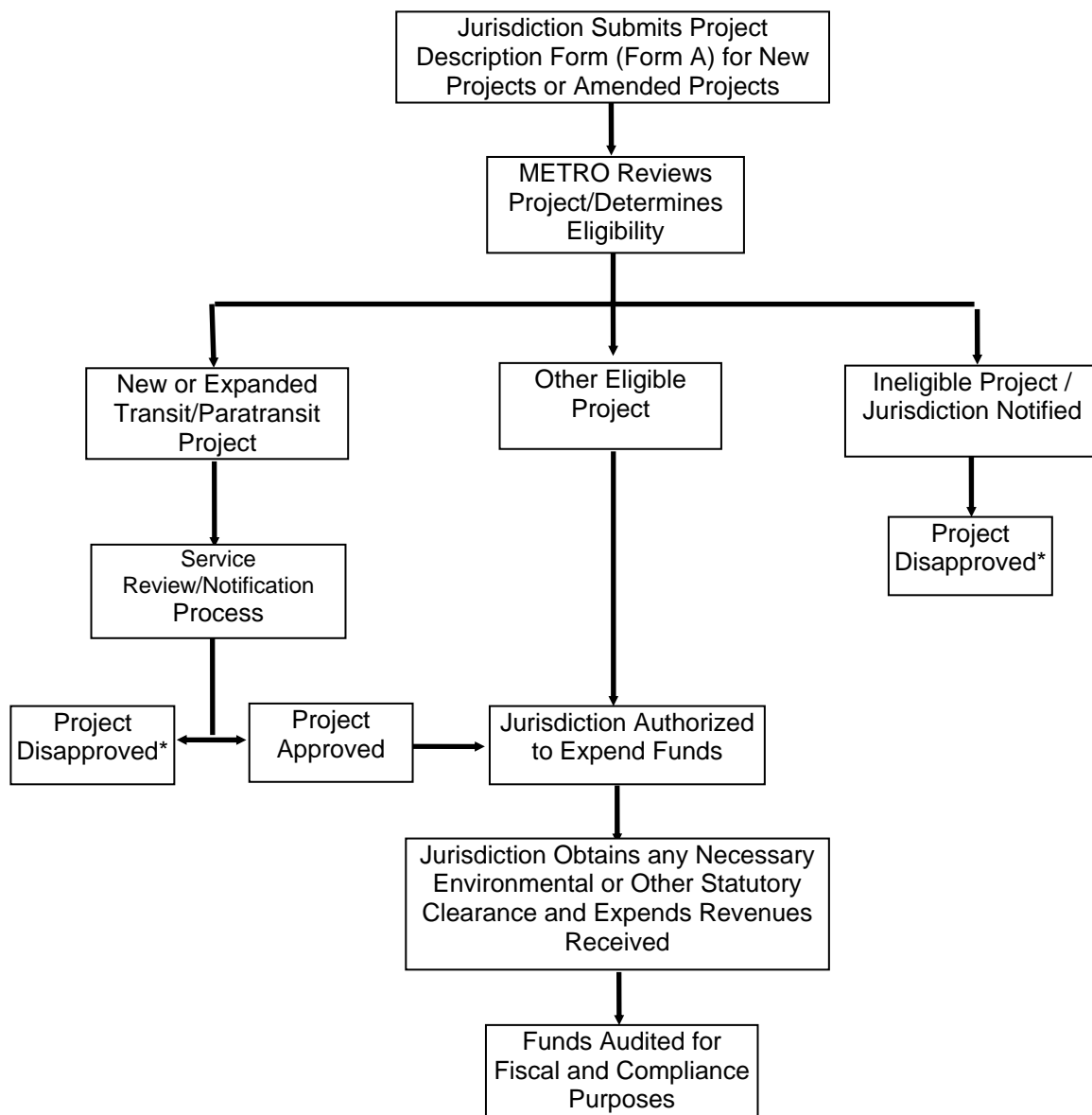
Jurisdictions shall submit on or before August 1 of each fiscal year an Annual Project Update to provide current information on all approved on-going and carryover LR projects. Metro will review and accept or return the report for changes. Cities shall report the anticipated expenditure cash flow amounts for the covered fiscal year.

Annual Expenditure Report (Form C)

On or before October 15th of each fiscal year, the Jurisdictions shall submit an Annual Expenditure Report to provide an update on previous year LR fund receipts and expenditures.

The following provides a summary of form use and due dates:

<u>FORM</u>	<u>DETERMINATION</u>	<u>DUE DATE</u>
Project Description Form - Form A	New and amended projects	Any time during the year
Annual Project Update - Form B	All on-going and/or capital (carryover) projects	August 1 st of each year
Annual Expenditure Report - Form C	Report expenditures	October 15 th of each year



***METRO Appeals Process:**

If a Jurisdiction's proposed project is formally denied by Metro project manager, the Jurisdiction may request a formal appeal. See Section III METRO's Administration Process - Appeal of eligibility.

II. PROJECT ELIGIBILITY

The Proposition A and Proposition C Ordinances specify that LR funds are to be used for “public transit purposes” as defined by the following: “A proposed expenditure of funds shall be deemed to be for public transit purposes to the extent that it can reasonably be expected to sustain or improve the quality and safety of and/or access to public transit services by the general public or those requiring special public transit assistance”.

For simplification and user ease, project categories that share common eligibility requirements and/or project code designations are defined and listed as either Proposition A and Proposition C Eligible, Proposition A Exclusive, or Proposition C Exclusive. Local Return can be used as a match to grant programs such as the Metro Call for Projects, the Safe Routes to School, and the Hazard Elimination and Safety programs, so long as the projects are LR eligible. Note: The following project eligibility criteria provide for general guidance only and are not the sole determinant for project approval. The authority to determine the eligibility of an expenditure rests solely with Metro. Jurisdictions may appeal projects deemed ineligible as described in Section III, Metro’s Administrative Process, page 23.

A. ELIGIBLE USES OF PROPOSITION A AND PROPOSITION C

1. PUBLIC TRANSIT SERVICES - OPERATING (Codes 110,120, 130 & 140)

New or expanded Transit or Paratransit services are subject to review under the Service Coordination Process (SCP) as detailed in Section III, page 24. The process will, in part, determine the proposed service’s compatibility with the existing regional bus transit system provided by Metro and services provided by the municipal transit operators. Metro may request that modification be made to proposed services that duplicate or compete with existing services. Proposed services must also meet the criteria outlined under Non-exclusive School Service and Specialized Transit discussed on the following page. Note that Emergency Medical Transportation is not an eligible use of LR funds.

Examples of Fixed Route, Paratransit, and Recreational Transit Service projects follow:

1.1 FIXED ROUTE SERVICE (Project Code 110)

- New fixed route or Flexible Destination bus service
- Extension or augmentation of an existing bus route(s)
- Contracting with a transit operator or private provider for commuter bus service
- Contracting with a transit in an adjacent county to provide transit within Los Angeles County
- Operating subsidy to existing municipal or regional bus operator
- Service enhancements related to Bus/rail Interface
- ADA improvements to fixed route operations
- Shuttle service between activity centers

1.2 **PARATRANSIT SERVICE** **(Project Codes 120 & 130)**

- Expansion/ coordination of existing paratransit service
- Subsidized, shared-ride taxi service for disadvantaged residents
- Taxi coupon programs used to provide intermittent or temporary capacity to support paratransit systems for senior and disabled patrons
- New paratransit service
- General public paratransit service
- ADA-related improvements to paratransit operations

Non-Exclusive School Service

Fixed-route bus services or Demand-responsive services available to the general public, which also provide school trips, are eligible for LR funding. Exclusive school bus services are not eligible. **Projects must meet the following conditions:**

- The bus Vehicles utilized cannot be marked "School Bus" or feature graphics that in any way indicate they are not available to the general public. Yellow paint schemes should not be for the specific purpose of meeting the vehicle code definition of a school bus
- The bus Head Sign is to display its route designation by street intersection, geographic area, or other landmark/destination description and cannot denote "School Trip" or "Special." In cases where the service includes an alternate rush-hour trip to provide service by a school location, the dashboard sign is to indicate the line termination without indicating the school name
- Timetables for such services will be made available to the general public, shall provide the given schedule and route but must not be labeled "school service"
- Drivers must be instructed that such service is available to the general public and board and alight all passengers as required at designated stops
- The same fare payment options must be made available to all users
- The overall transportation service provided in the Jurisdiction must not be for school service hours only

Specialized Public Transit

Metro will approve special-user group service or social service transit where it can be incorporated into the existing local transit or paratransit program. Jurisdictions must demonstrate that existing services cannot be modified to meet the identified user need. Projects must meet the following conditions:

- The special user group identified does not discriminate on the basis of race, religion, sex, disability or ethnicity
- Service shall be available to all members of the general public having that specialized need and not be restricted to a specific group or program
- Service shall be advertised to the general public
- Metro may require, as a condition of approval, inter-jurisdictional project coordination and consolidation
- LR funds may only be used for the transportation component of the special user group program, i.e., direct, clearly identifiable and auditable

transportation costs, excluding salaries for specialized escorts or other program aides

- The designated vehicle(s) used must be made available for coordination with other paratransit programs if space permits

1.3 RECREATIONAL TRANSIT SERVICE (Project Code 140)

Jurisdictions shall submit a listing of Recreational Transit Services no later than October 15 after the fiscal year. Recreational Transit Service projects must meet the following conditions:

- Travel within the area of Los Angeles, Orange and Ventura Counties, and portions of Kern, Riverside and San Bernardino Counties (see map Appendix VII, page 48) are eligible expenditures. Trip segments to areas shown on the proportionately eligible areas of the map must be funded through other sources. Trips to locations not within either the eligible or proportionately eligible area are not eligible.
- Trips may be limited to certain general age groups (e.g., children under 18, senior citizens, persons with disabilities), however, trips must be made available to all individuals within that designated group.
- Special events or destinations (e.g., city parks, concerts, special events) may be served, however, all members of the general public including individuals with disabilities must be allowed to use, the service.
- LR funds may not be used to pay the salaries of recreation leaders or escorts involved in recreational transit projects.
- All recreational transit trips must be advertised to the public, such as through newspapers, flyers, posters, and/or websites.

2. BUS STOP IMPROVEMENTS AND MAINTENANCE (Codes 150, 160 & 170)

Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:

- Concrete landings - in street for buses and at sidewalk for passengers
- Bus turn-outs
- Benches
- Shelters
- Trash receptacles
- Curb cuts
- Concrete or electrical work directly associated with the above items

Amenities shall be integral to the bus stop. Improvements must be located within 25 feet of the bus stop signpost, or have one edge or end within that area. At high volume stops, where more than one bus typically uses the stop at a time, improvements must be placed at the immediate locations where buses normally stop.

Curb cuts may be located on or adjacent to street segments (blocks) with bus stops.

Conditions:

Jurisdictions shall coordinate bus stop improvements (excluding curb cuts) with effected Transit Operators. A letter of coordination must be submitted with the Project Description Form. Jurisdictions that propose replacing privately owned benches or shelters must notify the Operator before requesting City Council project approval. The Operator shall have seven (7) days to respond to the notification before the Jurisdiction takes further action.

3. PUBLIC TRANSIT - CAPITAL (Project Codes 180, 190 & 200)

Public Transit Capital projects will be approved only for the percentage of vehicle or equipment use, as determined by Metro staff, exclusive to public transit service. A list of sample Public Transit Capital projects follows:

- a. Vehicles/parts purchases and repairs
 - Transit vehicles for passenger service
 - Mechanical parts and supplies for buses or vans
 - Non-revenue support vehicles, such as supervisor's cars, service trucks
 - ADA-related improvements to vehicles
 - Retrofits or additions to buses or vans, such as lifts, fare boxes, or radios
 - Security equipment, for example, cameras on buses
- b. Equipment
 - New or modified transit maintenance facilities
 - Maintenance equipment for new or existing transit or paratransit operations
 - Office equipment and furnishings for new and existing transit and paratransit operations

NOTE: Jurisdictions shall reimburse their LR Account, in the amount of the current appraised value or purchase price from resale, for Public Transit Capital projects no longer used for public transit purposes.

4. TRANSPORTATION SYSTEMS MANAGEMENT (TSM) (Project Code 210)

TSM projects are relatively low-cost, non-capacity-enhancing traffic control measures that serve to improve vehicular (bus and car) flow and/or increase safety within an existing right-of-way. Proposals must include an element demonstrating the project's benefit to public transit. **A list of sample TSM projects follows:**

- Reserved bus lanes (no physical separation) on surface arterials
- Contra-flow bus lanes (reversible lanes during peak travel periods)
- Ramp meter by-pass (regulated access with bus/carpool unrestricted entry)
- Traffic signal priority for buses (to allow approaching transit vehicles to extend green phase or change traffic signal from red to green)
- Preferential turning lanes for buses
- Other traffic signal improvements that facilitate bus movement

If a Local Return funded project is or has an Intelligent Transportation System (ITS) component, it must be consistent with the Regional ITS Architecture. ITS projects must comply with the Countywide ITS Policy and Procedures adopted by

the Metro Board including the submittal of a completed, signed self-certification form. Please go to <http://RIITS.net/RegITSDocs.html> and choose “Los Angeles Countywide ITS Policy and Procedures Document” or see Appendix VI (page 45) for information on Countywide ITS Policy and Procedures, and the self-certification form.

5. TRANSIT SECURITY (Project Codes 220 & 230)

Transit Security projects may include Transit Safety, Security Operations and Safety Education Programs, provided that they demonstrate a direct benefit to public transit service and do not supplant general law enforcement programs.

A list of sample Transit Security Programs follows:

- Local police deployment for direct and specific transit security
- Private security (state licensed) deployment for transit security
- Contracted police services for direct and specific transit security
- Capital improvements for transit security
- Innovative and/or advanced technology transit security
- Community-based policing activities in direct support of transit security
- Security awareness, graffiti prevention, Safety education and/or crime prevention programs
- Transit security at commuter rail stations and park and ride facilities

NOTE: Jurisdictions are encouraged to participate in existing local and regional transit security efforts, which should be coordinated through Metro.

6. FARE SUBSIDY (Project Codes 240 & 250)

Fare Subsidy programs provide residents within Jurisdictions a discount fare incentive for using public transit. The method, amount of subsidy and user group(s) shall be determined by Jurisdictions. **A list of sample Fare Subsidy Programs follows:**

- User-side subsidies (buy down of passes, tickets, or coupons) for the general public or segments of the general public (i.e., elderly, individuals with disabilities, or low-income residents)
- Subsidy of bus/rail passes, tickets or tokens for transit riders;

7. TRANSPORTATION PLANNING (Project Code 270)

Planning, coordination, engineering and design costs incurred toward the implementation of eligible LR projects are eligible when the following conditions are met:

- The projects being planned (designed, coordinated, etc.) are LR eligible.
- Coordination includes: local jurisdictions’ start up costs or dues for Councils of Governments (COG’s) and Transportation Management Associations (TMA’s); advocacy; and funding for Joint Powers Authorities (JPA’s) by local jurisdictions or (COG’s).
- If some of a COG’s, TMA’s or JPA’s projects or activities are LR eligible and some are not, partial payment of dues must be made, in proportion to the organization’s budget for LR eligible projects.

- Proposition A must be used to plan for Proposition A eligible projects.
- Proposition C must be used to plan for Proposition C eligible projects.

8. TRANSIT MARKETING (Project Code 280)

Transit Marketing projects may include:

- Transit user guides, maps, brochures
- Transit information Kiosks
- Transit information/pass sales centers
- New rider subsidy programs

9. PARK-AND-RIDE LOTS (Project Code 290)

Park-and-Ride Lot projects must be coordinated with Metro and appropriate affected transit operator(s). Additional justification including, for example, surveys or studies that provide a basis for determining the project's level of public transit use and related funding, may be requested prior to project evaluation.

Park-n-Ride Lot projects shall:

- be located adjacent to (no greater than 0.25 mile away from) a fixed route service bus stop, HOV lanes and/or rail stations.
- be located on unimproved land unless a specific Metro waiver is granted.
- have received environmental clearance by the Jurisdiction prior to Metro approval for construction funds
- require a letter from the affected transit operator(s) to the Jurisdiction and Metro, as reasonable assurance, that park-and-ride lot users will be assured of continued access to services.
- be used primarily by transit/rideshare patrons during commute hours.
- have appropriate exclusive-use signage posted and enforced.
- be open for general parking during non-transit use time, e.g., evenings and weekends, provided that transit user demands are not adversely impacted. All revenues, (for example, parking, advertising or related revenue) generated during the non-transit use time must be returned to the Jurisdictions' LR Account in the same proportion as the original LR investment in the facility. In the event that the facility ceases operation, the Jurisdiction shall be required to repay its LR Account as determined by the audit, see page 33.

10. TRANSIT FACILITIES/TRANSPORTATION ENHANCEMENTS (TE) (Project Codes 300 & 310)

Examples of Transit Facility projects include:

- Bus-only transit malls or stations
- Transit/paratransit accessible Transfer Centers that feature, for example, shelters, telephones, information displays/centers, and other related amenities)
- Eligible as match to TE grants.
- Eligible projects may include building rehabilitation and restoration for transit-related purposes.
- Project itself must be LR eligible.

Conditions:

Jurisdictions shall submit a project budget and scope of work that specifies the proposed facility's public transit and, if applicable, joint development. Additional documentation may be required to determine project eligibility and level of funding.

If the facility ceases to be used for public transit purposes, LR funds used toward land purchase for a facility must be returned at the original purchase price or present appraised value, whichever is greater, to the Jurisdiction's LR Account. Repayment of facility expenditures shall be based on the schedule outlined on page 31.

Prior to land and/or facility purchases, Jurisdictions shall provide the following:

- Documentation of the financial resources for facility implementation, operation and maintenance
- Assurance(s) from the affected transit carrier(s) to provide facility service
- Land appraisal
- Assurance that the Jurisdiction will proceed with the project per the implementation schedule outlined in the application
- Environmental clearance in conformance with, wherever applicable, all local, state and federal requirements. Jurisdictions preparing an Environmental Impact Report (EIR) must coordinate with Metro Regional Transportation Planning and Development Department.

11. METRO RAIL CAPITAL (Project Codes 320)

Metro Rail Capital projects may include, for example, Metro Red, Blue, Green, or Gold Line or Mid-City Exposition Light Rail Transit station or line improvements, local match toward Metro Rail Capital projects, Metro Art or related Metro Rail enhancements.

12. RIGHT-OF-WAY IMPROVEMENTS (Project Code 350)

Right-of-Way Improvements or land purchases must be coordinated through Metro to ensure consistency with adopted regional corridors, priorities or preferred alignments. Right-of-Way Improvement project proposals must also demonstrate direct, quantifiable, environmental and/or economic benefit to given LR-eligible projects.

13. COMMUTER RAIL (Project Codes 360 & 370)

Rail (commuter system and station enhancement) projects must be consistent with Metro's existing and planned program of rail projects. Eligible project may include match to TE grants for building rehabilitation and restoration for transit-related purposes. Project itself must be LR eligible. **Examples of Rail projects include:**

- Signal upgrades at rail crossings
- Signage and marketing materials to promote increased commuter rail ridership
- Landscaping, lighting, fencing and environmental enhancements at or along commuter rail facilities

- System safety
- Safety education programs
- Commuter rail station operating, maintenance, insurance, or other station-related costs
- Commuter rail station capital costs

14. CAPITAL RESERVE (Project Code 380)

A Capital Reserve project provides Jurisdictions the opportunity to accumulate LR funds (over and above the year of allocation and three year expenditure requirement see page 30, Timely Use of Funds) to finance a large project. Projects are limited to construction of bus facilities, bus purchases, transit centers, park-and-ride lots, construction of major street improvements or rail projects along Metro's planned and adopted rail corridors.

A Capital Reserve project constitutes a long-term financial and planning commitment. For specific information on the Capital Reserve approval process, see Section III, Metro's Administration Process, page 26.

15. DIRECT ADMINISTRATION (Project Code 480)

Direct Administration is defined as those fully burdened costs which are directly associated with administering Local Return program or projects, and includes salaries and benefits, office supplies and equipment, and other overhead costs.

Direct Administration project conditions:

- All costs shall be associated with developing, maintaining, monitoring, coordinating, reporting and budgeting specific LR project(s)
- Expenditures must be reasonable and appropriate to the activities undertaken by the locality
- The administrative expenditures for any year shall not exceed 20 percent of the total LR annual expenditures, based on year-end expenditures, and will be subject to an audit finding if the figure exceeds 20%;
- The annual expenditure figure will be reduced by fund trades to other cities and/or funds set aside for reserves; conversely, the annual expenditure figure will be increased by expenditure of reserves or LR funds received in fund exchanges;
- Jurisdictions are required to report all administrative charges to Direct Administration in order to verify compliance of 20% administration cap.

16. OTHER (Project Code 500)

Projects that do not fit under any of the project codes, but are for public transit purposes, may be included in the "other" category. Note that "public transit purposes" are defined as follows: "A proposed expenditure of funds shall be deemed to be for public transit purposes to the extent that it can reasonably be expected to sustain or improve the quality and safety of and/or access to public transit services by the general public or those requiring special public transit assistance".

- Providing matching funds for LR eligible Safe Routes to School projects.

Jurisdictions are encouraged to adopt monitoring and evaluation performance standards for funding TDM projects. Jurisdictions are encouraged to utilize regionally adopted standards, and demonstrate, for example, how AQMD trip reduction targets are addressed through the TDM measure.

In conformity with regional, state and federal air quality objectives, Metro encourages use of alternative-fuel vehicles (e.g. LNG, CNG, Methanol) for any TDM-related shuttle, vanpool or paratransit vehicles.

If a Local Return funded project is or has an Intelligent Transportation System (ITS) component, it must be consistent with the Regional ITS Architecture. ITS projects must comply with the Countywide ITS Policy and Procedures adopted by the Metro Board including the submittal of a completed, signed self-certification form. Please go to <http://RIITS.net/RegITSDocs.html> and choose “Los Angeles Countywide ITS Policy and Procedures Document” or see Appendix VI (page 45) for information on Countywide ITS Policy and Procedures, and the self-certification form.

C. EXCLUSIVE USES OF PROPOSITION C FUNDS

Projects listed below are eligible for Proposition C LR funding only. Jurisdictions must certify that all project conditions will be met and include all supporting documents with submittal of the Form A. Jurisdictions are encouraged to use LR funds for improved public transit services and for multi-jurisdictional cooperation of arterial traffic signal control operations. Agency costs for operating a centralized traffic signal system, including those costs linked to a local agency’s participation in the countywide Information Exchange Network (IEN), are now eligible for reimbursement. Stand alone amenities such as landscaping and storm drains are ineligible. Note: The following project eligibility criteria provide for general guidance only and are not the sole determinant for project approval. The authority to determine the eligibility of an expenditure rests solely with Metro. Jurisdictions may appeal projects deemed ineligible as described in Section III, page 23.

1. SIGNAL SYNCHRONIZATION & TRAFFIC MANAGEMENT (Project Code 400)

Synchronized Signalization projects must meet the following conditions:

- Projects shall be implemented only on major arterials.
- Operation costs associated with centralized traffic signal control systems, including updating traffic signal coordination timing and costs associated with multi-jurisdictional or inter-community systems, (such as the IEN or ATSAC/ATCS) or with transit signal priority systems, are eligible. Costs may include: lease lines for communication; software licenses and maintenance; hardware maintenance, maintenance and repair of hardware, vehicle detection devices and interconnect lines; warranties; and upgrades and enhancements for software or hardware. Cities shall coordinate the signal timing or systems with other affected jurisdictions.

- The major arterial targeted for implementation must have full-sized transit buses operating on regularly scheduled fixed routes.
- Documentation of coordination with affected public transit operators is required for approval (e.g., correspondence between the Jurisdiction and the transit operator with written concurrence from the transit operator to Metro)
- Local return funds shall not be used to alter system/signal timing that was implemented under a traffic forum project/grant unless coordinated with all affected jurisdictions in the corridor.

Installation or modification of traffic signals which are not part of a larger transit project are not eligible, except as detailed in this section. Maintenance and replacement of traffic signals are not eligible.

Traffic signal projects will be reviewed and considered on a case by case basis to evaluate the transit benefit of the project. The following information may be requested and evaluated, depending on the type of traffic signal project:

- Number of transit boardings at the affected transit stop or station
- Transit patrons as a proportion of pedestrian volume
- Transit vehicles as a proportion of vehicle flow
- Letter from affected transit operator requesting and justifying traffic signal installation or modification
- Proximity of proposed signal to transit stop or station
- The affected transit stop(s) must be served by transit with 15 minute or greater frequency to be eligible.
- Proximity to adjacent controlled intersection

Based on the review, all or a proportion of the project costs may be eligible for Local Return funds.

If a Local Return funded project is or has an Intelligent Transportation System (ITS) component, it must be consistent with the Regional ITS Architecture. ITS projects must comply with the Countywide ITS Policy and Procedures adopted by the Metro Board including the submittal of a completed, signed self-certification form. Please go to <http://RIITS.net/RegITSDocs.html> and choose “Los Angeles Countywide ITS Policy and Procedures Document” or see Appendix VI (page 45) for information on Countywide ITS Policy and Procedures, and the self-certification form.

2. TRANSPORTATION DEMAND MANAGEMENT (Project Code 410)

Transportation Demand Management (TDM) projects are defined as strategies/actions intended to influence the manner in which people commute, resulting in a decrease in the number of vehicle trips made and vehicle miles traveled during peak travel periods.

TDM projects funded by Proposition C will be evaluated on their proposed impact on reduction of single-occupancy vehicle trips and corresponding vehicle miles traveled.

A list of sample TDM projects follows:

- Formation and operation of vanpool and/or vanpool incentive programs, including ride matching programs (must be made available to all employers and/or residents within the Jurisdiction boundaries)
- Community-based shuttles for employees as long as such services complement existing transit service
- Parking Management incentive programs, such as, parking cash outs or parking pricing strategies
- Employer or citizen ride-matching programs and subsidies
- Formation or ongoing operation of a Transportation Management Association to administer and market local TDM programs (provided that the 20% administrative cost stipulated for Proposition A and Proposition C is not exceeded)
- Transit and TDM-related activities required by the Congestion Management Program (CMP) including: preparation of TDM ordinances; administration and implementation of transit or TDM-related projects pursuant to CMP deficiency plans; and monitoring of transit standards by transit operators
- Funding Transportation Management Organization's (TMO) insurance costs or individual employer's vanpool programs under the umbrella vehicle insurance policy of the Jurisdiction
- Providing matching funds for LR eligible Safe Routes to School projects.

Jurisdictions are encouraged to adopt monitoring and evaluation performance standards for funding TDM projects. Jurisdictions are encouraged to utilize regionally adopted standards, and demonstrate, for example, how AQMD trip reduction targets are addressed through the TDM measure.

In conformity with regional, state and federal air quality objectives, Metro encourages use of alternative-fuel vehicles (e.g. LNG, CNG, Methanol) for any TDM-related shuttle, vanpool or paratransit vehicles.

If a Local Return funded project is or has an Intelligent Transportation System (ITS) component, it must be consistent with the Regional ITS Architecture. ITS projects must comply with the Countywide ITS Policy and Procedures adopted by the Metro Board including the submittal of a completed, signed self-certification form. Please go to <http://RIITS.net/RegITSDocs.html> and choose "Los Angeles Countywide ITS Policy and Procedures Document" or see Appendix VI (page 45) for information on Countywide ITS Policy and Procedures, and the self-certification form.

3. CONGESTION MANAGEMENT PROGRAM (CMP) (Project Code 420)

The following provides a list of sample CMP projects:

- Land use analysis as required by CMP
- Computer modeling as required to support CMP land use analysis
- Administration, monitoring and implementation of transit- or TDM-related projects as part of deficiency plans
- Monitoring of transit standards by transit operators

4. BIKEWAYS AND BIKE LANES (Project Code 430)

Bikeway projects include bikeway construction and maintenance, signage, information/safety programs, and bicycle parking, and must meet the following conditions:

- Shall be linked to employment or educational sites
- Shall be used for commuting or utilitarian trips
- Jurisdictions must have submitted a PMS Self Certification (see page 20, and Appendix III on page 39).

5. STREET IMPROVEMENT AND MAINTENANCE (Codes 440, 450 & 460)

Proposition C Local Return funds are to be used for the maintenance and improvements to street and highways used as public transit thoroughfares. Street Improvement and Maintenance Projects Capacity enhancements include repair and maintenance projects with a direct benefit to transit. **Projects must meet the following conditions and reporting requirements:**

A. CONDITIONS:

Public Transit Benefit

Projects must demonstrate a public transit benefit or be performed on streets “heavily used by public transit,” where such streets carry regularly-scheduled, fixed-route public transit service, and where service has operated for a minimum of one (1) year and there are no foreseeable plans to discontinue such service.

If there are no fixed-route systems within a Jurisdiction, or if all the streets supporting fixed-route systems are already in a satisfactory condition as documented by the required Pavement Management System (PMS), a Jurisdiction may use LR funds for street improvements and maintenance and repair on streets within their community on which they can demonstrate that public paratransit trips, that have been in service for a minimum of one year, concentrate.

The method of demonstrating heavy-use by paratransit vehicles is to document trip pick-up and drop-off locations, including street-routing, for a consecutive three month time period. The data will be used in making a determination on which street segments have heavy-use by this form of transit.

Pavement Management System (PMS)

If Proposition C LR funds are to be used for street improvement or maintenance, a jurisdiction must have a PMS in place, and use it. (See PMS code 470 for self certification requirements, page 20).

Maintenance of Effort (MOE) Requirement

The goal of the Proposition C LR Program is to improve transportation conditions, including the roadways upon which public transit operates. When used to improve roadways, the additional funds provided to local jurisdictions through the Proposition C LR Program are intended to supplement existing local revenues being used for road improvement purposes. Cities and counties shall maintain their existing commitment of local, discretionary funds for street and

highway maintenance, rehabilitation, reconstruction, and storm damage repair in order to remain eligible for Proposition C LR funds to be expended for streets and roads.

Metro will accept the State Controller's finding of a Jurisdiction's compliance with the California Streets and Highways Code as sufficient to demonstrate the required Maintenance of Effort during any fiscal year in which Proposition C LR funds are expended for streets and roads.

B. REPORTING REQUIREMENTS

Street maintenance, rehabilitation or reconstruction projects should be submitted individually. Jurisdictions shall submit a Project Description Form listing all new project street segments prior to undertaking each street maintenance or improvement project. Jurisdictions will be advised as to any eligible and ineligible street segments within 30 days of project submittal.

The projects must be reflected on subsequent Annual Project Update (Form B) submittals and Annual Expenditure Reports (Form C) until the project is completed or deleted from the work program. Once deleted, a segment must be re-submitted for approval if a new street maintenance project on the segment is subsequently planned.

Eligible Street Improvement and Maintenance Projects

1. Exclusive Bus Lane Street Widening

Such projects are for exclusive bus lanes (physically separated) on surface arterials.

2. Capacity Enhancement

Capacity Enhancement projects are level-of-service and/or capacity improvements capital projects. These projects must include a public transit element that is comprised of transit vehicles on streets that are "heavily used by transit." Examples of these projects include street widening or restriping to add additional lanes.

3. Street Repair and Maintenance

Eligible Street Repair and Maintenance projects are limited to pavement maintenance, slurry seals, and chip seals, pavement rehabilitation and roadway reconstruction. Required curb, gutter, and catch basin repair (storm drains) on streets "heavily used by transit" that are part of a rehabilitation or reconstruction project are eligible. Betterments are not eligible for LR funding.

4. Safety

Street improvement projects to increase safety are eligible, but must have a direct and clearly demonstrable benefit to both safety and transit. At Metro's discretion, a project may be approved on a down-scoped demonstration basis. The local jurisdiction would be required to conduct a before and after evaluation prior to Metro approval of the full project scope.

5. Americans with Disabilities Act Related Street Improvements

In compliance with the Americans with Disabilities Act (ADA), the provision of curb cuts or passenger boarding/alighting concrete pads at or adjacent to bus stops and other accessible improvements on roadways “heavily used by transit” is an eligible use of Proposition C LR funds. Such modifications must meet ADA and California Title 24 specifications.

7. PAVEMENT MANAGEMENT SYSTEM (PMS) (Project Code 470)

Sample Pavement Management System projects include:

- Cost to purchase, upgrade or replace a Pavement Management System.
- The ongoing cost of maintaining a PMS equal to the proportion of a Jurisdiction’s eligible street mileage to total street mileage; or 50% of the PMS maintenance cost, whichever is greater.

Note: Jurisdictions are required to certify that they have conducted and maintain Pavement Management Systems when proposing "Street Repair and Maintenance" or “Bikeway” projects (see Appendix III, page 39). The requirement for a PMS is consistent with Streets & Highways Code Section 2108.1.

PMS must include the following:

- Inventory of existing pavements including, as a minimum, arterial and collector routes, reviewed and updated triennially;
- Inventory of existing Class I bikeways, reviewed and updated triennially;
- Assessment of pavement condition including, as a minimum, arterial and collector routes, reviewed and updated triennially;
- Identification of all pavement sections needing rehabilitation/replacement; and
- Determination of budget needs for rehabilitation or replacement of deficient sections of pavement for current and following triennial period(s)

Self-certifications (included in Appendix III) executed by the Jurisdiction’s Engineer or designated, registered civil engineer, must be submitted with a Form A for new street maintenance or bikeway projects, or Form B (biannually) for ongoing projects, to satisfy “Street Repair and Maintenance” and “Bikeway” project eligibility criteria.

**PROPOSITION A AND PROPOSITION C LOCAL RETURN PROGRAM
SUMMARY OF PROPOSITION A AND PROPOSITION C USES**

PROJECT TYPE	PROPOSITION A	PROPOSITION C
Streets and Roads Expenditures	<ul style="list-style-type: none"> Allowed exclusively for Bus Lanes and Curb Cuts at corners located or adjacent to Bus Stops 	<ul style="list-style-type: none"> Allowed only on streets that carry regularly scheduled, Fixed-Route Public Transit Services and on streets that carry public Paratransit trips (see conditions outlined in eligibility section of the Guidelines)
Signal Synchronization	<ul style="list-style-type: none"> Allowed if performed to predominantly benefit Transit. Bus Priority must be included as part of the project. The street must have a minimum of five (5) full-sized transit buses in each direction per hour 	<ul style="list-style-type: none"> Allowed on streets that are heavily-used by Public Transit The street must have full-sized transit buses operating on a regularly scheduled fixed-route (no minimum number of buses) Operating costs such as software and hardware maintenance are allowed
Bikeways and Bike Lanes	<ul style="list-style-type: none"> Not allowed 	<ul style="list-style-type: none"> Commuter bikeways Shall be linked to employment sites.
Congestion Management Activities	<ul style="list-style-type: none"> Not allowed 	<p>Most elements allowed, such as:</p> <ul style="list-style-type: none"> Preparation of TDM Ordinances and Deficiency Plans. Land Use Analysis required by CMP Monitoring of Transit Standards by transit operators
Pavement Management System	<ul style="list-style-type: none"> Not allowed 	<p>Some elements allowed, such as:</p> <ul style="list-style-type: none"> One-time development costs of a Pavement Management System. The ongoing costs of maintaining the Pavement Management System (see Guidelines for conditions)
Trading or Exchanging of Funds	<ul style="list-style-type: none"> Allowed if the traded funds are used for Public Transit purposes 	<ul style="list-style-type: none"> Not allowed

Exhibit D



BETTY T. YEE
California State Controller

October 25, 2016

Tae Rhee, Finance Director/Treasurer
Finance Department
City of Bellflower
16600 Civic Center Drive
Bellflower, CA 90706

Dear Mr. Rhee:

The State Controller's Office performed a desk review of costs claimed by the City of Bellflower for the legislatively mandated Municipal Storm Water and Urban Runoff Discharges Program (Los Angeles Regional Water Quality Control Board, Order No. 01-182, Permit CAS004001, Part 4F5c3) for the period of July 1, 2002, through June 30, 2010. We conducted our review under the authority of Government Code sections 12410, 17558.5, and 17561. Our review was limited to verifying the funding sources used to pay for the mandated activities.

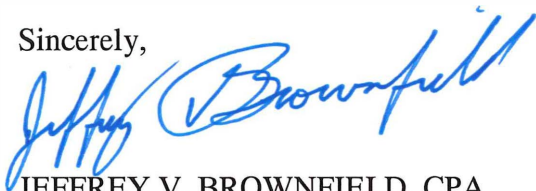
The city claimed \$533,742 for the mandated program. Our review found that \$3,421 is allowable and \$530,321 is unallowable. The costs are unallowable because the city did not offset the restricted revenues used to fund the mandated activities, as described in the attached Summary Program Costs and the Review Results. The State made no payments to the city. The State will pay \$3,421, contingent upon available appropriations.

We informed Bernardo Iniguez, Public Works Manager, of the review finding via email on September 21, 2016. We did not receive a response from the city.

This final letter report contains an adjustment to costs claimed by the city. If you disagree with the review finding, you may file an Incorrect Reduction Claim (IRC) with the Commission on the State Mandates (Commission). Pursuant to Section 1185, subdivision (c), of the Commission's regulations (*California Code of Regulations*, Title 3), an IRC challenging this adjustment must be filed with the Commission no later than three years following the date of this report, regardless of whether this report is subsequently supplemented, superseded, or otherwise amended. You may obtain IRC information on the Commission's website at www.csm.ca.gov/forms/IRCForm.pdf.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, by telephone at (916) 323-5849.

Sincerely,



JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/lis

Attachments

RE: S17-MCC-9003

cc: Bernardo Iniguez, Public Works Manager
Public Works Department, City of Bellflower
Mary Halterman, Principal Program Budget Analyst
Local Government Unit, California Department of Finance
Danielle Brandon, Staff Finance Budget Analyst
Local Government Unit, California Department of Finance
Jay Lal, Manager
Division of Accounting and Reporting
State Controller's Office

Attachment 1— Summary of Program Costs July 1, 2002, through June 30, 2010

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment ¹
<u>July 1, 2002, through June 30, 2003</u>			
One-time activities:			
Purchase, construction, and installation of receptacles and pads	\$ 3,421	\$ 3,421	\$ -
Total one-time costs	3,421	3,421	-
Ongoing activities:			
Reasonable reimbursement methodology factor	6.74	6.74	-
Number of transit receptacles	× 189	× 189	× -
Annual number of trash pickups	× 52	× 52	× -
Total ongoing costs	66,241	66,241	-
Total one-time costs and ongoing costs	69,662	69,662	-
Less offsetting revenues and reimbursements	-	(66,241)	(66,241)
Total program costs	\$ 69,662	3,421	\$ (66,241)
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		\$ 3,421	
<u>July 1, 2003, through June 30, 2004</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	× 189	× 189	× -
Annual number of trash pickups	× 52	× 52	× -
Total ongoing costs	66,241	66,241	-
Less offsetting revenues and reimbursements	-	(66,241)	(66,241)
Total program costs	\$ 66,241	-	\$ (66,241)
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		\$ -	
<u>July 1, 2004, through June 30, 2005</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	× 189	× 189	× -
Annual number of trash pickups	× 52	× 52	× -
Total ongoing costs	66,241	66,241	-
Less offsetting revenues and reimbursements	-	(66,241)	(66,241)
Total program costs	\$ 66,241	-	\$ (66,241)
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		\$ -	

Attachment 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment ¹
<u>July 1, 2005, through June 30, 2006</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	× 189	× 189	× -
Annual number of trash pickups	× 52	× 52	× -
Total ongoing costs	66,241	66,241	-
Less offsetting revenues and reimbursements	-	(66,241)	(66,241)
Total program costs	<u>\$ 66,241</u>	-	<u>\$ (66,241)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2006, through June 30, 2007</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	× 189	× 189	× -
Annual number of trash pickups	× 52	× 52	× -
Total ongoing costs	66,241	66,241	-
Less offsetting revenues and reimbursements	-	(66,241)	(66,241)
Total program costs	<u>\$ 66,241</u>	-	<u>\$ (66,241)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2007, through June 30, 2008</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	× 189	× 189	× -
Annual number of trash pickups	× 52	× 52	× -
Total ongoing costs	66,241	66,241	-
Less offsetting revenues and reimbursements	-	(66,241)	(66,241)
Total program costs	<u>\$ 66,241</u>	-	<u>\$ (66,241)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2008, through June 30, 2009</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	× 189	× 189	× -
Annual number of trash pickups	× 52	× 52	× -
Total ongoing costs	66,241	66,241	-
Less offsetting revenues and reimbursements	-	(66,241)	(66,241)
Total program costs	<u>\$ 66,241</u>	-	<u>\$ (66,241)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	

Attachment 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment ¹
<u>July 1, 2009, through June 30, 2010</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.78	\$ 6.78	\$ -
Number of transit receptacles	× 189	× 189	× -
Annual number of trash pickups	× 52	× 52	× -
Total ongoing costs	66,634	66,634	-
Less offsetting revenues and reimbursements	-	(66,634)	(66,634)
Total program costs	<u>\$ 66,634</u>	-	<u>\$ (66,634)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>Summary: July 1, 2002, through June 30, 2010</u>			
One-time costs	\$ 3,421	\$ 3,421	\$ -
Ongoing costs	530,321	530,321	-
Total one-time costs and ongoing costs	533,742	533,742	-
Less offsetting revenues and reimbursements	-	(530,321)	(530,321)
Total program costs	<u>\$ 533,742</u>	3,421	<u>\$ (530,321)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 3,421</u>	

¹ See Attachment 2, Review Results.

Attachment 2— Review Results July 1, 2002, through June 30, 2010

BACKGROUND—

The California Regional Water Quality Control Board, Los Angeles Region (Board), adopted a 2001 storm water permit (Permit CAS004001) that requires local jurisdictions to:

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

On July 31, 2009, the Commission on State Mandates (Commission) determined that part 4F5c3 of the permit imposes a state mandate reimbursable under Government Code section 17561 and adopted the Statement of Decision. The Commission further clarified that each local agency subject to the permit and not subject to a trash total maximum daily load is entitled to reimbursement.

The Commission also determined that the period of reimbursement for the mandated activities begins July 1, 2002, and continues until a new National Pollutant Discharge Elimination System (NPDES) permit issued by the Board is adopted. On November 8, 2012, the Board adopted a new NPDES permit, Order No. R4-2012-0175, which became effective on December 28, 2012.

The program's parameters and guidelines establish the state mandate and define the reimbursement criteria. The Commission adopted the parameters and guidelines on March 24, 2011. In compliance with Government Code section 17558, the State Controller's Office issues claiming instructions to assist local agencies, school districts, and community college districts in claiming mandated program reimbursable costs.

FINDING— Unreported offsetting revenues

The city did not offset any revenues on its claim forms for the review period. We found that the city should have offset \$530,321 in Proposition C funding used to pay for the ongoing maintenance of transit stop trash receptacles during the review period.

The ongoing maintenance costs are recorded in Fund 135 – Proposition C, a special revenue fund type. Special revenue funds are used to account for the proceeds a specific revenue sources that are legally restricted to expenditures for specified purposes.

Proposition C is half-cent sales tax measure approved by Los Angeles County voters in 1980 to finance transit programs. Twenty percent of the Proposition C tax is designated for the Local Return Program to be used by cities in developing and/or improving public transit and the related transportation infrastructure. Local return funds are distributed monthly to cities based on a "per capita" basis.

The Proposition C Local Return Guidelines, section II., Project Eligibility, identify reimbursement for ongoing trash receptacle maintenance as follows:

2. BUS STOP IMPROVEMENTS AND MAINTENANCE (Codes 150, 160, & 170)

Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:

- Concrete landings – in street for buses and at sidewalk for passengers
- Bus turn-outs
- Benches
- Shelters
- Trash receptacles
- Curb cuts
- Concrete of electrical work directly associated with the above items

We confirmed that there were no general fund transfers into the Proposition C Fund during the review period. Therefore, as the city used Proposition C funds authorized to be used on the mandated activities, it did not have to rely on the use of discretionary general funds to pay for the mandated activities.

The parameters and guidelines, section VIII. Offsetting Revenues and Reimbursements, state:

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

Recommendation

No recommendation is applicable for this finding, as the period of reimbursement expired on December 27, 2012, with the adoption of a new permit.

Exhibit E

OFFICE OF THE STATE CONTROLLER
STATE MANDATED COSTS CLAIMING INSTRUCTIONS NO. 2011-05
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES

MAY 31, 2011

This program will be in effect beginning July 1, 2002, until a new national pollutant discharge elimination system (NPDES) permit issued by the Regional Water Quality Control Board for Los Angeles is adopted.

In accordance with Government Code sections 17560 and 17561, eligible claimants may submit claims to the State Controller's Office (SCO) for reimbursement of costs incurred for state mandated cost programs. The following are claiming instructions and forms that eligible claimants will use for the filing of claims for the Municipal Storm Water and Urban Runoff Discharges program. These claiming instructions are issued subsequent to adoption of the program's Parameters and Guidelines (P's & G's) by the Commission on State Mandates (Commission).

On July 31, 2009, the Commission adopted a Statement of Decision finding that part 4F5c3 of the Permit CAS004001 adopted by the Los Angeles Regional Water Quality Control Board imposes a partially reimbursable state-mandated program on specified local agencies for the activities listed in the P's & G's which are included as an integral part of these claiming instructions.

Exception

There will be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

Eligible Claimants

The following local agencies that incur increased costs as a result of this mandate are eligible to claim reimbursement:

- Local agency permittees identified in the Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001, that are *not* subject to a trash total maximum daily load (TMDL) are eligible to claim reimbursement for the mandated activities.
- The following local agency permittees that are subject to the Ballona Creek trash TMDL are eligible to claim reimbursement for the mandated activities only to the extent they have transit stops located in areas not covered by the Ballona Creek trash TMDL requirements:

Beverly Hills, Culver City, Inglewood, Los Angeles (City), Los Angeles County, Santa Monica, and West Hollywood
- From August 28, 2002, until September 22, 2008, the following local agency permittees that are subject to the Los Angeles River trash TMDL are eligible to claim reimbursement for the mandated activities:

Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles (City), Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, and Vernon

- Beginning September 23, 2008, the following local agency permittees that are subject to the Los Angeles River trash TMDL are eligible to claim reimbursement for the mandated activities only to the extent they have transit stops located in areas not covered by the Los Angeles River trash TMDL requirements:

Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles (City), Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, and Vernon

Filing Deadlines

A. Reimbursement Claims

Initial reimbursement claims must be filed within 120 days from the issuance date of the claiming instructions. Costs incurred for compliance with this mandate are reimbursable for fiscal years 2002-2003 through 2009-2010 and must be filed with the SCO and be delivered or postmarked on or before **September 28, 2011**. Claims filed after **September 28, 2011**, are subject to a 10% late penalty without limitation. Claims for fiscal year 2010-2011 must be filed with the SCO and be delivered or post marked on or before **February 15, 2012**. Claims for fiscal year 2010-2011 filed after **February 15, 2012**, will be subject to a 10% late penalty not to exceed \$10,000. **Claims filed more than one year after the applicable deadline will not be accepted.**

B. Late Penalty

1. Initial Claims

Late initial claims are assessed a 10% late penalty of the total amount of the claims without limitation pursuant to Government Code Section 17561.

2. Annual Reimbursement Claims

Annual reimbursement claims must be filed by February 15 of the following fiscal year in which costs were incurred or the claims will be reduced by a late penalty.

Late annual reimbursement claims are assessed a 10% late penalty of the claimed amount; \$10,000 maximum penalty.

Minimum Claim Cost

GC section 17564(a) provides that no claim may be filed pursuant to sections 17551, 17560, and 17561, unless such a claim exceeds one thousand dollars (**\$1,000**).

Reimbursement of Claims

Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating: "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure Section 2015.5.

Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Audit of Costs

All claims submitted to the SCO are subject to review to determine if costs are related to the mandate, are reasonable and not excessive, and if the claim was prepared in accordance with the SCO's claiming instructions and the P's & G's adopted by the Commission. If any adjustments are made to a claim, a Notice of Claim Adjustment specifying the activity adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within thirty days after payment of the claim.

On-site audits will be conducted by the SCO as deemed necessary. Pursuant to GC section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency for this mandate is subject to the initiation of an audit by the SCO no later than three years after the date that the actual reimbursement claim was filed or last amended, whichever is later. However, if no funds were appropriated or no payment was made to a claimant for the program for the fiscal year for which the claim was filed, the time for the Controller to initiate an audit will commence to run from the date of initial payment of the claim.

All documents used to support the reimbursable activities must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

Record Retention

All documentation to support actual costs claimed must be retained for a period of three years after the end of the calendar year in which the reimbursement claim was filed or last amended regardless of the year of costs incurred. If no funds were appropriated for initial claims at the time the claim was filed, supporting documents must be retained for three years from the date of

initial payment of the claim. Therefore, all documentation to support actual costs claimed must be retained for the same period, and must be made available to the SCO on request.

Address for Filing Claims

Submit a signed original and a copy of form FAM-27, Claim for Payment, and all other forms and supporting documents. **To expedite the payment process, please sign the form in blue ink, and attach a copy of the form FAM-27 to the top of the claim package.**

Use the following mailing addresses:

If delivered by
U.S. Postal Service:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

If delivered by
other delivery services:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

Mandated costs claiming instructions and forms are available online at the SCO's Web site: www.sco.ca.gov/ard_mancost.html. If you have questions, call the Local Reimbursements Section at (916) 324-5729 or email **LRSDAR@sco.ca.gov**.

PARAMETERS AND GUIDELINES

Los Angeles Regional Quality Control Board Order No. 01-182

Permit CAS004001

Part 4F5c3

Municipal Storm Water and Urban Runoff Discharges

03-TC-04, 03-TC-20, 03-TC-21

County of Los Angeles, Claimant (03-TC-04)

Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village,

Azusa, Commerce, Vernon, Claimants (03-TC-20)

Bellflower, Covina, Downey, Monterey Park, Signal Hill, Claimants (03-TC-21)

I. SUMMARY OF THE MANDATE

This consolidated test claim was filed by the County of Los Angeles and several cities in the Los Angeles region, alleging that various sections of the 2001 storm water permit (Permit CAS004001) adopted by the Los Angeles Regional Water Quality Control Board constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. On July 31, 2009, the Commission adopted a Statement of Decision, finding that part 4F5c3 of the permit imposes a partially reimbursable state-mandated program on specified local agencies. (California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.) Part 4F5c3 states the following:

Permittees not subject to a trash TMDL [total maximum daily load] shall [¶]...[¶] Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

The Commission found that each local agency subject to the permit and not subject to a trash total maximum daily load (TMDL), is entitled to reimbursement to: “Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.” All other activities pled in the test claim were denied by the Commission. The Statement of Decision was issued in September 2009.

II. ELIGIBLE CLAIMANTS

The following local agencies that incur increased costs as a result of this mandate are eligible to claim reimbursement:

- Local agency permittees identified in the Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001, that are *not* subject to a trash TMDL are eligible to claim reimbursement for the mandated activities.
- The following local agency permittees that are subject to the Ballona Creek trash TMDL are eligible to claim reimbursement for the mandated activities only to the extent they have transit stops located in areas not covered by the Ballona Creek trash TMDL requirements:
 Beverly Hills, Culver City, Inglewood, Los Angeles (City), Los Angeles County Santa Monica, and West Hollywood
- From August 28, 2002, until September 22, 2008, the following local agency permittees that are subject to the Los Angeles River trash TMDL are eligible to claim reimbursement for the mandated activities:
 Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles (City), Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, and Vernon
- Beginning September 23, 2008, the following local agency permittees that are subject to the Los Angeles River trash TMDL are eligible to claim reimbursement for the mandated activities only to the extent they have transit stops located in areas not covered by the Los Angeles River trash TMDL requirements:
 Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles (City), Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, and Vernon

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The County of Los Angeles filed a test claim on *Transit Trash Receptacles* (03-TC-04) on September 2, 2003. The Cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, and Westlake Village filed a test claim on *Waste Discharge Requirements* (03-TC-20) on September 30, 2003. The Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina filed a test claim on *Storm Water Pollution Requirements* (03-TC-21) on September 30, 2003. Each test claim alleged that Part 4F5C3 of the Los Angeles Regional Water Quality Control Board Order No. 01-182,

Permit CAS004001 was a reimbursable state-mandated program. The filing dates of these test claims establish eligibility for reimbursement beginning July 1, 2002, pursuant to Government Code section 17557, subdivision (e), and continues until a new NPDES permit issued by the Regional Water Quality Control Board for Los Angeles is adopted.

Reimbursement for state-mandated costs may be claimed as follows:

1. Costs for one fiscal year shall be included in each claim.
2. All claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions. (Gov. Code, § 17561, subd. (b)(1)(A).)
3. A local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year. (Gov. Code, § 17560, subd. (a).)
4. In the event revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code, § 17560, subd. (b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564, subdivision (a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed for the one-time activities in section IV. A below. The ongoing activities in section IV. B below are reimbursed under a reasonable reimbursement methodology.

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual costs were incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, timesheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The 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.

For each eligible local agency, the following activities are reimbursable:

- A. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):
 - 1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
 - 2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
 - 3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.
 - 4. Purchase or construct receptacles and pads and install receptacles and pads.
 - 5. Move (including replacement if required) receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.
- B. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):
 - 1. Collect and dispose of trash at a disposal/recycling facility. *This activity is limited to no more than three times per week.*
 - 2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.
 - 3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. *Graffiti removal is not reimbursable.*
 - 4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.

V. CLAIM PREPARATION AND SUBMISSION OF ACTUAL COSTS FOR THE REIMBURSABLE ACTIVITIES IDENTIFIED IN SECTION IV.A.

Each of the following cost elements must be identified for the reimbursable activities identified in section IV of this document. Each reimbursable cost must be supported by source documentation as described in section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

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

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

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

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include: (1) the overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B).) However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distributions base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in (OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) separate a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. CLAIM PREPARATION AND SUBMISSION OF THE REASONABLE REIMBURSEMENT METHODOLOGY FOR THE REIMBURSABLE ACTIVITIES IDENTIFIED IN SECTION IV.B

Direct and Indirect Costs

The Commission is adopting a reasonable reimbursement methodology to reimburse eligible local agencies for all direct and indirect costs for the on-going activities identified in section IV.B of these parameters and guidelines to maintain trash receptacles. (Gov. Code, §§ 17557, subd. (b) & 17518.) The RRM is in lieu of filing detailed documentation of actual costs. Under the RRM, the unit cost of \$6.74, during the period of July 1, 2002 to June 30, 2009, for each trash collection or "pickup" is multiplied by the annual number of trash collections (number of receptacles times pickup

events for each receptacle), subject to the limitation of no more than three pickups per week. Beginning in fiscal year 2009-2010, the RRM shall be adjusted annually by the implicit price deflator as forecast by the Department of Finance.

VII. RECORDS RETENTION

A. Actual Costs

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the State 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. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

B. Reasonable Reimbursement Methodology

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter² 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.

Pursuant to Government Code section 17561, subdivision (d)(2), the Controller has the authority to audit the application of a reasonable reimbursement methodology.

Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups. If an audit has been initiated by the Controller during the period subject to audit, the record retention period is extended until the ultimate resolution of any audit findings.

VIII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

² This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1)(A), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon the request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM FOR PAYMENT			For State Controller Use Only		PROGRAM 314	
			(19) Program Number 00314 (20) Date Filed (21) LRS Input			
(01) Claimant Identification Number			Reimbursement Claim Data			
(02) Claimant Name			(22) FORM-1, (04) A.1.(g)			
County of Location			(23) FORM-1, (04) A.2.(g)			
Street Address or P.O. Box		Suite	(24) FORM-1, (04) A.3.(g)			
City	State	Zip Code	(25) FORM-1, (04) A.4.(g)			
	(03) (04) (05)	Type of Claim	(26) FORM-1, (04) A.5.(g)			
		(09) Reimbursement <input type="checkbox"/>	(27) FORM-1, (06)			
		(10) Combined <input type="checkbox"/>	(28) FORM-1, (07)			
		(11) Amended <input type="checkbox"/>	(29) FORM-1, (08)			
Fiscal Year of Cost		(06)	(12)	(30) FORM-1, (11)		
Total Claimed Amount		(07)	(13)	(31) FORM-1, (12)		
Less: (refer to attached instructions)			(14)	(32)		
Less: Prior Claim Payment Received			(15)	(33)		
Net Claimed Amount			(16)	(34)		
Due from State	(08)	(17)	(35)			
Due to State		(18)	(36)			
(37) CERTIFICATION OF CLAIM In accordance with the provisions of Government Code Sections 17560 and 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Article 4, Chapter 1 of Division 4 of Title 1 Government Code. I further certify that there was no application other than from the claimant, nor any grants or payments received for reimbursement of costs claimed herein and claimed costs are for a new program or increased level of services of an existing program. All offsetting revenues and reimbursements set forth in the parameters and guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant. The amount for this reimbursement is hereby claimed from the State for payment of actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the the State of California that the foregoing is true and correct. <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> Signature of Authorized Officer _____ _____ Type or Print Name and Title of Authorized Signatory </div> <div style="width: 45%;"> Date Signed _____ Telephone Number _____ E-mail Address _____ </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> (38) Name of Agency Contact Person for Claim _____ Name of Consulting Firm / Claim Preparer _____ </div> <div style="width: 45%;"> Telephone Number _____ E-mail Address _____ Telephone Number _____ E-mail Address _____ </div> </div>						

PROGRAM 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM FOR PAYMENT INSTRUCTIONS	FORM FAM - 27
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- (01) Enter the claimant identification number assigned by the State Controller's Office.
- (02) Enter claimant official name, county of location, street or postal office box address, city, State, and zip code.
- (03) to (08) Leave blank.
- (09) If filing a reimbursement claim, enter an "X" in the box on line (09) Reimbursement.
- (10) Not applicable.
- (11) If filing an amended reimbursement claim, enter an "X" in the box on line (11) Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.
- (13) Enter the amount of the reimbursement claim as shown on Form 1, line (13). The total claimed amount must exceed \$1,000; minimum claim must be \$1,001.
- (14) Initial claims must be filed as specified in the claiming instructions. Annual reimbursement claims must be filed by **February 15** of the following fiscal year in which costs were incurred or the claims must be reduced by a late penalty. Enter zero if the claim was timely filed. Otherwise, enter the penalty amount as a result of the calculation formula as follows:
- Late Initial Claims: FAM-27 line(13) multiplied by 10%, without limitation; or
 - Late Annual Reimbursement Claims: FAM-27, line (13) multiplied by 10%, late penalty not to exceed \$10,000.
- (15) Enter the amount of payment, if any, received for the claim. If no payment was received, enter zero.
- (16) Enter the net claimed amount by subtracting the sum of lines (14) and (15) from line (13).
- (17) If line (16), Net Claimed Amount, is positive, enter that amount on line (17), Due from State.
- (18) If line (16), Net Claimed Amount, is negative, enter that amount on line (18), Due to State.
- (19) to (21) Leave blank.
- (22) to (36) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (36) for the reimbursement claim, e.g., Form 1, (04) A.1.(g), means the information is located on Form 1, line (04). A.1, column (g). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. Indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 35.19% should be shown as 35. **Completion of this data block will expedite the payment process.**
- (37) Read the statement of Certification of Claim. The claim must be dated, signed by the district's authorized officer, and must type or print name, title, date signed, telephone number, and email address. **Claims cannot be paid unless accompanied by an original signed certification. (To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)**
- (38) Enter the name, telephone number, and e-mail address of the agency contact person for the claim. If the claim was prepared by a consultant, type or print the name of the consulting firm, the claim preparer, telephone number, and e-mail address.

SUBMIT A SIGNED ORIGINAL, AND A COPY OF FORM FAM-27, WITH ALL OTHER FORMS TO:

Address, if delivered by U.S. Postal Service:

**OFFICE OF THE STATE CONTROLLER
 ATTN: Local Reimbursements Section
 Division of Accounting and Reporting
 P.O. Box 942850
 Sacramento, CA 94250**

Address, if delivered by other delivery service:

**OFFICE OF THE STATE CONTROLLER
 ATTN: Local Reimbursements Section
 Division of Accounting and Reporting
 3301 C Street, Suite 700
 Sacramento, CA 95816**

PROGRAM 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM SUMMARY						Form 1	
(01) Claimant				(02) Fiscal Year ____/20____				
(03) Department								
Direct Costs		Object Accounts						
		(a)	(b)	(c)	(d)	(e)	(f)	(g)
(04) Reimbursable Activities		Salaries	Benefits	Materials and Supplies	Contract Services	Fixed Assets	Travel	Total
A. One-time Activities								
1. Identification of locations that are required to have a trash receptacle								
2. Selection/evaluation/and preparation of specifications and drawings								
3. Preparation of contracts/specification review process/advertise/review and award bids								
4. Purchase or construction and installation of receptacles and pads								
5. Moving/restoration at old location/and installation at new location								
(05) Total One-time Costs								
Reasonable Reimbursement Methodology (RRM).								
B. Ongoing Activity: Maintain Trash Receptacles and Pads								
(06) Annual number of trash collections (Refer to claiming instructions)								
(07) Total Ongoing Costs Line (06) x RRM rate								
Indirect Costs								
(08) Indirect Cost Rate for A. One-time Activities [From ICRP or 10%]								%
(09) Total Indirect Costs for A. One-time Activities Line (05)(a) x 10% or [Refer to Claiming Instructions for ICRP over 10%]								
(10) Total Direct and Indirect Costs Line (05)(g)+ line (07) + line (09)								
(11) Less: Offsetting Revenues								
(12) Less: Other Reimbursements								
(13) Total Claimed Amount [Line (10) - {(line (11) + line (12))}]								

PROGRAM 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES CLAIM SUMMARY INSTRUCTIONS	Form 1
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- (01) Enter the name of the claimant.
- (02) Enter the fiscal year of claim.
- (03) Department. If more than one department has incurred costs for this mandate, give the name of each department. A separate Form-1 should be completed for each department.
- (04) A **One-time Activities (Actual Costs)**
- Reimbursable Activities. For each reimbursable activity, enter the total from Form 2, line (05), columns (d) through (i) to Form 1, block (04), columns (a) through (f) in the appropriate row. Total each row.
- (05) Total One-time Costs. Total each column (a) through (g).
- (04) B. **Ongoing Activity- Reasonable Reimbursement Methodology (RRM)**
- (06) Annual number of trash collections. Enter the product of (number of receptacles) x (pick up events) for each receptacle, subject to the limitation of no more than three pickups per week.
Example: 10 receptacles x 2 times per week x 52 weeks = 1,040
- (07) Total Cost = Result from line (06) above x RRM rate for the applicable fiscal year.
Example: 1,040 x \$6.74 = \$7,010

Fiscal Year	RRM Rate
2002-03 to 2008-09	\$6.74
2009-2010	6.78
2010-2011	6.80

- (08) Indirect Cost Rate for A. One-time Activities. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, without preparing an ICRP. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim.
- (09) Local agencies have the option of using 1) the flat rate of 10% of direct labor costs or 2) a department's indirect cost rate proposal (ICRP) in accordance with the Office of Management and Budget OMB Circular A-87 (Title 2 CFR Part 225). If the flat rate is used for indirect costs, multiply Total Salaries, line (05)(a), by 10%. If an ICRP is submitted, multiply applicable costs used in the distribution base for the computation of the indirect cost rate, by the Indirect Cost Rate, line (08). If more than one department is reporting costs, each must have its own ICRP for the program. [Line (08) x (line (05) (g) – costs not used in distribution base)].
- (10) Total Direct and Indirect Costs. Enter the sum of line (05)(g) + line (07) + line (09).
- (11) Less Offsetting Revenues. If applicable, enter any revenue received by the claimant for this mandate from any state or federal source.
- (12) Less: Other Reimbursements. If applicable, enter the amount of other reimbursements received from any source including, but not limited to, service fees collected, federal funds, and other state funds, that reimbursed any portion of the mandated cost program. Submit a schedule detailing the reimbursement sources and amounts.
- (13) Total Claimed Amount. Line (10) less the sum of line (11) plus line (12). Enter the total on this line and carry the amount forward to form FAM-27, line (14) for the Reimbursement Claim.

<div> <div>Program</div> <div>314</div> </div>		<div> <div>MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES</div> <div>ACTIVITY COST DETAIL</div> </div>						<div> <div>Form</div> <div>2</div> </div>																			
(01) Claimant				(02) Fiscal Year																							
(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.																											
<div>A. One-time Activities</div> <div> <div> <input type="checkbox"/> 1. Identification of locations that are required to have a trash receptacle </div> <div> <input type="checkbox"/> 2. Selection/evaluation and preparation of specifications and drawings </div> <div> <input type="checkbox"/> 3. Preparation of contracts/specification review process/advertisement/review and award of bids </div> <div> <input type="checkbox"/> 4. Purchase or construction and installation of receptacles and pads </div> <div> <input type="checkbox"/> 5. Moving/restoration at old location/and installation at new location </div> </div>																											
(04) Description of Expenses				Object Accounts																							
<table border="1"> <thead> <tr> <th>(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses</th> <th>(b) Hourly Rate or Unit Cost</th> <th>(c) Hours Worked or Quantity</th> <th>(d) Salaries</th> <th>(e) Benefits</th> <th>(f) Materials and Supplies</th> <th>(g) Contract Services</th> <th>(h) Fixed Assets</th> <th>(i) Travel</th> </tr> </thead> <tbody> <tr> <td colspan="3"></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>										(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Materials and Supplies	(g) Contract Services	(h) Fixed Assets	(i) Travel									
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Materials and Supplies	(g) Contract Services	(h) Fixed Assets	(i) Travel																			
(05) Total			Subtotal			Page: ____ of ____																					

Program 314	MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES ACTIVITY COST DETAIL INSTRUCTIONS	Form 2
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- (01) Claimant. Enter the name of the claimant.
- (02) Fiscal Year. Enter the fiscal year for which costs were incurred.
- (03) Reimbursable Activities. Check the box which indicates the activity being claimed. Check only one box per form. A separate Form 2 must be prepared for each applicable activity.
- (04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the activity box checked in block (03), enter the employee names, position titles, a brief description of the activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, contract services, and travel expenses. **The descriptions required in column (4)(a) must be of sufficient detail to explain the cost of activities or items being claimed.** For audit purposes, all supporting documents must be retained by the claimant for a period of not less than three years after the date the claim was filed or last amended, whichever is later. If no funds were appropriated and no payment was made at the time the claim was filed, the time for the Controller to initiate an audit shall be from the date of initial payment of the claim. Such documents must be made available to the SCO on request.

Object/ Sub object Accounts	Columns									Submit supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	
Salaries	Employee Name/Title	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours Worked						
Benefits	Activities Performed	Benefit Rate			Benefits = Benefit Rate x Salaries					
Materials and Supplies	Description of Supplies Used	Unit Cost	Quantity Used			Cost = Unit Cost x Quantity Used				
Contract Services	Name of Contractor Specific Tasks Performed	Hourly Rate	Hours Worked Inclusive Dates of Service				Cost = Hourly Rate x Hours Worked			Copy of Contract
Fixed Assets	Description of Equipment Purchased	Unit Cost	Usage					Cost = Unit Cost x Usage		
Travel	Purpose of Trip Name and Title Departure and Return Date	Per Diem Rate Mileage Rate Travel Cost	Days Miles Travel Mode						Total Travel Cost = Rate x Days or Miles	

- (05) Total line (04), columns (d) through (i) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed to detail the activity costs, number each page. Enter totals from line (05), columns (d) through (i) to Form 1, block (05), columns (a) through (f) in the appropriate row.

12. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the incorrect reduction claim submission.**

This claim alleges an incorrect reduction of a reimbursement claim filed with the State Controller's Office pursuant to Government Code section 17561. This incorrect reduction claim is filed pursuant to Government Code section 17551, subdivision (d). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this incorrect reduction claim submission is true and complete to the best of my own knowledge or information or belief.

Jeffrey L. Stewart

Print or Type Name of Authorized Local Agency
or School District Official

City Manager

Print or Type Title

July 26, 2018

Date

Signature of Authorized Local Agency or
School District Official

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the incorrect reduction claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On August 23, 2018, I served the:

- **Notice of Complete Incorrect Reduction Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued August 23, 2018**
- **Incorrect Reduction Claim (IRC) filed by the City of Bellflower on August 17, 2018**

Municipal Storm Water and Urban Runoff Discharges, 18-0304-I-01
Los Angeles Regional Quality Control Board Order No. 01-182,
Permit CAS004001, Part 4F5c3
Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007,
2007-2008, 2008-2009, and 2009-2010
City of Bellflower, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 23, 2018 at Sacramento, California.


Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/21/18

Claim Number: 18-0304-I-01

Matter: Municipal Storm Water and Urban Runoff Discharges

Claimant: City of Bellflower

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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RECEIVED
October 21, 2019
Commission on
State Mandates

LATE FILING

Exhibit B

BIT TY T. YEE
California State Controller

October 21, 2019

Heather Halsey, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Incorrect Reduction Claim

Municipal Storm Water and Urban Runoff Discharges, 18-0304-I-01
Los Angeles Regional Water Quality Control Board,
Order No. 01-182, Permit CAS004001, Part 4F5c3
Fiscal Years: 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, and 2009-10
City of Bellflower, Claimant

Dear Ms. Halsey:

The State Controller's Office is transmitting our response to the above-named IRC.

If you have any questions, please contact me by telephone at (916) 327-3138.

Sincerely,

LISA KUROKAWA, Chief

Compliance Audits Bureau
Division of Audits

LK/hf

**RESPONSE BY THE STATE CONTROLLER’S OFFICE
TO THE INCORRECT REDUCTION CLAIM (IRC) BY
THE CITY OF BELLFLOWER**

Municipal Storm Water and Urban Runoff Discharges Program

Table of Contents

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Excerpts from Commission on State Mandates’ Statement of Decision, Two-Way Traffic Signal Program, March 26, 1998	Tab 4

Note: References to Exhibits relate to the city’s IRC filed on August 17, 2018, as follows:

- Exhibit A – California Regional Water Quality Control Board for the Los Angeles Region Order Number 01-182 – PDF pages 12-22
- Exhibit B – Claims for Payment – PDF pages 24-49
- Exhibit C – Guidelines Proposition A and Proposition C Local Return – PDF pages 51-74
- Exhibit D – SCO Final Letter Report (October 25, 2016) – PDF pages 76-82
- Exhibit E – SCO Costs Claiming Instructions (May 31, 2011) – PDF pages 84-87
- Exhibit E – Commission on State Mandates’ Adopted Parameters and Guidelines, Municipal Storm Water and Urban Runoff Discharges Program (March 24, 2011) – PDF pages 88-95
- Exhibit E – SCO Municipal Storm Water and Urban Runoff Discharges Claim for Payment Forms – PDF pages 96-101
- Exhibit E – Declaration of Service by Email / Mailing List– PDF pages 103-110

Tab 1

1 **OFFICE OF THE STATE CONTROLLER**

2 3301 C Street, Suite 725

3 Sacramento, CA 94816

4 Telephone No.: (916) 323-5849

5
6 BEFORE THE

7 COMMISSION ON STATE MANDATES

8 STATE OF CALIFORNIA

9
10 INCORRECT REDUCTION CLAIM (IRC)
11 ON:

No.: IRC 18-0304-I-01

12 Municipal Storm Water and Urban
13 Runoff Discharges Program

AFFIDAVIT OF BUREAU CHIEF

14 Los Angeles Regional Water Quality
15 Control Board, Order No. 01-182,
16 Permit CAS004001, Part 4F5c3

17 CITY OF BELLFLOWER, Claimant

18 I, Lisa Kurokawa, make the following declarations:

- 19 1) I am an employee of the State Controller's Office (SCO) and am over the age of 18
20 years.
- 21 2) I am currently employed as a bureau chief, and have been so since February 15, 2018.
22 Before that, I was employed as an audit manager for six years.
- 23 3) I reviewed the work performed by the SCO auditor.
- 24 4) Any attached copies of records are true copies of records, as provided by the City of
25 Bellflower or retained at our place of business.

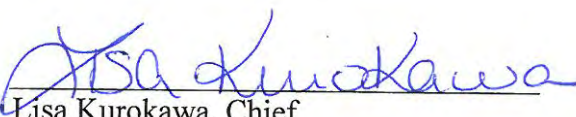
- 1 5) The records include claims for reimbursement, along with any attached supporting
2 documentation, explanatory letters, or other documents relating to the above-entitled Incorrect
3 Reduction Claim.
4 6) A desk review of the claims for fiscal year (FY) 2002-03, FY 2003-04, FY 2004-05, FY 2005-
5 06, FY 2006-07, FY 2007-08, FY 2008-09, and FY 2009-10 started on September 21, 2016
6 (initial contact email with the city) and ended on October 25, 2016 (issuance of the final letter
7 report).

8 I do declare that the above declarations are made under penalty of perjury and are true and
9 correct to the best of my knowledge, and that such knowledge is based on personal
10 observation, information, or belief.

11 Date: October 21, 2019

12 OFFICE OF THE STATE CONTROLLER

13 By:



14 Lisa Kurokawa, Chief
15 Compliance Audits Bureau
16 Division of Audits
17 State Controller's Office
18
19
20
21
22
23
24
25

Tab 2

**STATE CONTROLLER'S OFFICE ANALYSIS AND RESPONSE
TO THE INCORRECT REDUCTION CLAIM BY
CITY OF BELLFLOWER**

**For Fiscal Year (FY) 2002-03, FY 2003-04, FY 2004-05, FY 2005-06, FY 2006-07,
FY 2007-08, FY 2008-09, and FY 2009-10**

**Los Angeles Regional Water Quality Control Board,
Order No. 01-182, Permit CAS004001,
Part 4F5c3**

SUMMARY

The following is the State Controller's Office's (SCO) response to the Incorrect Reduction Claim (IRC) that the City of Bellflower (City) submitted on August 17, 2018. The SCO performed a desk review of the City's claims for costs of the legislatively mandated Municipal Storm Water and Urban Runoff Discharges Program for the period of July 1, 2002, through June 30, 2010. The SCO issued its letter report on October 25, 2016 (**Exhibit D- pages 76-82**).

The City submitted claims totaling \$533,742—\$69,662 for fiscal year (FY) 2002-03, \$66,241 for FY 2003-04, \$66,241 for FY 2004-05, \$66,241 for FY 2005-06, \$66,241 for FY 2006-07, \$66,241 for FY 2007-08, \$66,241 for FY 2008-09, and \$66,634 for FY 2009-10 (**Exhibit B-pages 24-49**). Subsequently, the SCO performed a desk review of these claims and determined that \$3,421 is allowable and \$530,321 is unallowable because the City did not offset the restricted revenues used to fund the mandated activities.

The following table summarizes the review results:

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment
<u>July 1, 2002, through June 30, 2003</u>			
One-time activities:			
Purchase, construction, and installation of receptacles and pads	\$ 3,421	\$ 3,421	\$ -
Related indirect costs	-	-	-
Total one-time costs	3,421	3,421	-
Ongoing activities:			
Reasonable reimbursement methodology factor	6.74	6.74	-
Number of transit receptacles	189	189	-
Annual number of trash pickups	52	52	-
Total ongoing costs	66,241	66,241	-
Total one-time cost and ongoing costs	69,662	69,662	-
Less offsetting revenues and reimbursements	-	(66,241)	(66,241)
Total program costs	\$ 69,662	3,421	\$ (66,241)
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		\$ 3,421	

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment
<u>July 1, 2003, through June 30, 2004</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	189	189	-
Annual number of trash pickups	52	52	-
Total ongoing costs	66,241	66,241	-
Less offsetting revenues and reimbursements	-	(66,241)	(66,241)
Total program costs	\$ 66,241	66,241	\$ (66,241)
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		\$ 66,241	
<u>July 1, 2004, through June 30, 2005</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	189	189	-
Annual number of trash pickups	52	52	-
Total ongoing costs	66,241	66,241	-
Less offsetting revenues and reimbursements	-	(66,241)	(66,241)
Total program costs	\$ 66,241	-	\$ (66,241)
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		\$ 66,241	
<u>July 1, 2005, through June 30, 2006</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	189	189	-
Annual number of trash pickups	52	52	-
Total ongoing costs	66,241	66,241	-
Less offsetting revenues and reimbursements	-	(66,241)	(66,241)
Total program costs	\$ 66,241	-	\$ (66,241)
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		\$ 66,241	
<u>July 1, 2006, through June 30, 2007</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	189	189	-
Annual number of trash pickups	52	52	-
Total ongoing costs	66,241	66,241	-
Less offsetting revenues and reimbursements	-	(66,241)	(66,241)
Total program costs	\$ 66,241	-	\$ (66,241)
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		\$ 66,241	

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment
<u>July 1, 2007, through June 30, 2008</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	189	189	-
Annual number of trash pickups	52	52	-
Total ongoing costs	66,241	66,241	-
Less offsetting revenues and reimbursements	-	(66,241)	(66,241)
Total program costs	<u>\$ 66,241</u>	-	<u>\$ (66,241)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 66,241</u>	
<u>July 1, 2008, through June 30, 2009</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	189	189	-
Annual number of trash pickups	52	52	-
Total ongoing costs	66,241	66,241	-
Less offsetting revenues and reimbursements	-	(66,241)	(66,241)
Total program costs	<u>\$ 66,241</u>	-	<u>\$ (66,241)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 66,241</u>	
<u>July 1, 2009, through June 30, 2010</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.78	\$ 6.78	\$ -
Number of transit receptacles	189	189	-
Annual number of trash pickups	52	52	-
Total ongoing costs	66,634	66,634	-
Less offsetting revenues and reimbursements	-	(66,634)	(66,634)
Total program costs	<u>\$ 66,634</u>	-	<u>\$ (66,634)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 66,634</u>	
<u>Summary: July 1, 2002, through June 30, 2010</u>			
One-time costs	\$ 3,421	\$ 3,421	\$ -
Ongoing costs	530,321	530,321	-
Total one-time costs and ongoing costs	533,742	533,742	-
Less offsetting revenues and reimbursements	-	(530,321)	(530,321)
Total program costs	<u>\$ 533,742</u>	3,421	<u>\$ (530,321)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 3,421</u>	

I. MUNICIPAL STORMWATER AND URBAN RUNOFF DISCHARGES PROGRAM CRITERIA

Adopted Parameters and Guidelines—March 24, 2011

The California Regional Water Quality Control Board, Los Angeles Region (Board), adopted a 2001 storm water permit (Permit CAS004001) (**Exhibit A – pages 12-22**). Section F.S (c) (3) of Order No. 01-182 requires local jurisdictions to:

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

On July 31, 2009, the Commission on State Mandates (Commission) determined that Part 4F5c3 of the permit imposes a state mandate reimbursable under Government Code (GC) section 17561 and adopted the Statement of Decision (**Tab 3**). The Commission further clarified that each local agency subject to the permit and not subject to a trash total maximum daily load (TMDL) is entitled to reimbursement.

The Commission also determined that the period of reimbursement for the mandated activities begins July 1, 2002, and continues until a new National Pollutant Discharge Elimination System (NPDES) permit issued by the Board is adopted. On November 8, 2012, the Board adopted a new NPDES permit, Order No. R4-2012-0175, which became effective on December 28, 2012.

The program's parameters and guidelines establish the state mandate and define the reimbursement criteria. The Commission adopted the parameters and guidelines on March 24, 2011 (**Exhibit E – pages 88-95**). In compliance with GC section 17558, the SCO issues claiming instructions to assist local agencies in claiming mandated program reimbursable costs.

SCO Claiming Instructions

The SCO annually issues mandated cost claiming instructions, which contain filing instructions for mandated cost programs. The SCO issued claiming instructions on May 31, 2011 (**Exhibit E- pages 84-87**). These claiming instructions are believed to be, for the purposes and scope of the audit period, substantially similar to the version extant at the time the City filed its FY 2002-03, FY 2003-04, FY 2004-05, FY 2005-06, FY 2006-07, FY 2007-08, FY 2008-09, and FY 2009-10 mandated cost claims.

II. UNREPORTED OFFSETTING REVENUES AND REIMBURSEMENTS

Issue

The SCO determined that the City overstated costs by \$530,321 for the review period (**Exhibit D- pages 76-82**). The costs were overstated because the City did not report any offsetting revenues. The SCO concluded that the City should have reported \$530,321 in offsets received from Proposition C Local Return Funds used to pay for the ongoing maintenance of transit stop trash receptacles. In an IRC filed on August 17, 2018, the City disagreed with the SCO's determination that Proposition C funds are considered offsetting revenues.

SCO Analysis:

The City believes that the SCO's determination that \$530,321 of the costs claimed by the City were not eligible for reimbursement is erroneous, and that it should be fully reimbursed for the amounts expended in connection with ongoing maintenance of trash receptacles. The ongoing maintenance costs are recorded in Fund 135 – Proposition C, which is a special revenue fund type. Special revenue funds are used to account for the proceeds of specific revenue sources that are legally restricted to expenditures for specified purposes. During the review, the SCO confirmed that there were no General Fund transfers into the Proposition C Local Return Fund during the review period. As the City used only Proposition C funds authorized to be used on the mandated activities, it did not need to rely on the use of discretionary general funds to pay for the mandated activities.

City's Response

CITY OF BELLFLOWER STORMWATER AND URBAN RUNOFF DISCHARGES PROGRAM COST CLAIM; SECTIONS 7 AND 8

7. WRITTEN DETAILED NARRATIVE

On December 13, 2001, the California Regional Water Quality Control Board for the Los Angeles Region ("RWQCB") issued Order Number 01-182 (the "Order") in connection with National Pollutant Discharge Elimination System ("NPDES") Permit CAS00401. (See Exh. A.) The Order contained special provisions related to the Public Agency Activities Program, including Public Agency requirements pertaining to storm drain operation and management. (Exh. A, BF_005-BF_006, § 4(F), BF_008-BF_010, § 4(F)(5) [requirements pertaining to storm drain operation].) These provisions required that permittees implement a Public Agency program to minimize storm water pollution impacts from public agency activities; specifically, it requires that permittees which were not subject to trash Total Maximum Daily Load ("TMDL"), such as the City of Bellflower ("City"), place trash receptacles at all transit stops with shelters in their jurisdictions no later than February 3, 2003, and maintain them as necessary. (Exh. A, BF_009, § 4(F)(5)(c)(3).) This requirement is not federally mandated and is thus subject to reimbursement. (See *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal. 5th 749, 771.)

The City complied with these provisions, using funds available through the Proposition C Ordinance of the Los Angeles County Metropolitan Transportation Authority ("Metro") rather than the City's general fund.¹ (Declaration of Bernardo Iniguez, hereinafter "Iniguez Decl.," ¶3.) All of the costs associated with installing and maintaining trash receptacles pursuant to the Order, aside from overhead costs, were financed through the use of funds raised through the Proposition C tax. (Id.)

Twenty percent of the funds raised through the Proposition C tax is designated for the Local Return ("LR") Program funds to be used by local entities to develop and improve transit and transportation infrastructure. LR funds are allocated and distributed to cities on a "per capita" basis every month, and may be applied towards certain eligible expenditures. (See Exh. C, BF_050-BF_064, §§ II(A) II(C).) Eligible uses identified by Metro include new fixed route or flexible destination bus services, extension of bus routes, shuttle services between activity centers, expansion of paratransit services, signal synchronization and traffic management projects, congestion management programs, bikeway construction and management projects, street improvement and maintenance in support of public transit, and the maintenance, improvement, or replacement of pavement management systems. (Id.)

On September 28, 2011, Bernardo Iniguez submitted a Claim for Payment to the Office of the State Controller, seeking reimbursement in connection with the purchase, construction, and maintenance of receptacles and pads during the period between Fiscal Year 2002 and Fiscal Year 2010. (Iniguez Decl. ¶ 4, Exh. B.) The City claimed \$533,742 in connection with the mandated program. (Id.)

In a letter dated October 25, 2016, the State Controller found that only \$3,421 of the claimed funds were allowable. (Exh. D, BF_071-BF_072.) It found that the City “should have offset the [remaining] \$530,321 in Proposition C funding used to pay for the ongoing maintenance of transit stop trash receptacles during the review period.” (Id. At 4.) It further explained that, as per the Controller’s guidelines, “any offsetting revenue the claimant experiences *in the same program as a result of the same statutes or executive orders found to contain the mandate* shall be deducted from the costs claimed.” (Id. At BF_072 [emphasis added]; see also Gov. Code § 17556(e).)

The State Controller improperly classified the Proposition C funds as “offsetting” revenues. The mandate at issue, which is intended to minimize discharge of waste from municipal storm sewer systems, derives from the *Water Code*, as implemented by the RWQCB through the Order. (Wat. Code § 13000 et seq.; see also *Dept. of Finance*, 1 Cal. 5th 749.)

By contrast, Proposition C never mandated that the City maintain the trash receptacles; it provided the City with discretionary authority to direct the LR funds towards certain enumerated transit-related projects. Moreover, because the Proposition C funds were expended to comply with the mandate in the Order, the City was unable to apply the LR funds towards other projects, as it would have done if it were not subject to the requirement to install and maintain trash receptacles. These projects, which the City had previously funded with Proposition C funds, included, but were not limited to, street improvements, highway safety improvements, and traffic signal improvements. (Iniguez Decl. ¶3.)

The so-called “offsetting revenue” was simply not “a result of the same statutes or executive orders found to contain the mandate.” For this reason, the Controller’s determination that \$530,321 of the costs claimed by the City were not eligible for reimbursement was erroneous, and the City should be fully reimbursed for the amounts expended in connection with its maintenance of trash receptacles.

SCO’s Comments

In its IRC, the City contends that the SCO improperly classified Proposition C funds as offsetting revenues. It also contends that because the City expended Proposition C funds to comply with the mandate, it was unable to apply the funds towards other projects as it would have done if it were not subject to the requirement to install and maintain trash receptacles. We will address these two arguments in the order presented.

Proposition C funds as offsetting revenues

As outlined in the final report letter (**Exhibit D-pages 76-82**), the program’s parameters and guidelines, section VIII. Offsetting Revenues and Reimbursements, state:

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

Referring to this portion of the program's parameters and guidelines, the City states that "the so-called offsetting revenue was simply not a result of the same statutes or executive orders found to contain the mandate. For this reason, the Controller's determination that \$530,321 of the costs claimed by the City were not eligible for reimbursement was erroneous..." In its response, the city neglects to consider the second sentence in the paragraph, beginning with the words "In addition..." The SCO believes that Proposition C is a non-local source, as it is not revenue that the city generated through its own means, such as with unrestricted general sales tax. Rather, Proposition C is a special supplementary sales tax that was approved by Los Angeles County voters in 1980 and is restricted in its use.

Eligible use of Proposition C funds

As a condition of voter approval, the sales tax revenue from Proposition C is restricted to benefiting public transit. Specifically, 20% of the Proposition C tax is designated for the Local Return Program, wherein the funds are allocated and distributed to cities on a "per capita" basis and may be used for certain eligible expenditures. The Proposition C Local Return Guidelines, section II. Project Eligibility (**Exhibit C- pages 51-74**), identify reimbursement for ongoing trash receptacle maintenance as follows [emphasis added]:

2. BUS STOP IMPROVEMENTS AND MAINTENANCE (Codes 150, 160, & 170)

Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:

- Concrete landings – in street for buses and at sidewalk for passengers
- Bus turn-outs
- Benches
- Shelters
- **Trash receptacles**
- Curb cuts
- Concrete or electrical work directly associated with the above items

As evidenced above, Proposition C is an eligible use of funds for the ongoing maintenance of the transit stop trash receptacles. The City states in its IRC filing that it complied with the provisions of the mandated program "using funds available through the Proposition C Ordinance of the Los Angeles County Metropolitan Transportation Authority ("Metro") rather than the City's general fund." It also states that Proposition C "provided the City with *discretionary authority* [emphasis added] to direct the Local Return funds towards certain enumerated transit-related projects." Based on language in the Local Return Guidelines, and the City's own statements, the City not only appropriately used the Proposition C funds, but it used and applied them at its own discretion and as it saw fit.

The general premise of mandated costs is that claimants are entitled to reimbursement to the extent that they incur increased costs as the direct result of a mandated program. However, the city did not incur increased costs to the extent that it relied on revenues raised outside of its appropriations limit, which were dedicated to public transit purposes to fund such costs.

In its Statement of Decision for the Two-Way Traffic Control Signal Program, the Commission of State Mandates states:

Therefore, the Commission concluded that the funds received by local agencies from the gas tax *may* be used to fund the cost of obtaining the standard two-way traffic signal communications software. Accordingly, reimbursement is not required to the extent local agencies use their gas tax proceeds to fund the test claim legislation (Tab 4).

The same principle applies to the Municipal Storm Water and Urban Runoff Discharges Program. The City chose, at its discretion, to use the Proposition C Local Return Funds for installing and maintaining trash receptacles. As such, reimbursement for mandated costs is not required to the extent that the city used its Proposition C Local Return Funds to fund the mandated activities.

III. CONCLUSION

The SCO performed a desk review of the City of Bellflower's claims for costs of the legislatively mandated Municipal Storm Water and Urban Runoff Discharges Program (Los Angeles Regional Water Quality Control Board, Order No. 01-182, Permit CAS004001, Part 4F5c3) for the period of July 1, 2002, through June 30, 2010. The city claimed \$533,742 for the mandated program. Our review found that \$3,421 is allowable and \$530,321 is unallowable. The costs are unallowable because the City did not offset the restricted revenues used to fund the mandated activities.

The Commission should find that: (1) the SCO correctly reduced the City's FY 2002-03 claim by \$66,241; (2) the SCO correctly reduced the City's FY 2003-04 claim by \$66,241; (3) the SCO correctly reduced the City's FY 2004-05 claim by \$66,241; (4) the SCO correctly reduced the City's FY 2005-06 claim by \$66,241; (5) the SCO correctly reduced the City's FY 2006-07 claim by \$66,241; (6) the SCO correctly reduced the City's FY 2007-08 claim by \$66,241; (7) the SCO correctly reduced the City's FY 2008-09 claim by \$66,241; and (8) the SCO correctly reduced the City's FY 2009-10 claim by \$66,634.

IV. CERTIFICATION

I hereby certify by my signature below that the statements made in this document are true and correct of my own knowledge, or, as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on October 21, 2019, at Sacramento, California, by:



Lisa Kurokawa, Chief
Compliance Audits Bureau
Division of Audits
State Controller's Office

Tab 3

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

PHONE: (916) 323-3562

FAX: (916) 445-0278

E-mail: csmInfo@csm.ca.gov



September 3, 2009

Mr. Leonard Kaye
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Howard Gest
David W. Burhenn & Gest, LLP
624 S. Grand Ave., Suite 2200
Los Angeles, CA 90017

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Adopted Statement of Decision and Timeline for Submission of Proposed Parameters and Guidelines or Reasonable Reimbursement Methodology
Municipal Storm Water and Urban Runoff Discharges
03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21
Los Angeles Regional Quality Control Board Order No. 01-182
Permit CAS004001; Parts 4C2a., 4C2b, 4E & 4F5c3
County of Los Angeles, Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Bellflower, Covina, Downey, Monterey Park, Signal Hill, Co-claimants

Dear Mr. Kaye and Mr. Gest:

The Commission on State Mandates adopted the enclosed Statement of Decision on July 31, 2009. State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program, approval of a statewide cost estimate, a specific legislative appropriation for such purpose, a timely-filed claim for reimbursement, and subsequent review of the claim by the State Controller's Office.

Following is a description of the responsibilities of all parties and of the Commission during the parameters and guidelines phase.

- **Claimant's Submission of Proposed Parameters and Guidelines.** Pursuant to Government Code section 17557 and California Code of Regulations, title 2, sections 1183.1 et seq., the claimant is responsible for submitting proposed parameters and guidelines to the Commission by **October 5, 2009**. For guidance in preparing and filing a timely submission see Government Code section 17557 and California Code of Regulations, title 2, sections 1183.1 et seq. Also, the claimant may include a "reasonable reimbursement methodology," a formula for reimbursing local agency costs mandated by the state in the Proposed Parameters and Guidelines. (See Gov. Code, § 17518.5 and Cal. Code Regs., tit.2, 1183.13.)
- **Review of Proposed Parameters and Guidelines.** Within ten days of receipt of completed proposed parameters and guidelines, Commission staff will send copies to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the enclosed mailing list. Interested parties may propose a "reasonable reimbursement methodology" pursuant to Government Code section

- 17518.5. All recipients will be given an opportunity to provide written comments or recommendations to the Commission within 15 days of service. The claimant and other interested parties may submit written rebuttals. (See Cal. Code Regs., tit. 2, § 1183.11.)
- **State Agencies and Interested Parties Comments.** State agencies and interested parties may submit recommendations and comments on staff's draft proposal and the claimant's modifications and/or comments within 15 days of service. State agencies and interested parties are required to submit an original and two (2) copies of written responses or rebuttals to the Commission and to simultaneously serve copies on the test claimant, state agencies, and interested parties on the mailing list. The claimant and other interested parties may submit written rebuttals. (See Cal. Code Regs., tit. 2, § 1183.11.)
- **Adoption of Parameters and Guidelines.** After review of the draft parameters and guidelines and all comments, Commission staff will recommend the adoption of an amended, modified, or supplemented version of staff's draft parameters and guidelines. (See Cal. Code Regs., tit. 2, § 1183.14.)
- **Review of Statewide Cost Estimate.** Commission staff may develop the statewide cost estimate based on initial reimbursement claims filed with the Office of the State Controller, application of a reasonable reimbursement methodology, or use a different methodology based on recommendations from the test claimant, the Department of Finance, or other interested parties. Before presenting a statewide cost estimate to the Commission for adoption, Commission staff shall disclose to the parties and interested parties the methodology, basis for any assumptions made, and sources of any data used to develop the estimate. (See Cal. Code Regs., tit. 2, § 1183.3.)
- **Adoption of Statewide Cost Estimate.** At least ten days prior to the next hearing, Commission staff shall issue a final staff analysis and a staff recommendation for adoption of the statewide cost estimate.

Reasonable Reimbursement Methodology and Statewide Estimate of Costs

- **Test Claimant and Department of Finance Submission of Letter of Intent.** Within 30 days of the Commission's adoption of a Statement of Decision on a test claim, the test claimant(s) and the Department of Finance may notify the executive director of the Commission in writing of their intent to follow the process described in Government Code sections 17557.1–17557.2 and section 1183.30 of the Commission's regulations to develop a *reasonable reimbursement methodology* and *statewide estimate of costs* for the initial claiming period and budget year for reimbursement of costs mandated by the state. The letter of intent shall include the date on which the test claimant and the Department of Finance will submit a plan to ensure that costs from a representative sample of eligible claimants are considered in the development of a reasonable reimbursement methodology.

Mr. Kaye and Mr. Gest

September 3, 2009

Page Three

- **Test Claimant and Department of Finance Submission of Plan.** Pursuant to the letter of intent, the test claimant and the Department of Finance shall submit an original and two copies of the *jointly developed plan* for development of a reasonable reimbursement methodology and statewide estimate of costs to the Commission.
- **Test Claimant and Department of Finance Submission of Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs.** Pursuant to the plan, the test claimant and the Department of Finance shall submit an original and two copies of the *Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs* to the Commission. See Government Code section 17557.1 for guidance in preparing and filing a timely submission. Any filings made pursuant to Government Code section 17557.1 shall be simultaneously served on the other parties and interested parties on the mailing list.
- **Review of Proposed Reasonable Reimbursement Methodology and Statewide Estimate of Costs.** Upon receipt of the jointly developed proposals, Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the draft reasonable reimbursement methodology and proposed statewide estimate of costs within fifteen (15) days of service. Claimants, state agencies, and interested parties shall submit an original and two copies of any written responses to Commission staff and shall simultaneously serve a copy on the other parties and interested parties. The test claimant and Department of Finance may submit written rebuttals to Commission staff and simultaneously serve a copy on the other parties and interested parties.
- **Adoption of Reasonable Reimbursement Methodology and Statewide Estimate of Costs.** At least ten days prior to the next hearing, Commission staff shall issue review comments and a staff recommendation on whether the Commission should approve the draft reasonable reimbursement methodology and adopt the proposed statewide estimate of costs pursuant to Government Code section 17557.2.

Please contact Heidi Palchik at (916) 323-8218 if you have any questions.

Sincerely,


PAULA HIGASHI
Executive Director

Enclosure

J:mandates/2003/tc/03tc04/sod/sodtrans

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Los Angeles Regional Quality Control Board
Order No. 01-182
Permit CAS004001
Parts 4C2a., 4C2b, 4E & 4F5c3

Filed September 2, 2003, (03-TC-04)
September 26, 2003 (03-TC-19)
by the County of Los Angeles, Claimant

Filed September 30, 2003 (03-TC-20 &
03-TC-21) by the Cities of Artesia, Beverly
Hills, Carson, Norwalk, Rancho Palos Verdes,
Westlake Village, Azusa, Commerce, Vernon,
Bellflower, Covina, Downey, Monterey Park,
Signal Hill, Claimants

Case Nos.: 03-TC-04, 03-TC-19,
03-TC-20, 03-TC-21

*Municipal Stormwater and Urban Runoff
Discharges*

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

(Adopted July 31, 2009)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled manner.


PAULA HIGASHI, Executive Director

Dated: September 3, 2009

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Los Angeles Regional Quality Control Board
Order No. 01-182
Permit CAS004001
Parts 4C2a., 4C2b, 4E & 4F5c3

Filed September 2, 2003, (03-TC-04)
September 26, 2003 (03-TC-19)
by the County of Los Angeles, Claimant

Filed September 30, 2003 (03-TC-20 &
03-TC-21) by the Cities of Artesia, Beverly
Hills, Carson, Norwalk, Rancho Palos Verdes,
Westlake Village, Azusa, Commerce, Vernon,
Bellflower, Covina, Downey, Monterey Park,
Signal Hill, Claimants

Case Nos.: 03-TC-04, 03-TC-19,
03-TC-20, 03-TC-21

*Municipal Stormwater and Urban Runoff
Discharges*

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

(Adopted July 31, 2009)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on July 31, 2009. Leonard Kaye and Judith Fries appeared on behalf of the County of Los Angeles. Howard Gest appeared on behalf of the cities. Michael Lauffer appeared on behalf of the State Water Resources Control Board and the Regional Water Quality Control Board. Carla Castaneda and Susan Geanacou appeared on behalf of the Department of Finance. Geoffrey Brosseau appeared on behalf of the Bay Area Stormwater Management Agencies Association.

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 the staff analysis to partially approve the test claim at the hearing by a vote of 4-2.

Summary of Findings

The consolidated test claim, filed by the County of Los Angeles and several cities, allege various activities related to placement and maintenance of trash receptacles at transit stops and inspections of various facilities to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board.

The Commission finds that the following activity in part 4F5c3 of the permit is a reimbursable state mandate on local agencies subject to the permit that are not subject to a trash total

maximum daily load:¹ "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

The Commission also finds that the remainder of the permit (parts 4C2a, 4C2b & 4E) does not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution because the claimants have fee authority (under Cal. Const. article XI, § 7) within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the activities in those parts of the permit.

BACKGROUND

The claimants allege various activities related to placement and maintenance of trash receptacles at transit stops and inspections of restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I industrial facilities (as defined) and construction sites to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board (LA Regional Board), a state agency.

History of the test claims

The test claims were filed in September 2003,² by the County of Los Angeles and several cities within it (the permit covers the Los Angeles County Flood Control District and 84 cities in Los Angeles County, all except Long Beach). The Commission originally refused jurisdiction over the permits based on Government Code section 17516's definition of "executive order" that excludes permits issued by the State Water Resources Control Board (State Water Board) or Regional Water Quality Control Boards (regional boards). After litigation, the Second District Court of Appeal held that the exclusion of permits and orders of the State and Regional Water Boards from the definition of "executive order" is unconstitutional. The court issued a writ commanding the Commission to set aside the decision "affirming your Executive Director's rejection of Test Claim Nos. 03-TC-04, 03-TC-19, 03-TC-20 and 03-TC-21" and to fully consider those claims.³

The County of Los Angeles and the cities re-filed their claims in October and November 2007. The claims were consolidated by the Executive Director in December 2008. Thus, the

¹ A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

² Originally, test claims 03-TC-04 (*Transit Trash Receptacles*) and 03-TC-19 (*Inspection of Industrial/Commercial Facilities*) were filed by the County of Los Angeles on September 5, 2003. Test claim 03-TC-21 (*Stormwater Pollution Requirements*) was filed by the Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina on September 30, 2003. Test claim 03-TC-20 (*Waste Discharge Requirements*) was filed by Cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, and Westlake Village on September 30, 2003.

³ *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898.

reimbursement period is as though the claims were filed in September 2003, i.e., beginning July 1, 2002.⁴

Before discussing the specifics of the permit, an overview of municipal stormwater pollution puts the permit in context.

Municipal stormwater

One of the main objectives of the permit is “to assure that stormwater discharges from the MS4 [Municipal Separate Storm Sewer Systems]⁵ shall neither cause nor contribute to the exceedance of water quality standards and objectives nor create conditions of nuisance in the receiving waters, and that the discharge of non-stormwater to the MS4 has been effectively prohibited.” (Permit, p. 13.)

Stormwater runoff flows untreated from urban streets directly into streams, lakes and the ocean. To illustrate the effect of stormwater⁶ on water pollution, the Ninth Circuit Court of Appeal has stated the following:

Storm water runoff is one of the most significant sources of water pollution in the nation, at times “comparable to, if not greater than, contamination from industrial and sewage sources.” [Citation omitted.] Storm sewer waters carry suspended metals, sediments, algae-promoting nutrients (nitrogen and phosphorus), floatable trash, used motor oil, raw sewage, pesticides, and other toxic contaminants into streams, rivers, lakes, and estuaries across the United States. [Citation omitted.] In 1985, three-quarters of the States cited urban storm water runoff as a major cause of waterbody impairment, and forty percent reported construction site runoff as a major cause of impairment. Urban runoff has been named as the foremost cause of impairment of surveyed ocean waters. Among the sources of storm water contamination are urban development, industrial facilities, construction sites, and illicit discharges and connections to storm sewer systems.⁷

⁴ Government Code section 17557, subdivision (e).

⁵ Municipal separate storm sewer means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. (40 C.F.R. § 122.26 (b)(8).)

⁶ Storm water means “storm water runoff, snow melt runoff, and surface runoff and drainage.” (40 C.F.R. § 122.26 (b)(13).)

⁷ *Environmental Defense Center, Inc. v. U.S. E.P.A.* (2003) 344 F.3d 832, 840-841.

Because of the stormwater pollution problems described by the Ninth Circuit above, California and the federal government regulate stormwater runoff as described below.

California law

The California Supreme Court summarized the state statutory scheme and regulatory agencies applicable to this test claim as follows:

In California, the controlling law is the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which was enacted in 1969. (Wat. Code, § 13000 et seq., added by Stats.1969, ch. 482, § 18, p. 1051.) Its goal is "to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (§ 13000.) The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise "the principal state agencies with primary responsibility for the coordination and control of water quality." (§ 13001.) As relevant here, one of those regional boards oversees the Los Angeles region (the Los Angeles Regional Board).

Whereas the State Board establishes statewide policy for water quality control (§ 13140), the regional boards "formulate and adopt water quality control plans for all areas within [a] region" (§ 13240).⁸

Much of what the regional board does, especially as pertaining to permits like the one in this claim, is based in federal law as described below.

Federal law

The Federal Clean Water Act (CWA) was amended in 1972 to implement a permitting system for all discharges of pollutants⁹ from point sources¹⁰ to waters of the United States, since

⁸ *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619.

⁹ According to the federal regulations, "Discharge of a pollutant" means: (a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or (b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger." (40 C.F.R. § 122.2.)

¹⁰ A point source is "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

discharges of pollutants are illegal except under a permit.¹¹ The permits, issued under the national pollutant discharge elimination system, are called NPDES permits. Under the CWA, each state is free to enforce its own water quality laws so long as its effluent limitations¹² are not "less stringent" than those set out in the CWA (33 USCA 1370). The California Supreme Court described NPDES permits as follows:

Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma*, *supra*, 503 U.S. at p. 101, 112 S.Ct. 1046.) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)¹³

In the Porter-Cologne Water Quality Control Act (Wat. Code, §§ 13370 et seq.), the Legislature found that the state should implement the federal law in order to avoid direct regulation by the federal government. The Legislature requires the permit program to be consistent with federal law, and charges the State and Regional Water Boards with implementing the federal program (Wat. Code, §§ 13372 & 13370). The State Water Resources Control Board (State Board) incorporates the regulations from the U.S. EPA for implementing the federal permit program, so both the Clean Water Act and U.S. EPA regulations apply to California's permit program (Cal.Code Regs., tit. 23, § 2235.2).

When a regional board adopts an NPDES permit, it must adopt as stringent a permit as U.S. EPA would have (federal Clean Water Act, § 402 (b)). As the California Supreme Court stated:

The federal Clean Water Act reserves to the states significant aspects of water quality policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority to "enforce any effluent limitation" that is not "*less stringent*" than the federal standard (*id.* § 1370, *italics added*). It does not prescribe or restrict the factors that a state may consider when exercising this reserved authority, and thus it does not prohibit a state-when imposing effluent limitations that are *more stringent*

¹¹ 40 Code of Federal Regulations, section 122.21 (a). The section applies to U.S. EPA-issued permits, but is incorporated into section 123.25 (the state program provision) by reference.

¹² *Effluent limitation* means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean. (40 C.F.R. § 122.2.)

¹³ *City of Burbank v. State Water Resources Control Bd.*, *supra*, 35 Cal.4th 613, 621. Actually, State and regional board permits allowing discharges into state waters are called "waste discharge requirements" (Wat. Code, § 13263).

than required by federal law-from taking into account the economic effects of doing so.¹⁴

Actions that dischargers must implement as prescribed in permits are commonly called "best management practices" or BMPs.¹⁵

Stormwater was not regulated by U.S. EPA in 1973 because of the difficulty of doing so. This exemption from regulation was overturned in *Natural Resources Defense Council v. Costle* (1977) 568 F.2d 1369, which ordered U.S. EPA to require NPDES permits for stormwater runoff. By 1987, U.S. EPA still had not adopted regulations to implement a permitting system for stormwater runoff. The Ninth Circuit Court of Appeals explained the next step as follows:

In 1987, to better regulate pollution conveyed by stormwater runoff, Congress enacted Clean Water Act § 402(p), 33 U.S.C. § 1342(p), "Municipal and Industrial Stormwater Discharges." Sections 402(p)(2) and 402(p)(3) mandate NPDES permits for stormwater discharges "associated with industrial activity," discharges from large and medium-sized municipal storm sewer systems, and certain other discharges. Section 402(p)(4) sets out a timetable for promulgation of the first of a two-phase overall program of stormwater regulation.¹⁶

NPDES permits are required for "A discharge from a municipal separate storm sewer system serving a population of 250,000 or more."¹⁷ The federal Clean Water Act specifies the following criteria for municipal storm sewer system permits:

- (i) may be issued on a system- or jurisdiction-wide basis;
- (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
- (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.¹⁸

In 1990, U.S. EPA adopted regulations to implement Clean Water Act section 402(p), defining which entities need to apply for permits and the information to include in the permit application.

¹⁴ *City of Burbank v. State Water Resources Control Bd.*, *supra*, 35 Cal.4th 613, 627-628.

¹⁵ Best management practices, or BMPs, means "schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage." (40 CFR § 122.2.)

¹⁶ *Environmental Defense Center, Inc. v. U.S. E.P.A.*, *supra*, 344 F.3d 832, 841-842.

¹⁷ 33 USCA 1342 (p)(2)(C).

¹⁸ 33 USCA 1342 (p)(3)(B).

The permit application must propose management programs that the permitting authority will consider in adopting the permit. The management programs must include the following:

[A] comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate.¹⁹

General state-wide permits

In addition to the regional stormwater permit at issue in this claim, the State Board has issued two general statewide permits,²⁰ as described in the permit as follows:

To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for stormwater discharges: one for stormwater from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for stormwater from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. ... Facilities discharging stormwater associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for stormwater discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The U.S. EPA guidance anticipates coordination of the state-administered programs for industrial and construction activities with the local agency program to reduce pollutants in stormwater discharges to the MS4. The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES stormwater and non-stormwater permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations. (Permit, p. 11.)

The State Board has statutory fee authority to conduct inspections to enforce the general statewide permits.²¹ The statewide permits are discussed in further detail in the analysis.

The Los Angeles Regional Board permit (Order No. 01-182, Permit CAS004001)

To obtain the permit, the County of Los Angeles, on behalf of all permittees, submitted on January 31, 2001 a Report of Waste Discharge, which constitutes a permit application, and a Stormwater Quality Management Program, which constituted the permittees' proposal for best management practices that would be required in the permit.²²

¹⁹ 40 Code of Federal Regulations section 122.26 (d)(2)(iv).

²⁰ A general permit means "an NPDES 'permit' issued under [40 CFR] §122.28 authorizing a category of discharges under the CWA within a geographical area." (40 CFR § 122.2.)

²¹ Water Code section 13260, subdivision (d)(2)(B)(i) - (iii).

²² State Water Resources Control Board, comments submitted April 18, 2008, page 8 and attachment 36.

The permit states that its objective is: "to protect the beneficial uses of receiving waters in Los Angeles County."²³ The permit was upheld by the Second District Court of Appeal in 2006, which described it as follows:

The 72-page permit is divided into 6 parts. There is an overview and findings followed by a statement of discharge prohibitions; a listing of receiving water limitations; the Storm Water Quality Management Program; an explanation of special provisions; a set of definitions; and a list of what are characterized as standard provisions. The county, the flood control district, and the 84 cities are designated in the permit as the permittees.²⁴

After finding that "the county, the flood control district, and the 84 cities discharge and contribute to the release of pollutants from "municipal separate storm sewer systems" (storm drain systems)" and that the discharges were the subject of regional board permits in 1990 and 1996, the regional board found that the storm drain systems in the county discharged a host of specified pollutants into local waters. The permit summed up by stating: "Various reports prepared by the regional board, the Los Angeles County Grand Jury, and academic institutions indicated pollutants are threatening to or actually impairing the beneficial uses of water bodies in the Los Angeles region."²⁵

The permit also specifies prohibited and allowable discharges, receiving water limitations, the implementation of the Storm Water Quality Management Program "requiring the use of best management practices to reduce pollutant discharge into the storm drain systems to the maximum extent possible."²⁶ As the court described the permit:

In the prohibited discharges portion of the permit, the county and the cities were required to "effectively prohibit non-stormwater discharges" into their storm sewer systems. This prohibition contains the following exceptions: where the discharge is covered by a National Pollutant Discharge Elimination permit for non-stormwater emission; natural springs and rising ground water; flows from riparian habitats or wetlands; stream diversions pursuant to a permit issued by the

²³ Permit page 13. The permit also says: "This permit is intended to develop, achieve, and implement a timely comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP) from the permitted areas in the County of Los Angeles to the waters of the US subject to the Permittees' jurisdiction."

²⁴ *County of Los Angeles v. California State Water Resources Control Board* (2006) 143 Cal.App.4th 985, 990.

²⁵ *County of Los Angeles v. California State Water Resources Control Board*, *supra*, 143 Cal.App.4th 985, 990

²⁶ *County of Los Angeles v. California State Water Resources Control Board*, *supra*, 143 Cal.App.4th 985, 994.

regional board; "uncontaminated ground water infiltrations" ... and waters from emergency fire-fighting flows.²⁷

There is also a list of permissible discharges that are incidental to urban activity, as specified (e.g., landscape irrigation runoff, etc.). In the part on receiving water limitations, the permit prohibits discharges from storm sewer systems that "cause or contribute" to violations of "Water Quality Standards" objectives in receiving waters as specified in state and federal water quality plans. Storm or non-stormwater discharges from storm sewer systems which constitute a nuisance are also prohibited.²⁸

To comply with the receiving water limitations, the permittees must implement control measures in accordance with the permit.²⁹

The permittees are also to implement the Storm Water Quality Management Program (SQMP) that meets the standards of 40 Code of Federal Regulations, part 122.26(d)(2) (2000) and reduces the pollutants in stormwaters to the maximum extent possible with the use of best management practices. And the permittees must revise the SQMP to comply with specified total maximum daily load (TMDL) allocations.³⁰ If a permittee modified the countywide SQMP, it must implement a local management program. Each permittee is required by November 1, 2002, to adopt a stormwater and urban runoff ordinance. By December 2, 2002, each permittee must certify that it had the legal authority to comply with the permit through adoption of ordinances or municipal code modifications.³¹

²⁷ *County of Los Angeles v. California State Water Resources Control Board*, *supra*, 143 Cal.App.4th 985, 991-992.

²⁸ "'Nuisance' means anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; (3) occurs during, or as a result of, the treatment or disposal of wastes." *Id.* at 992.

²⁹ If the Storm Water Quality Management Program did not assure compliance with the receiving water requirements, the permittee must immediately notify the regional board; submit a Receiving Water Limitations Compliance Report that describes the best management practices currently being used and proposed changes to them; submit an implementation schedule as part of the Receiving Water Limitations Compliance Report; and, after approval by the regional board, promptly implement the new best management practices. If the permittee makes these changes, even if there were further receiving water discharges beyond those addressed in the Water Limitations Compliance Report, additional changes to the best management practices need not be made unless directed to do so by the regional board. *Id.* at 993.

³⁰ A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards. See <<http://www.epa.gov/OWOW/tmdl>> as of October 3, 2008.

³¹ *County of Los Angeles v. California State Water Resources Control Board*, *supra*, 143 Cal.App.4th 985.

The permit gives the County of Los Angeles additional responsibilities as principal permittee, such as coordination of the SQMP and convening watershed management committees. In addition, the permit contains a development construction program under which permittees are to implement programs to control runoff from construction sites, with additional requirements imposed on sites one acre or larger, and more on those five acres or larger. Permittees are to eliminate all illicit connections and discharges to the storm drain system, and must document, track and report all cases.

In this claim, however, claimants only allege activities in parts 4C2a, 4C2b, 4E and 4F5c3 of the permit. These parts concern placement and maintenance of trash receptacles at transit stops, and inspections of restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I industrial facilities (as defined) and construction sites, as quoted below.

Co-Claimants' Position

Co-claimants assert that parts 4C2a, 4C2b, 4E and 4F5c3 of the LA Regional Board's permit constitute a reimbursable state-mandate within the meaning of article XIII B, section 6, and Government Code section 17514.

Transit Trash Receptacles: Los Angeles County ("County") filed test claims 03-TC-04 and 03-TC-19. In 03-TC-04, *Transit Trash Receptacles*, filed by the County, and 03-TC-20, *Waste Discharge Requirements*, filed by the cities, the claimants allege the following activities as stated in the permit part 4F5c3 (Part 4, Special Provisions, F. Public Agency Activities Program, 5. Storm Drain Operation and Management):

- c. Permittees not subject to a trash TMDL³² shall: [¶]...[¶]
 - (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

Claimant County asserts that this permit condition requires the following:

1. Identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed Management areas.
2. Selecting proper trash receptacle design and evaluating proper placement of trash receptacles.
3. Designing receptacle pad improvement, if needed.
4. Constructing and installing trash receptacle units.
5. Collecting trash and maintaining receptacles.

Inspection of Industrial and Commercial Facilities: In claim 03-TC-19, *Inspection of Industrial/Commercial Facilities*, filed by the County, and 03-TC-20, *Waste Discharge Requirements*, filed by the cities, claimants allege the following activities as stated in the permit parts 4C2a and 4C2b (Part 4, Special Provisions, C. Industrial/Commercial Facilities Control Program):

³² A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards. See <<http://www.epa.gov/OWOW/tmdl>> as of October 3, 2008.

2. Inspect Critical Sources -- Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections:

a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections:- Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that stormwater BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP [Storm Water Quality Management Program].

At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on stormwater pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floor mats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each permittee shall inspect all automotive service facilities within its jurisdiction to confirm that stormwater BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;

- is aware of the prohibition on discharge of non-stormwater to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement stormwater pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO [Retail Gasoline Outlet] and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other stormwater pollution prevention practices.

b) Phase I Facilities³³

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories:³⁴ Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories:³⁵ Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004, Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity³⁶ to stormwater. For those facilities that do

³³ On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

³⁴ Attachment B of the Permit (pp. B-1 to B-2) lists the Tier 1 categories as follows (with Phase I facilities listed in italics): "*Municipal landfills ...; Hazardous Waste Treatment, Disposal and Recovery Facilities; Facilities Subject to SARA Title III ...; Restaurants; Wholesale trade (scrap, auto dismantling) ...; Automotive service facilities; Fabricated metal products ...; Motor freight ...; Chemical/allied products ...; Automotive Dealers/Gas Stations ...; Primary Metals.*"

³⁵ Attachment B of the Permit (pp. B-1 to B-2) lists the Tier 2 categories as follows (with Phase I facilities listed in italics): "*Electric/Gas/Sanitary ...; Air Transportation ...; Rubbers/Miscellaneous Plastics ...; Local/Suburban Transit ...; Railroad Transportation ...; Oil & Gas Extraction ...; Lumber/Wood Products ...; Machinery Manufacturing ...; Transportation Equipment ...; Stone, Clay, Glass, Concrete ...; Leather/Leather Products ...; Miscellaneous Manufacturing ...; Food and kindred Products ...; Mining of Nonmetallic Minerals ...; Printing and Publishing ...; Electric/Electronics ...; Paper and Allied Products ...; Furniture and Fixtures ...; Laundries ...; Instruments ...; Textile Mills Products ...; Apparel ...*"

³⁶ "Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. ... The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14): []... [] (x) Construction activity including clearing, grading and excavation,

have exposure of industrial activities to stormwater, a Permittee may reduce that frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

Inspection of Construction Sites: In claims 03-TC-20 and 03-TC-21, *Waste Discharge Requirements*, the cities allege the activities in permit parts 4C2a, 4C2b, and 4F5c3, as listed in the test claims cited above, in addition to the following activities as stated in part 4E of the permit (Part 4, Special Provisions, E. Development Construction Program):

- For construction sites one acre or greater, each Permittee shall comply with all conditions in section E1 above and shall: ...
 - (b) Inspect all construction sites for stormwater quality requirements during routine inspections a minimum of once during the wet seasons. The Local SWPPP [Storm Water Pollution Prevention Plan] shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal codes). If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

Part 4E3 of the Order provides, in relevant part, as follows:

3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E1 and E2 and shall:

- a) require, prior to issuing a grading permit for all projects requiring coverage under the state general permit,³⁷ proof of a Waste Discharger Identification (WDID) number for filing a Notice of Intent (NOI) for coverage under the GCASP [General Construction

except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;" [40 CFR §122.26 (b)(14), Emphasis added.]

³⁷ A general permit means "an NPDES 'permit' issued under [40 CFR] §122.28 authorizing a category of discharges under the CWA [Clean Water Act] within a geographical area." (40 CFR § 122.2.) California has issued one general permit for construction activity and one for industrial activity.

Activity Storm Water Permit]³⁸ and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

- b) Require proof of an NOI and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.
- c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

Both county and city claimants allege more than \$1000 in costs in each test claim to comply with the permit activities.

In comments submitted June 4, 2009 on the draft staff analysis, the County of Los Angeles asserts that local agencies do not have fee authority to collect trash from trash receptacles that must be placed at transit stops, and that voter approval under Proposition 218 would be required to do so. The County also argues that voter approval under Proposition 218 would be required for stormwater inspection costs, and cites as evidence the City of Santa Clarita's stormwater pollution prevention fee, as well as legislative proposals now in the legislature that would, if enacted, provide fee authority.

In comments submitted June 8, 2009 on the draft staff analysis, the cities disagree with the conclusion that they have fee authority to recoup the costs of the transit-stop trash receptacles, and disagree that they have fee authority to inspect facilities covered by the state-issued general stormwater permits, as discussed in more detail below.

State Agency Positions

Department of Finance: Finance, in comments filed March 27, 2008 on all four test claims, alleges that the permit does not impose a reimbursable mandate within the meaning of section 6 of article XIII B of the California Constitution because "The permit conditions imposed on the local agencies are required by federal laws" so they are not reimbursable pursuant to Government Code section 17556, subdivision (c). Finance asserts that "requirements of the permit are federally required to comply with the NPDES [National Pollutant Discharge Elimination System] program ... [and] is enforceable under the federal CWA [Clean Water Act]."

Finance also argues that the claimants had discretion over the activities and conditions to include in the permit application. The permittees submitted a Storm Water Quality Management Program prevention report with their applications, in which they had the option to use "best management practices" to identify alternative practices to reduce water pollution. Since the local agencies prescribed the activities to be included in the permit, the requirements are a downstream result of the local agencies' decision to include the particular activities in the permit. Finance cites the *Kern* case,³⁹ which held that if participation in the underlying program is voluntary, the resulting new consequential requirements are not reimbursable mandates.

³⁸ See page 11, paragraph 22 of the permit for a description of the statewide permits.

³⁹ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727

Finally, Finance states that some local agencies are using fees for funding the claimed permit activities, so should the Commission find that the permit constitutes a reimbursable mandate, the fees should be considered as offsetting revenues.

Finance submitted comments on the draft staff analysis on June 19, 2009, agreeing that the local agencies have fee authority sufficient to pay for the mandated activities. Finance disagrees, however, with the portion of the analysis that finds that the activities are not federal mandates.

State Water Resources Control Board: The State Board filed comments on the four test claims on April 18, 2008, noting that the federal CWA mandates that municipalities apply for and receive permits regulating discharges of pollutants from their municipal separate storm sewer system (MS4) to waters of the United States. "Pursuant to federal regulations, the Permit contains numerous requirements for the cities and County to take actions to reduce the flow of pollutants into the rivers and the Bay, known as Best Management practices (BMPs)."

The State Board asserts that the permit is mandated on the local governments by federal law, and applies to many dischargers of stormwater, both public and private, so it is not unique to local governments. The federal mandate requires that the permit be issued to the local governments, and the specific requirements challenged are consistent with the minimum requirements of federal law. According to the State Board, even if the permit were interpreted as going beyond federal law, any additional state requirements are de minimis. And the costs are not subject to reimbursement because the programs were proposed by the cities and County themselves, and because they have the ability to fund these requirements through charges and fees and are not required to raise taxes.

In comments filed with the State Board on April 10, 2008 (attached to the State Board comments on the test claim), the United States Environmental Protection Agency (U.S. EPA) asserts that the permit conditions reduce pollutants to the "maximum extent practicable." The transit trash receptacle and inspection programs, according to U.S. EPA, are founded in section 402 (p) of the Clean Water Act, and are well within the scope of the federal regulations (40 CFR § 122.26 (d)(2)(iv)(A)(3)).

In its comments on the draft staff analysis submitted June 5, 2009, the State Board agrees with the conclusion and staff recommendation to deny the test claim, but disagrees with parts of the analysis. The State Board asserts that federal law: (1) requires local agencies to obtain NPDES permits from California Water Boards, and (2) mandates the permit, which is less stringent than permits for private industry. The State Board also states that the permit does not exceed the minimum federal mandate, as found by a court of appeal. Finally, the State Board argues that the federal stormwater law is one of general application, and therefore does not impose a state mandate.

Interested Party Positions

Bay Area Stormwater Management Agencies Association: In comments on the draft staff analysis received June 3, 2009 (although the letter is dated April 29, 2009) the Bay Area Stormwater Management Agencies Association (BASMAA) states that this matter is of statewide importance with broad implications, and fundamentally a matter of public finance. BASMAA also urges keeping the voters' objectives paramount. BASMAA agrees that the permit requirements are a new program or higher level of service and that the requirements go beyond the federal Clean Water Act's mandates. As for the portion of the draft staff analysis that

discusses local agency fee authority, BASMAA calls it "myopic" saying it "falls short in its consideration of all potentially relevant issues and appellate court precedents that need to be presented to the Commission to serve the interest of the public." (Comments p. 3.) BASMAA contends that many permit requirements relate to local communities and their residents rather than specific business activities, and require public services that are essentially incident to real property ownership, and/or may only be financed via fees that remain subject to the Proposition 218 voting requirement or increased property taxes. BASMAA also states that many permit activities would fall on joint power authorities or special districts that have no fee authority, or for which exemptions from Proposition 218 would not be applicable. BASMAA requests that the analysis be revised to revisit the conclusions regarding "funded vs. unfunded" requirements, and to recognize and distinguish the many types of stormwater activities for which regulatory fees would not apply.

League of California Cities and California State Association of Counties (CSAC): In joint comments on the draft staff analysis received June 4, 2009, the League of Cities and CSAC agree with the draft staff analysis that the permit is a mandate, but question whether the *Connell* and *County of Fresno* decisions are still valid as applied to Government Code section 17556, subdivision (d), which prohibit the Commission from finding costs mandated by the state if the local agency has fee authority. This is because of the voters' approval of Proposition 218 in 1996. The League and CSAC urge the Commission not to find that fee authority exists for local agencies (1) to the extent there may be doubt about whether a local agency has it, and (2) to the extent that there is no person upon which the local agency can impose the fee.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution⁴⁰ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁴¹ "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."⁴² A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or

⁴⁰ Article XIII B, section 6, subdivision (a), provides:

(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

⁴¹ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 735.

⁴² *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

task.⁴³ In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.⁴⁴

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.⁴⁵ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.⁴⁶ A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."⁴⁷

Finally, the newly required activity or increased level of service must impose costs mandated by the state.⁴⁸

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 6.⁴⁹ 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."⁵⁰

The permit provisions in the consolidated test claim are discussed separately to determine whether they are reimbursable state-mandates.

⁴³ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁴⁴ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

⁴⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

⁴⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

⁴⁷ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

⁴⁸ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

⁴⁹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁵⁰ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Issue 1: Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) subject to article XIII B, section 6, of the California Constitution?

The issues discussed here are whether the permit provisions are an executive order within the meaning of Government Code section 17516, whether they are discretionary, and whether they constitute a federal mandate.

A. Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) an executive order within the meaning of Government Code section 17516?

The Commission has jurisdiction over test claims involving statutes and executive orders as defined by Government Code section 17516, which defines an "executive order" for purposes of state mandates, as "any order, plan, requirement, rule, or regulation issued by any of the following:

- (a) The Governor.
- (b) Any officer or official serving at the pleasure of the Governor.
- (c) Any agency, department, board, or commission of state government."⁵¹

The LA Regional Water Board is a state agency.⁵² The permit it issued is both a plan for reducing water pollution, and contains requirements for local agencies toward that end. Therefore, the Commission finds that the permit is an executive order within the meaning of article XIII B, section 6 and Government Code section 17516.

B. Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) the result of claimants' discretion?

The permit provisions require placing and maintaining trash receptacles at transit stops and inspecting specified facilities and construction sites.

The Department of Finance, in comments submitted March 27, 2008, asserts that the claimants had discretion over what activities and conditions to include in the permit application, so that any resulting costs are downstream of the claimant's decision to include those provisions in the permit. Thus, Finance argues that the costs are not mandated by the state.

Similarly, the State Board, in its April 18, 2008 comments, cites the Stormwater Quality Management Program (SQMP) submitted by the county that constituted the claimants' proposal for the BMPs required under the permit. The State Water Board refers to (on p. 28 of the SQMP) the county's proposal to "collect trash along open channels and encourage voluntary trash collection in natural stream channels." The State Water Board further states that the SQMP (pp. 22-23) contains the municipalities' proposal for (1) site visits to industrial and commercial facilities, including automotive service businesses and restaurants to verify evidence of BMP

⁵¹ Section 17516 also states: "'Executive order" does not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code." The Second District Court of Appeal has held that this statutory language is unconstitutional. *County of Los Angeles v. Commission on State Mandates*, *supra*, 150 Cal.App.4th 898, 904.

⁵² Water Code section 13200 et seq.

implementation, and (2) maintaining a database of automotive and food service facilities including whether they have NPDES stormwater permit coverage.

Claimant County of Los Angeles, in its June 23, 2008 rebuttal comments (pp.3-4), stated whether or not most jurisdictions place transit receptacles at transit stops is not relevant to the existence of a state mandate because Government Code section 17565 provides that if a local agency has been incurring costs for activities that are subsequently mandated by the state, the activities are still subject to reimbursement. The County also states that the permit application only proposed an industrial/commercial *educational* site visit program, not an inspection program. The claimants allege that the inspection program was previously the state's duty, but that the permit shifted it to the local agencies.

Claimant cities in their June 28, 2008 comments also construe the SQMP proposal as involving only educational site visits, which they characterize as very different from compliance inspections. And cities assert that "nowhere in the Report of Waste Discharge do the applicants propose compliance inspections of facilities that hold general industrial and general construction stormwater permits for compliance with those permits." According to the cities, the city and county objected orally and in writing to the inspection permit provision.

In determining whether the permit provisions at issue are a downstream activity resulting from the discretionary decision by the local agencies, the following rule stated by the Supreme Court in the *Kern High School Dist.* case applies:

[A]ctivities undertaken at the option or discretion of a local government entity ... do not trigger a state mandate and hence do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.⁵³

The Commission finds that the permit activities at issue were not undertaken at the option or discretion of the claimants. The claimants were required by state and federal law to submit the NPDES permit application in the form of a Report of Waste Discharge and SQMP. Submitting them was not discretionary. According to the record,⁵⁴ the county on behalf of all claimants, submitted on January 31, 2001 a Report of Waste Discharge (ROWD), which constitutes a permit application, and a SQMP, which constitutes the claimants' proposal for best management practices that would be required in the permit.

The duty to apply for an NPDES permit is not within the claimants' discretion. According to the federal regulation:

a) *Duty to apply.* (1) Any person⁵⁵ who discharges or proposes to discharge pollutants ... and who does not have an effective permit ... must submit a

⁵³ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742.

⁵⁴ State Water Resources Control Board, comments submitted April 18, 2008, page 8 & attachment 36.

⁵⁵ *Person* means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof (40 CFR § 122.2).

complete application to the Director in accordance with this section and part 124 of this chapter.⁵⁶

Moreover, the ROWD (tantamount to an NPDES permit application) is required by California law, as follows: "Any person discharging pollutants or proposing to discharge pollutants to the navigable water of the United States within the jurisdiction of this state ... shall file a report of the discharge in compliance with the procedures set forth in Section 13260 ..."⁵⁷ Thus, submitting the ROWD is not discretionary.

Federal regulations also anticipate the filing of an application for a stormwater permit, which contains the information in the SQMP. The regulation states in part:

(d) *Application requirements for large and medium municipal separate storm sewer discharges.* The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application.⁵⁸

According to the permit, section 122.26, subdivision (d), of the federal regulations contains the essential components of the SQMP (p. 32), which is an enforceable element of the permit (p. 45). Section 122.26, subdivision (d)(2)(iv)(C), in the federal regulations is interpreted in the permit to "require that MS4 permittees implement a program to monitor and control pollutants in discharges to the municipal system from industrial and commercial facilities that contribute a substantial pollutant load to the MS4." (p. 35.) In short, the claimants were required by law to submit the ROWD and SQMP, with specified contents.

Because the claimants do not voluntarily participate in the NPDES program, the Commission finds that the *Kern High School Dist.* case does not apply to the permit, the contents of which were not the result of the claimants' discretion.

C. Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) a federal mandate within the meaning of article XIII B, sections 6 and 9, subdivision (b)?

The next issue is whether the parts of the permit at issue are federally mandated, as asserted by the State Board and the Department of Finance (whose comments are detailed below). If so, the parts of the permit would not constitute a state mandate.

In *County of Los Angeles v. Commission on State Mandates*, the court stated as follows regarding this permit: "We are not convinced that the obligations imposed by a permit issued by a Regional Water Board necessarily constitute federal mandates under all circumstances."⁵⁹ But after

⁵⁶ 40 Code of Federal Regulations, section 122.21 (a). The section applies to U.S. EPA-issued permits, but is incorporated into section 123.25 (the state program provision) by reference.

⁵⁷ Water Code section 13376.

⁵⁸ 40 Code of Federal Regulations, section 122.26 (d).

⁵⁹ *County of Los Angeles v. Commission on State Mandates*, *supra*, 150 Cal.App.4th 898, 914.

summarizing the arguments on both sides, the court declined to decide the issue, stating: "Resolution of the federal or state nature of these [permit] obligations therefore is premature and, thus, not properly before this court."⁶⁰ The court agreed with the Commission (calling it an "inescapable conclusion") that the federal versus state issues in the test claims must be addressed in the first instance by the Commission.⁶¹

The California Supreme Court has stated that "article XIII B, section 6, and the implementing statutes ... by their terms, provide for reimbursement only of *state-* mandated costs, not *federally* mandated costs."⁶²

When analyzing federal law in the context of a test claim under article XII B, section 6, the court in *Hayes v. Commission on State Mandates* held that "[w]hen the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations" under article XIII B.⁶³ When federal law imposes a mandate on the state, however, and the state "freely [chooses] to impose the costs upon the local agency as a means of implementing a federal program, then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government."⁶⁴

Similarly, Government Code section 17556, subdivision (c), states that the Commission shall not find "costs mandated by the state" if "[t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation."

In *Long Beach Unified School Dist. v. State of California*,⁶⁵ the court considered whether a state executive order involving school desegregation constituted a state mandate. The court held that the executive order required school districts to provide a higher level of service than required by federal constitutional or case law because the state requirements went beyond federal requirements.⁶⁶ The *Long Beach* court stated that unlike the federal law at issue, "the executive

⁶⁰ *Id.* at page 918.

⁶¹ *Id.* at page 917. The court cited *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal. 3d 830, 837, in support.

⁶² *San Diego Unified School Dist. v. Commission on State Mandates*, *supra*, 33 Cal.4th 859, 879-880, emphasis in original.

⁶³ *Hayes v. Commission on State Mandates* (1992) 11 Cal. App. 4th 1564, 1593, citing *City of Sacramento v. State of California*, *supra*, 50 Cal.3d 51, 76; see also, Government Code sections 17513 and 17556, subdivision (c).

⁶⁴ *Hayes v. Commission on State Mandates*, *supra*, 11 Cal. App. 4th 1564, 1594.

⁶⁵ *Long Beach Unified School Dist. v. State of California*, *supra*, 225 Cal.App.3d 155.

⁶⁶ *Id.* at page 173.

Order and guidelines require specific actions ... [that were] required acts. These requirements constitute a higher level of service.⁶⁷

In analyzing the permit under the federal Clean Water Act, we keep the following in mind. First, each state is free to enforce its own water quality laws so long as its effluent limitations are not "less stringent" than those set out in the Clean Water Act.⁶⁸ Second, the California Supreme Court has acknowledged that an NPDES permit may contain terms that are federally mandated and terms that exceed federal law.⁶⁹ The federal Clean Water Act also allows for more stringent measures, as follows:⁷⁰

Permits for discharges from municipal storm sewers [¶]...[¶] (iii) shall require controls to reduce the discharges of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the ... State determines appropriate for the control of such pollutants. (33 U.S.C.A. 1342 (p)(3)(B)(iii).)

As discussed further below, the Commission finds that the permit activities are not federally mandated because federal law does not require the permittees to install and maintain trash receptacles at transit stops, or require inspections of restaurants, automotive service facilities, retail gasoline outlets or automotive dealerships. As to inspecting phase I facilities or construction sites, the federal regulatory scheme authorizes states to perform the inspections under a general statewide permit, making it possible to avoid imposing a mandate on the local agencies to do so.

In its June 2009 comments on the draft staff analysis, the State Board disagrees that specific mandates in the permit exceed the federal requirements, the State Board argues:

This approach fails to recognize that NPDES storm water permits, whether issued by U.S. EPA or California's Water Boards, are designed to translate the general federal mandate into specific programs and enforceable requirements. Whether issued by U.S. EPA or the California's Water Boards, the federal NPDES permit will identify specific requirements for municipalities to reduce pollutants in their storm water to the maximum extent practicable. The federally required pollutant reduction is a federal mandate. ... The fact that state agencies have responsibility for specifying the federal permit requirements for municipalities does not convert the federal mandate into a state mandate.⁷¹

The Commission disagrees. Based on the *Long Beach Unified School Dist.* case discussed above and applied in the analysis below, the specific requirements in the permit may constitute a state mandate even though they are imposed in order to comply with the federal Clean Water Act.

⁶⁷ *Long Beach Unified School Dist. v. State of California*, *supra*, 225 Cal.App.3d 155, 173.

⁶⁸ 33 U.S.C. § 1370.

⁶⁹ *City of Burbank v. State Water Resources Control Board*, *supra*, 35 Cal.4th 613, 618, 628.

⁷⁰ 33 USCA section 1370.

⁷¹ State Board comments submitted June 2009, page 6.

Finance, in its June 2009 comments on the draft staff analysis, distinguishes this permit from the issue in the *Long Beach Unified School Dist.* case. According to Finance, in *Long Beach*, the courts had suggested certain steps and approaches that might help alleviate racial discrimination, although the state's executive order and guidelines required specific actions. But in this claim, federal law requires NPDES permits to include specific requirements.

The Commission agrees that NPDES permits are required to include specific measures. But as discussed in more detail below, those measures are not the same as the specific requirements at issue in this permit (in Parts 4C2a, 4C2b, 4E, and 4F5c3).

The State Board's June 2009 comments also discuss *County of Los Angeles v. State Water Resources Control Board*,⁷² which involved the same permit as in this test claim. The State Board asserts that this case holds, in an unpublished part, that "the permit did not exceed the federal minimum requirements for the MS4 program."⁷³ (Comments, p. 5.) The State Board asserts that the Commission is bound by this decision.

The Commission reads the *County of Los Angeles* case differently than the State Board. The plaintiffs (permittees and others) in that case challenged the permit on a variety of issues, including that the regional board did not have jurisdiction to issue it, and that it violated the California Environmental Quality Act. The court did not, however, discuss the permit conditions at issue in this test claim. In the portion cited by the State Board, the court was addressing the consideration of the permit's economic effects. One of the plaintiffs' challenges to the permit was that the regional board was required to consider the economic effects in issuing the permit. By alleging the regional board had not done so, the plaintiffs argued that the permit imposed conditions more stringent than required by the federal Clean Water Act. The court held that the plaintiff's contentions were waived for failure to set forth all the documents received by the regional board, and that the regional board had considered the costs and benefits of implementation of the permit. In other parts of the opinion, however, the court acknowledged the regional board's authority to impose permit restrictions beyond the "maximum extent feasible"⁷⁴

The *County of Los Angeles* case is silent on the permit provisions at issue in this claim⁷⁵ (Parts 4C2a, 4C2b, 4E, and 4F5c3) except when it said: "we need no [sic] address the parties"

⁷² *County of Los Angeles v. State Water Resources Control Board*, *supra*, 143 Cal.App.4th 985.

⁷³ The court's opinion, including the unpublished parts, are in attachment 26 of the State Board's comments submitted April 18, 2008.

⁷⁴ See page 18 of attachment 26 of the State Board's comments submitted April 18, 2008.

⁷⁵ In *County of Los Angeles*, the plaintiffs also challenged the following parts of the permit: (1) part 2.1 that deals with receiving water restrictions and that prohibits all water discharges that violate water quality standards or objectives regardless of whether the best management practices are reasonable; (2) part 3.C, which requires the permittees to revise their storm water quality management programs in order to implement the total maximum daily loads for impaired water bodies, and (3) parts 3.G and 4., which authorize the regional board to require strict requirements with numeric limits on pollutants which are incorporated into the total maximum daily load restrictions. The court held that these contentions were waived for failure to set forth all the

remaining contentions concerning trash receptacles.”⁷⁶ The court also said inspections under the permit were not unlawful. Nonetheless, the case is not binding on the Commission in deciding the issues in this claim.

California in the NPDES program: By way of background, under the federal statutory scheme, a stormwater permit may be administered by the Administrator of U.S. EPA or by a state-designated agency, but states are not required to have an NPDES program. Subdivision (b) of section 1324 of the federal Clean Water Act, the section that describes the NPDES program (and which, in subdivision (p), describes the requirements for the municipal stormwater system permits) states in part:

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator [of U.S. EPA] a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. [Emphasis added.]

And the federal stormwater statute states that the permits:

[S]hall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. (33 USCA § 1342 (p)(3)(B)(iii). [Emphasis added].)

The federal statutory scheme indicates that California is neither required to have an NPDES program nor to issue stormwater permits. According to section 1342 (p) quoted above, the Administrator of U.S. EPA would do so if California had no program. The California Legislature, when adopting the NPDES program⁷⁷ to comply with the Federal Water Pollution Control Act of 1972 stated the following findings and declaration in Water Code section 13370:

- (a) The Federal Water Pollution Control Act [citation omitted] as amended, provides for permit systems to regulate the discharge of pollutants ... to the navigable waters of the United States and to regulate the use and disposal of sewage sludge.
- (b) The Federal Water Pollution Control Act, as amended, provides that permits may be issued by states which are authorized to implement the provisions of that act.
- (c) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government, of persons already subject to regulation under state law pursuant to this division, to enact this chapter in order to authorize the state to implement the

applicable evidence, and that the regional board has authority to impose restrictions beyond the maximum extent feasible.

⁷⁶ See page 22, attachment 26 of the State Board’s comments submitted April 18, 2008.

⁷⁷ Water Code section 13374 states: “The term ‘waste discharge requirements’ as referred to in this division is the equivalent of the term ‘permits’ as used in the Federal water Pollution Control Act, as amended.”

provisions of the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto, provided, that the state board shall request federal funding under the Federal Water Pollution Act for the purpose of carrying out its responsibilities under this program.

Based on this Water Code section 13370, in which California voluntarily adopts the permitting program, and on the federal statutes quoted above that authorize but do not expressly require states to have this program, the state has freely chosen⁷⁸ to effect the stormwater permit program.

Any further discussion in this analysis of federal "requirements" should be construed in the context of California's choice to participate in the federal regulatory NPDES program.

In its June 2009 comments on the draft staff analysis, the State Board argues as follows:

[T]he ... analysis treats the state's decision to *administer* the NPDES permit program in 1972 as the 'choice' referred to in *Hayes*. ... The state's 'choice' to administer the program in lieu of the federal government does not alter the federal requirement on municipalities to reduce pollutants in these discharges to the maximum extent practicable.⁷⁹

Finance, in its June 2009 comments, also disagrees with this part of the draft staff analysis, asserting that the duty to apply for a NPDES permit is required by federal law on public and private dischargers, which in this case are local agencies.

Even though California opted into the NPDES program, further analysis is needed to determine whether the federal regulations impose a mandate on the local agencies. To the extent that state requirements go beyond the federal requirements, there would be a state mandate.⁸⁰ Thus, the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) are discussed below in context of the following federal law governing stormwater permits: Clean Water Act section 402(p) (33 USCA 1342 (p)(3)(B)) and Code of Federal Regulations, title 40, section 122.26.

Placing and maintaining trash receptacles at transit stops (part 4F5c3): This part of the permit states:

- c. Permittees not subject to a trash TMDL⁸¹ shall: [¶]...[¶]
(3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

The comments of the State Water Board and U.S. EPA assert that the permit conditions merely implement a federal mandate under the federal Clean Water Act and its regulations. The U.S.

⁷⁸ *Hayes v. Commission on State Mandates*, *supra*, 11 Cal. App. 4th 1564, 1593-1594.

⁷⁹ State Board comments submitted June 2009, page 4.

⁸⁰ *Long Beach Unified School Dist. v. State of California*, *supra*, 225 Cal.App.3d 155, 173. Government Code section 17556, subdivision (b).

⁸¹ A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

EPA submitted a letter to the State Water Board regarding the permit conditions in April 2008, which the State Water Board attached to its comments. Regarding the trash receptacles, the letter states:

[M]aintaining trash receptacles at all public transit stops is well within the scope of these [Federal] regulations. Among the minimum controls required to reduce pollutants from runoff from commercial and residential areas are practices for "operating and maintaining public streets, roads, and highways ... [40 CFR] § 122.26(d)(2)(iv)(A)(3)."⁸²

U.S. EPA also cites EPA's national menu of BMPs for stormwater management programs, "which recommends a number of BMPs to reduce trash discharges." Among the recommendations is 'improved infrastructure' for trash management when necessary, which includes the placement of trash receptacles at appropriate locations based on expected need."⁸³

The State Water Board, in comments filed April 18, 2008, states that part 4F of the permit (regarding trash receptacles) concerns "the municipalities' own activities, as opposed to its regulation of discharges into its system by others." The State Water Board cites the same section 122.26 regulation as U.S. EPA, and states that the requirements "reflect the federal requirement to reduce pollutants from the MS4 to the maximum extent practicable. It is federal law that animates the requirement and federal law that mandates specificity in describing the BMPs." The State Water Board alleges that two appellate courts⁸⁴ have determined that the permit provisions constitute the "maximum extent practicable" standard, which is the minimum requirement under federal law.

The Department of Finance also asserts that the permit requirements are a federal mandate.

The County of Los Angeles, in comments filed June 23, 2008, states that "Nothing in the federal Clean Water Act requires the County to install trash receptacles at transit stops. Nothing in the federal regulations or the Clean Water Act itself imposes this obligation." The county states that the U.S.EPA's citation to BMPs for stormwater management programs "may be permitted under federal law ... and even encouraged as 'reasonable expectations.' But such requirements are not mandated on the County by federal law." The County admits the existence of "an abundance of federal guidance and encouragement to have the County install and maintain trash receptacles at all public transit stops. But these are merely federal suggestions, not mandates."

The city claimants, in comments filed June 25, 2008, also argue that the requirement for transit trash receptacles is not a federal mandate, stating that nothing in the Clean Water Act or the federal regulations requires cities to install trash receptacles at transit stops. City claimants also submit a survey of other municipal stormwater permits, finding that none of those issued by U.S. EPA required installation of trash receptacles at transit stops.

⁸² Letter from Alexis Strauss, Director, Water Division, U.S. EPA, to Tam M. Doduc, Chair, and Dorothy Rice, Executive Director, State Water Resources Control Board, April 10, 2008, page 3.

⁸³ *Id.* at page 3.

⁸⁴ The State Water Board cites: *City of Rancho Cucamonga v. Regional Water Quality Control Board- Santa Ana Region* (2006) 135 Cal.App.4th 1377; *County of Los Angeles v. California State Water Resources Control Board* (2006) 148 Cal.App.4th 985.

The federal law applicable to this issue is section 402 of the Clean Water Act, which states:

Permits for discharges from municipal storm sewers--

- (i) may be issued on a system- or jurisdiction-wide basis;
- (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
- (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator⁸⁵ or the State determines appropriate for the control of such pollutants. (33 USCA § 1342 (p)(3)(B).)

The applicable federal regulations state as follows:

- (d) Application requirements for large and medium municipal separate storm sewer discharges. The operator⁸⁶ of a discharge⁸⁷ from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. ... Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include; [¶]...[¶]
- (2) Part 2 of the application shall consist of: [¶]...[¶]
- (iv) Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design

⁸⁵ Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative. (40 CFR § 122.2.)

⁸⁶ "Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES program." (40 CFR § 122.2.)

⁸⁷ "Discharge when used without qualification means the "discharge of a pollutant. *Discharge of a pollutant* means: (a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or (b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger." (40 CFR § 122.2.)

and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(A) A description of structural and source control measures⁸⁸ to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include: [¶]...[¶]

(3) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities. (40 CFR § 122.26(d)(2)(iv)(A)(3).) [Emphasis added.]

The Commission finds that the plain language of the federal statute (33 USCA § 1342 (p)(3)(B)) and regulation (40 CFR § 122.26 (d)(2)(iv)(A)(3)) does not require the permittees to install and maintain trash receptacles at transit stops.

Specifically, the state freely chose⁸⁹ to impose the transit trash receptacle requirement on the permittees because neither the federal statute nor the regulations require it. Nor do they require the permittees to implement "practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems"⁹⁰ although the regulation requires a description of practices for doing so. Because installing and maintaining trash receptacles at transit stops is not expressly required of cities or counties or municipal separate storm sewer dischargers in the federal statutes or regulations, these are activities that "mandate costs that exceed the mandate in the federal law or regulation."⁹¹

⁸⁸ Minimum control measures are defined in 40 CFR § 122.34 to include: 1) Public education and outreach on storm water impacts; (2) Public involvement/participation; (3) Illicit discharge detection and elimination. (4) Construction site storm water runoff control; (5) Post-construction storm water management in new development and redevelopment.; (6) Pollution prevention/good housekeeping for municipal operations.

⁸⁹ *Hayes v. Commission on State Mandates*, *supra*, 11 Cal. App. 4th 1564, 1593-1594.

⁹⁰ 40 CFR § 122.26(d)(2)(iv)(A)(3).

⁹¹ Government Code section 17556, subdivision (c).

In *Long Beach Unified School Dist. v. State of California*,⁹² the court considered whether a state executive order involving school desegregation constituted a state mandate. The court held that the executive order required school districts to provide a higher level of service than required by federal constitutional or case law because the state requirements went beyond federal requirements.⁹³ The *Long Beach Unified School District* court stated:

Where courts have suggested that certain steps and approaches may be helpful [in meeting constitutional and case law requirements] the executive Order and guidelines require *specific actions*. ...[T]he point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are required acts. These requirements constitute a higher level of service.⁹⁴ [Emphasis added.]

The reasoning of *Long Beach Unified School Dist.* is applicable to this claim. Although "operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems..."⁹⁵ is a federal requirement on municipalities, the permit requirement to place trash receptacles at all transit stops and maintain them is an activity, like in *Long Beach Unified School Dist.*, that is a *specified action* going beyond federal law.⁹⁶

Neither of the cases cited by the State Water Board demonstrate that placing trash receptacles at transit stops is required by federal law. In *City of Rancho Cucamonga v. Regional Water Quality Control Board - Santa Ana Region*⁹⁷ the court upheld a stormwater permit similar to the one at issue in this claim. The City of Rancho Cucamonga challenged the permit on a variety of grounds, including that it exceeded the federal requirements for stormwater dischargers to "reduce the discharge of pollutants to the maximum extent practicable"⁹⁸ and that it was overly prescriptive. The court concluded that the permit did not exceed the maximum extent practicable standard and upheld the permit in all respects. There is no indication in that case, however, that the permit at issue required trash receptacles at transit stops. Similarly, in a suit regarding the same permit at issue in this case, the *Los Angeles County*⁹⁹ court dismissed various challenges to the permit, but made no mention of the permit's transit trash receptacle provision.

⁹² *Long Beach Unified School Dist. v. State of California*, *supra*, 225 Cal.App.3d 155.

⁹³ *Id.* at page 173.

⁹⁴ *Long Beach Unified School Dist. v. State of California*, *supra*, 225 Cal.App.3d 155, 173.

⁹⁵ 40 Code of Federal Regulations, section 122.26 (d)(2)(iv)(A)(3).

⁹⁶ *Ibid.*

⁹⁷ *City of Rancho Cucamonga v. Regional Water Quality Control Board - Santa Ana Region*, *supra*, 135 Cal.App.4th 1377.

⁹⁸ 33 USCA section 1342 (p)(3)(B)(iii).

⁹⁹ *County of Los Angeles v. California State Water Resources Control Board*, *supra*, 143 Cal.App.4th 985.

Therefore, the Commission finds that placing and maintaining trash receptacles at all transit stops within the jurisdiction of each permittee, as specified, is not a federal mandate within the meaning of article XIII B, sections 6 and 9, subdivision (b).

Part 4F5c3 of the permit states as follows:

c. Permittees not subject to a trash TMDL shall: (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

Based on the mandatory language (i.e., "shall") in part 4F5c3 of the permit, the Commission finds it is a state mandate for the claimants that are not subject to a trash TMDL to place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003, and to maintain all trash receptacles as necessary.

Inspecting commercial facilities (part 4C2a): Section 4C2a of the permit requires inspections of restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships as follows:

2. Inspect Critical Sources – Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections:

(a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that stormwater BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on stormwater pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floor mats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;

- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each permittee shall inspect all automotive service facilities within its jurisdiction to confirm that stormwater BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-stormwater to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement stormwater pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;

- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other stormwater pollution prevention practices. [¶]...[¶]

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

The state asserts that these inspection requirements in permit part 4C2a are a federal mandate.

In comments filed April 18, 2008, the State Water Board quotes from the MS4 Program Evaluation Guide issued by U.S. EPA, asserting that it requires inspections of businesses. The State Water Board also states:

The federal regulations also specifically require local stormwater agencies, as part of their responsibilities under NPDES permits, to conduct inspections. [citing 40 CFR § 122.26(d)(2)(iv)(C).] Throughout the federal law, there are numerous requirements for entities that discharge pollutants to waters of the United States to monitor and inspect their facilities and their effluent. [citing Clean Water Act §402(b)(2)(B); 40 CFR § 122.44(i)]. The claimants are the dischargers of pollutants into surface waters; as part of their permit allowing these dischargers they must conduct inspections.

Similarly, the April 10, 2008 letter from U.S. EPA to the State Water Board and attached to the Board's comments submitted April 18, 2008, states:

A program for commercial and industrial facility inspection and enforcement that includes restaurants and automobile facilities, would appear to be both practicable and effective. Such an inspection program ensures that stormwater discharges from such facilities are reducing their contribution of pollutants and that there are no non-stormwater discharges or illicit connections. Thus these programs are founded in both 402 (p)(3)(B)(ii) and (iii) and are well within the scope of 40 CFR § 122.26(d)(2)(iv)(A) and (B).

The County of Los Angeles, in its June 23, 2008 rebuttal comments, asserts that federal law requires prohibiting non-stormwater discharges into the storm sewers, and reducing the discharge of pollutants in stormwater to the maximum extent practicable (33 USC 1342(p)) but not inspecting restaurants, automotive service facilities, retail gas outlets, or automotive dealerships.

Only municipal landfills, hazardous waste treatment, disposal and recovery facilities and related facilities are required to be inspected (40 CFR § 122.26(d)(2)(iv)(C)).

In comments received June 25, 2008, the city claimants argue that the LA Regional Board freely chose to impose the permit requirements on the permittees, and make the following arguments: (1) The inspection obligations were not contained in two prior permits issued to the cities and the County—thus, the requirements are not federal mandates; (2) No federal statute or regulation requires the cities or the County to inspect restaurants, automotive service facilities, retail gas outlets, automotive dealerships or facilities that hold general industrial permits; (3) Stormwater NPDES permits issued by the U.S. EPA do not contain the requirement to inspect restaurants, auto service facilities, retail gas outlets and automotive dealerships, or require the extensive inspection of facilities that hold general industrial stormwater permits as contained in the Order [i.e. permit]; (4) The Administrator of U.S. EPA, as well as the head of the water division for U.S. EPA Region IX, have specifically stated that a municipality has an obligation under a stormwater permit only to assure compliance with local ordinances; the state retains responsibility to inspect for compliance with state law, including state-issued permits.

The city claimants dispute the State Board's contention that the court in *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377 held that federal law required inspections like those at issue in the permit. The cities quote part of the *City of Rancho Cucamonga* case with the following emphasis:

Rancho Cucamonga and the other permittees are responsible for inspecting construction and industrial sites and commercial facilities within their jurisdiction for compliance with and enforcement of local municipal ordinances and permits. *But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits.* The Regional Board may conduct its own inspections but permittees must still enforce their own laws at these sites. (40 C.F.R. § 122.26, subd. (d)(2) (2005).)

In discussing the federal mandate issue, the applicable federal law is section 402 of the Clean Water Act, which states that municipal storm sewer system permits:

(i) may be issued on a system- or jurisdiction-wide basis; (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. (33 USCA § 1342 (p)(3)(B).)

The applicable federal regulations (40 CFR § 122.26 (d)(2)(iv)(B)&(C)) state as follows:

(d) Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such

operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include; [¶]...[¶]

(2) Part 2 of the application shall consist of: [¶]...[¶]

(iv) Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on: [¶]...[¶]

(B) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(1) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-stormwater discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States [¶]...[¶]

(C) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(1) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges. (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1) & (C)(1).) [Emphasis added.]

There is a requirement in subdivision (d)(2)(iv)(B)(1) for implementing and enforcing "an ordinance, orders, or similar means to prevent illicit discharges to the municipal separate storm system." There is no express requirement in federal law, however, to inspect restaurants, automotive service facilities, retail gasoline outlets, or automotive dealerships. Nor does the

portion of the MS4 Program Evaluation Guide quoted by the State Water Board contain mandatory language to conduct inspections for these facilities.

In its April 2008 comments, the State Water Board argues that this reading of the regulations is not reasonable, and that U.S. EPA acknowledged that the initial selection by MS4s was only a starting point. In its comments (p.15), the State Water Board also states:

Because the federal mandate requires Water Boards to choose specific BMPs [Best Management Practices] that are included in MS4 permits as requirements, the 'discretion' exercised in selecting those BMPs is necessarily a part of the federal mandate. It is not comparable to the discretion that the courts in *Hayes* or *San Diego* spoke of, where the state truly had a 'free choice.' The Los Angeles Water Board was mandated by federal law to select BMPs that would result in compliance with the federal MEP [Maximum Extent Practicable] standard. ... Therefore, it is clear that the mere exercise of discretion in selecting BMPs does not create a reimbursable mandate.

The State Water Board would have the Commission read requirements into the federal law that are not there. The Commission, however, cannot read a requirement into a statute or regulation that is not on its face or its legislative history.¹⁰⁰

Based on the plain language of the federal regulations that are silent on the types of facilities at issue in the permit, the Commission finds that performing inspections at restaurants, automotive service facilities, retail gasoline outlets, or automotive dealerships, as specified in the permit, is not a federal mandate.

Moreover, the requirement to inspect the facilities listed in the permit is an activity, as in the *Long Beach Unified School Dist.* case discussed above,¹⁰¹ that is a specified action going beyond the federal requirement for inspections "to prevent illicit discharges to the municipal separate storm sewer system." (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1).) As such, the inspections are not federally mandated.

The permit states in part: "Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified ..." Based on the mandatory language in part 4C2a of the permit, the Commission finds that this part is a state mandate on the claimants to perform the inspections at restaurants, automotive service facilities, retail gasoline outlets, and automotive dealerships at the frequency and levels specified in the permit.

Inspecting phase I industrial facilities (part 4C2b): Part 4C2b of the permit regarding phase I industrial facilities requires the following:

¹⁰⁰ *Gillett-Harris-Duranceau & Associates, Inc. v. Kemple* (1978) 83 Cal.App.3d 214, 219-220. "Rules governing the interpretation of statutes also apply to interpretation of regulations." *Diablo Valley College Faculty Senate v. Contra Costa Community College Dist.* (2007) 148 Cal.App.4th 1023, 1037.

¹⁰¹ *Long Beach Unified School Dist. v. State of California, supra*, 225 Cal.App.3d 155.

b) Phase I Facilities¹⁰²

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories:¹⁰³ Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories:¹⁰⁴ Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004, Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to stormwater. For those facilities that do have exposure of industrial activities to stormwater, a Permittee may reduce that frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

¹⁰² On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

¹⁰³ Attachment B of the permit (pp. B-1 to B-2) lists the Tier 1 categories as follows (with Phase I facilities listed in italics): "*Municipal landfills ...; Hazardous Waste Treatment, Disposal and Recovery Facilities; Facilities Subject to SARA Title III ...; Restaurants; Wholesale trade (scrap, auto dismantling) ...; Automotive service facilities; Fabricated metal products ...; Motor freight ...; Chemical/allied products ...; Automotive Dealers/Gas Stations ...; Primary Metals.*"

¹⁰⁴ Attachment B of the permit (pp. B-1 to B-2) lists the Tier 2 categories as follows (with Phase I facilities listed in italics): "*Electric/Gas/Sanitary ...; Air Transportation ...; Rubbers/Miscellaneous Plastics ...; Local/Suburban Transit ...; Railroad Transportation ...; Oil & Gas Extraction ...; Lumber/Wood Products ...; Machinery Manufacturing ...; Transportation Equipment ...; Stone, Clay, Glass, Concrete ...; Leather/Leather Products ...; Miscellaneous Manufacturing ...; Food and kindred Products ...; Mining of Nonmetallic Minerals ...; Printing and Publishing ...; Electric/Electronics ...; Paper and Allied Products ...; Furniture and Fixtures ...; Laundries ...; Instruments ...; Textile Mills Products ...; Apparel ...*"

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

The issue is whether these inspection requirements for phase I industrial facilities is a federal mandate. The governing federal regulation is 40 CFR section 122.26 (d)(2)(iv)(B)&(C), which is cited above. Specifically on point is subpart (C), which states that the proposed management program must include the following:

(C) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(1) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges; (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1) & (C)(1).) [Emphasis added.]

The phase I facilities in the permit are defined to include.

(i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities. (Permit, p. 62)

And the Tier 1 facilities in the permit include municipal landfills, hazardous waste treatment, disposal and recovery facilities and facilities subject to SARA Title III (see permit attachment B, pp. B-1 to B-2). Thus, there is a federal requirement to inspect these phase I and tier 1 facilities in the permit. The issue is whether this requirement constitutes a federal mandate on local agencies. The Commission finds that it does not.

It is the state that mandates the phase I inspection and related activities in that the state freely chooses to impose the inspection and enforcement requirements on the local agency permittees.¹⁰⁵ This is because the federal regulatory scheme provides an alternative means of regulating and inspecting these industrial facilities under the state-enforced, statewide permit, as follows:

¹⁰⁵ *Hayes v. Commission on State Mandates*, *supra*, 11 Cal. App. 4th 1564, 1593-1594.

(c) Application requirements for stormwater discharges associated with industrial activity¹⁰⁶ and stormwater discharges associated with small construction activity -

(1) Individual application. Dischargers of stormwater associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated stormwater general permit. Facilities that are required to obtain an individual permit, or any discharge of stormwater which the Director is evaluating for designation (see 124.52(c) of this chapter) under paragraph (a)(1)(v) of this section and is not a municipal storm sewer, shall submit an NPDES application in accordance with the requirements of § 122.21 as modified and supplemented by the provisions of this paragraph. [Emphasis added.]

The state has issued a statewide general activity industrial permit (GIASP) that is enforced through the regional boards.¹⁰⁷ This, along with the statewide construction permit, is described in the permit itself:

To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for stormwater discharges: one for stormwater from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for stormwater from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. The GCASP was reissued on August 19, 1999. The GIASP was reissued on April 17, 1997. Facilities discharging stormwater associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for stormwater discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The USEPA guidance anticipates coordination of the state-administered programs for industrial and construction activities with the local agency program to reduce pollutants in stormwater discharges to the MS4. The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES stormwater and

¹⁰⁶ According to 40 CFR § 122.26, (b)(14): "Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. ... The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14): [¶]...[¶](x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more."

¹⁰⁷ For example, page 2 of the Fact Sheet for the General Construction Activity Storm Water Permit states: "This General Permit shall be implemented and enforced by the nine California Regional Water Quality Control Boards (RWQCBs)."

non-stormwater permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations.¹⁰⁸

There is nothing in the federal statutes or regulations that would prevent the state (rather than local agencies) from performing the inspections of industrial facilities (specified in part 4C2b of the permit) under the state-enforced general permit. Nor does federal law require the owner or operator of the discharge to perform these activities in part 4C2b of the permit. In fact, the State Board collects fees for the regional boards for performing inspections under the GIASP (see Wat. Code, § 13260, subd. (d)(2)(B)(ii)).

In its April 18, 2008 comments, the State Water Board asserts:

Because the federal mandate requires Water Boards to choose specific BMPs [Best Management Practices] that are included in MS4 permits as requirements, the 'discretion' exercised in selecting those BMPs is necessarily a part of the federal mandate. It is not comparable to the discretion that the courts in *Hayes* or *San Diego* spoke of, where the state truly had a 'free choice.' The Los Angeles Water Board was mandated by federal law to select BMPs that would result in compliance with the federal MEP [Maximum Extent Practicable] standard. ... Therefore, it is clear that the mere exercise of discretion in selecting BMPs does not create a reimbursable mandate.¹⁰⁹

The Commission disagrees. Inasmuch as the federal regulation (40 CFR § 122.26 (c)) authorizes coverage under a statewide general permit for the inspections of industrial activities, and the federal regulation (40 CFR § 122.26 (d)(2)(iv)(D)) does not expressly require those inspections to be performed by the county or cities (or the "owner or operator of the discharge") the Commission finds that the state has freely chosen¹¹⁰ to impose these activities on the permittees. Therefore, the Commission finds that there is no federal mandate on the claimants to perform inspections of phase I facilities as specified in part 4C2b of the permit.

As to whether the permit is a state mandate, part 4C2b contains the following mandatory language:

¹⁰⁸ Permit, page 11, paragraph 22.

¹⁰⁹ State Water Board comments, submitted April 18, 2008, page 15.

¹¹⁰ *Hayes v. Commission on State Mandates*, *supra*, 11 Cal. App. 4th 1564, 1593-1594.

b) Phase I Facilities¹¹¹

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below. [Emphasis added.]

Frequency of Inspection

Facilities in Tier 1 Categories:¹¹² Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories:¹¹³ Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004, Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity¹¹⁴ to stormwater. For those facilities that do

¹¹¹ On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

¹¹² Attachment B of the permit (pp. B-1 to B-2) lists the Tier 1 categories as follows (with Phase I facilities listed in italics): "*Municipal landfills ...; Hazardous Waste Treatment, Disposal and Recovery Facilities; Facilities Subject to SARA Title III ...; Restaurants; Wholesale trade (scrap, auto dismantling) ...; Automotive service facilities; Fabricated metal products ...; Motor freight ...; Chemical/allied products ...; Automotive Dealers/Gas Stations ...; Primary Metals.*"

¹¹³ Attachment B of the permit (pp. B-1 to B-2) lists the Tier 2 categories as follows (with Phase I facilities listed in italics): "*Electric/Gas/Sanitary ...; Air Transportation ...; Rubbers/Miscellaneous Plastics ...; Local/Suburban Transit ...; Railroad Transportation ...; Oil & Gas Extraction ...; Lumber/Wood Products ...; Machinery Manufacturing ...; Transportation Equipment ...; Stone, Clay, Glass, Concrete ...; Leather/Leather Products ...; Miscellaneous Manufacturing ...; Food and kindred Products ...; Mining of Nonmetallic Minerals ...; Printing and Publishing ...; Electric/Electronics ...; Paper and Allied Products ...; Furniture and Fixtures ...; Laundries ...; Instruments ...; Textile Mills Products ...; Apparel ...*"

¹¹⁴ "Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. ... The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14): [¶]... [¶] (x) Construction activity including clearing, grading and excavation,

have exposure of industrial activities to stormwater, a Permittee may reduce that frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

Based on this mandatory language to perform the inspections of phase I facilities as specified, the Commission finds that part 4C2b of the permit is a state-mandate.

Inspecting construction sites (part 4E): Part 4E of the permit contains the following requirements:

- Implement a program to control runoff from construction activity at all construction sites within each permittees jurisdiction, and ensure the specified minimum requirements are effectively implemented at all construction sites. (Permit, 4E1.)

For construction sites one acre or greater, each permittee shall:

- Require the preparation and submittal of a Local SWPPP [Storm Water Pollution Prevention Plan], with specified contents, for approval prior to issuing a grading permit for construction projects. (Permit, 4E2a.)
- Inspect all construction sites for stormwater quality requirements during routine inspections a minimum of once during the wet seasons. (Permit, 4E2b.)
- Review the Local SWPPP for compliance with local codes, ordinances, and permits. (Permit, 4E2b.)
- For inspected sites that have not adequately implemented their Local SWPPP, conduct a follow-up inspection to ensure compliance will take place within 2 weeks.
 - If compliance has not been attained, take additional actions to achieve compliance (as specified in municipal codes).
 - If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, enforce the local ordinance requirements, and
 - If non-compliance continues the Regional Board shall be notified for further joint enforcement actions. (Permit, 4E2b.)

except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more." [40 CFR §122.26 (b)(14), Emphasis added.]

- Require by March 10, 2003, before issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction stormwater permit, proof of a Waste Discharger Identification Number for filing a Notice of Intent for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs [Best Management Practices] as the State SWPPP (Permit, 4E2c.)
- For sites five acres and greater:
 - Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) number for filing a Notice of Intent (NOI) for coverage under the GCASP [General Construction Activity Storm Water Permit] and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.
 - Require proof of an Notice of Intent (NOI) and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still ongoing.
 - Use an effective system to track grading permits issued by each permittee. (Permit, 4E3.)
- For projects subject to the GCASP [General Construction Activity Storm Water Permit], permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of making a determination. In making such referrals, permittees shall include, at a minimum, the following documentation: Project location; Developer; Estimated project size; and Records of communication with the developer regarding filing requirements. (Permit, 4E4b.)
- Train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the stormwater management program no later than August 1, 2002, and annually thereafter. For permittees with a population of 250,000 or more (2000 US Census), initial training shall be completed no later than February 3, 2003. Each permittee shall maintain a list of trained employees. (Permit, 4E5.)

The applicable federal regulation (40 CFR § 122.26 (d)(2)(iv)(D)) on the issue of whether the inspection of construction sites is a federal mandate is as follows:

(d) Application requirements for large¹¹⁵ and medium¹¹⁶ municipal separate storm sewer discharges. The operator¹¹⁷ of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. ... Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include; [¶]...[¶]

(2) Part 2 of the application shall consist of: [¶]...[¶]

(iv) Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed

¹¹⁵ "(4) Large municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix F of this part); or (ii) Located in the counties listed in appendix H, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or (iii) Owned or operated by a municipality other than those described in paragraph (b)(4)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4)(i) or (ii) of this section. ..." (40 CFR § 122.26 (b)(4).)

¹¹⁶ "(7) Medium municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix G of this part); or (ii) Located in the counties listed in appendix I, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or (iii) Owned or operated by a municipality other than those described in paragraph (b)(7)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(7)(i) or (ii) of this section. ..." (40 CFR § 122.26 (b)(7).)

¹¹⁷ "Owner or operator means the owner or operator of any 'facility or activity' subject to regulation under the NPDES program." (40 CFR § 122.2.)

management programs shall describe priorities for implementing controls. Such programs shall be based on: [¶]...[¶]

(D) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in stormwater runoff from construction sites to the municipal storm sewer system, which shall include: [¶]...[¶]

(3) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and ... [Emphasis added.]

The language of the federal regulation indicates a duty to inspect construction sites and enforce control measures as specified in part 4E of the permit. The *Rancho Cucamonga* case cited by the State Board also states that federal law requires NPDES permittees to inspect construction sites.¹¹⁸

The issue, however, is whether the federal requirements to inspect construction sites and enforce control measures amounts to a federal mandate on the local agencies. The Commission finds that it does not. First, the federal regulations quoted above do not specify the frequency or other specifics of the inspection program as the permit does. These are activities, as in the *Long Beach Unified School Dist.* case discussed above,¹¹⁹ that are specified actions going beyond the federal requirement for inspections "to prevent illicit discharges to the municipal separate storm sewer system." (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1).) As such, it is not a federal mandate for the local agency permittees to inspect construction sites.

Moreover, it is the state that mandates the inspections of construction sites and related activities in that the state freely chooses to impose the inspection and enforcement requirements on the local agency permittees.¹²⁰ The federal regulations do not require: (1) a municipality to have a separate permit for construction activity or enforcement; or (2) that the inspections and related activities in part 4E of the permit be conducted by the owner or operator of the discharge. Rather, these activities may be conducted by the state under a state-wide, state-enforced, general permit, as stated in the federal stormwater regulation (40 CFR § 122.26 (c)); which states in part:

(c) Application requirements for stormwater discharges associated with industrial activity [includes construction activity of five or more acres] and stormwater discharges associated with small construction activity¹²¹ [construction activity from one to less than five acres]--

¹¹⁸ *City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region*, *supra*, 135 Cal.App.4th 1377, 1390.

¹¹⁹ *Long Beach Unified School Dist. v. State of California*, *supra*, 225 Cal.App.3d 155.

¹²⁰ *Hayes v. Commission on State Mandates*, *supra*, 11 Cal. App. 4th 1564, 1593-1594.

¹²¹ According to 40 CFR § 122.26, (b)(15): "Storm water discharge associated with small construction activity means the discharge of storm water from: (i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater

(1) Individual application. Dischargers of stormwater associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated stormwater general permit. [Emphasis added.]

The state has issued a statewide general construction permit, as described on page 11 of the permit as quoted above, which is enforced through the regional boards.¹²² In fact, the State Board collects fees for the regional board for performing inspections under the GCASP (see Wat. Code, § 13260, subd. (d)(2)(B)(ii)).

There is nothing in the federal statutes or regulations that would prevent the state (rather than local agencies) from performing the inspection of construction sites and related activities (in part 4E of the permit) under the state-enforced general permit. Nor does federal law require the owner or operator of the discharge to perform these activities in part 4E of the permit. Therefore, the Commission finds that the requirement for local-agency permittees to inspect construction sites in section 4E of the permit is not a federal mandate.

The Commission finds that, based on the permit's mandatory language, the following activities in part 4E are state mandates on the permittees within the meaning of article XIII B, section 6:

- Implement a program to control runoff from construction activity at all construction sites within each permittee's jurisdiction, and ensure the specified minimum requirements are effectively implemented at all construction sites. (Permit, 4E1.)

For construction sites one acre or greater:

- Require the preparation of a Local SWPPP [Storm Water Pollution Prevention Plan], with specified contents, for approval prior to issuing a grading permit for construction projects. (Permit, 4E2a.)
- Inspect all construction sites for stormwater quality requirements during routine inspections a minimum of once during the wet seasons. (Permit, 4E2b.)
- Review the Local SWPPP for compliance with local codes, ordinances, and permits. (Permit, 4E2b.)

than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Director may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where: ..."

¹²² For example, page 2 of the Fact Sheet for the General Construction Activity Storm Water Permit states: "This General Permit shall be implemented and enforced by the nine California Regional Water Quality Control Boards (RWQCBs)."

- For inspected sites that have not adequately implemented their Local SWPPP, conduct a follow-up inspection to ensure compliance will take place within 2 weeks.
 - If compliance has not been attained, take additional actions to achieve compliance (as specified in municipal codes).
 - If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, enforce the local ordinance requirements, and
 - If non-compliance continues, notify the Regional Board for further joint enforcement actions. (Permit, 4E2b.)
- Require by March 10, 2003, before issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction stormwater permit, proof of a Waste Discharger Identification Number for filing a Notice of Intent for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs [Best Management Practices] as the State SWPPP. (Permit, 4E2c.)
- For sites five acres and greater:
 - Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) number for filing a Notice of Intent (NOI) for coverage under the GCASP [General Construction Activity Storm Water Permit] and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.
 - Require proof of an Notice of Intent (NOI) and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.
 - Use an effective system to track grading permits issued by each permittee. (Permit, 4E3.)
- For projects subject to the GCASP [General Construction Activity Storm Water Permit], permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of making a determination. In making such referrals, permittees shall include, at a minimum, the following documentation: Project location; Developer; Estimated project size; and Records of communication with the developer regarding filing requirements. (Permit, 4E4b.)
- Train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the stormwater management program no later than August 1, 2002, and annually thereafter. For permittees with a population of 250,000 or

more (2000 US Census), initial training shall be completed no later than February 3, 2003. Each permittee shall maintain a list of trained employees. (Permit, 4E5.)

One of the requirements in part 4E3c of the permit is to: "Use an effective system to track grading permits issued by each permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required." The Commission finds that, based on the plain language of this provision, using an effective system to track grading permits is a state mandate, although use of a database or GIS system is not.

Overall, the Commission finds that the permit provisions (parts 4C2a, 4C2b, 4E & 4F5c3) are subject to article XIII B, section 6, of the California Constitution.

Issue 2: Do the transit trash receptacle and inspection permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) impose a new program or higher level of service?

The next issue is whether the permit provisions at issue, i.e., found above to be state-mandated, are a program, and whether they are a new program or higher level of service.

First, courts have defined a "program" for purposes of article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹²³

The State Water Board, in its April 2008 comments, argues that the NPDES program is not a program because "the NPDES permit program, and the stormwater requirements specifically, are not peculiar to local government. Industrial and construction facilities must also obtain NPDES stormwater permits."

In comments submitted June 25, 2008, the cities call the State Board's argument inapposite, and cite the *Carmel Valley Fire Protection District* case¹²⁴ regarding whether the permit constitutes a "program." According to claimant, "[t]he test is not whether the general program applies to both governmental and non-governmental entities. The test is whether the specific executive orders at issue apply to both government and non-governmental entities."

The Commission finds that the permit activities constitute a program within the meaning of article XIII B, section 6. The permit activities are limited to local governmental entities. The permit defines the "permittees" as the County of Los Angeles and 84 incorporated cities within the Los Angeles County Flood Control District (Permit, p. 1 & attachment A). The permit lists no private entities as "permittees." Moreover, the permit provides a service to the public by preventing or abating pollution in waterways and beaches in Los Angeles County. (Or as stated on page 13 of the permit: "The objective of this Order is to protect the beneficial uses of receiving waters in Los Angeles County.") Therefore, the Commission finds that the permit is a program within the meaning of article XIII B, section 6.

¹²³ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

¹²⁴ *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537.

In its comments on the draft staff analysis submitted June 5, 2009, the State Board disagrees with this conclusion because NPDES permits may also apply to private entities.

The State Board made this same argument in *County of Los Angeles v. Commission on State Mandates*, which the court addressed by stating: “[T]he applicability of permits to public and private dischargers does not inform us about whether a particular permit or an obligation thereunder imposed on local governments constitutes a state mandate necessitating subvention under article XIII B, section 6.”¹²⁵

In other words, the issue is not whether NPDES permits generally constitute a “program” within the meaning of article XIII B, section 6. The only issue before the Commission is whether the permit in this test claim (Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001) constitutes a program because this permit is the only one over which the Commission has jurisdiction. Because they apply exclusively to local agencies, the Commission finds that the activities (parts 4C2a, 4C2b, 4E & 4F5c3) in this permit (Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001) constitute a program within the meaning of article XIII B, section 6.

The next step to determine whether the permit is a new program or higher level of service, the permit is compared to the legal requirements in effect immediately before its adoption.¹²⁶

The Commission finds that local agencies were not required by state or federal law to place and maintain trash receptacles at transit stops before the permit was adopted. Whether or not most cities or counties do so, as argued by the State Water Board in its April 2008 comments, is not relevant to finding a state-mandated new program or higher level of service because even if they do, Government Code section 17565 states: “If a local agency ... at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency ... for those costs incurred after the operative date of the mandate.”

Because the transit trash receptacle requirement is newly mandated by the permit, and based on the plain language of part 4F5c3 of the permit, the Commission finds that it is a new program or higher level of service to place trash receptacles at transit stops and maintain them as specified in the permit.

For the same reason, the Commission finds that the inspections and enforcement activities at industrial and commercial facilities, including restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, and phase I facilities (in parts 4C2a & 4C2b of the permit) as well as inspection and enforcement at construction sites (in part 4E of the permit) are a new program or higher level of service. These were not required activities of the permittees prior to the permit’s adoption.

In sum, the Commission finds that all the permit provisions at issue in this test claim impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

¹²⁵ *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 919.

¹²⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

Issue 3: Do the transit trash receptacle and inspection permit provisions (Parts 4C2a, 4C2b, 4E & 4F5c3) impose costs mandated by the state within the meaning of Government Code sections 17514 and 17556?

The final issue is whether the permit provisions impose costs mandated by the state,¹²⁷ and whether any statutory exceptions listed in Government Code section 17556 apply to the test claims. Government Code section 17514 defines "cost mandated by the state" as follows:

[A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17564 requires reimbursement claims to exceed \$1000 to be eligible for reimbursement.

In test claims 03-TC-20 and 03-TC-21, the cities' claimant representative declares (p. 24) that the cities will incur costs estimated to exceed \$1000 to implement the permit conditions.

In test claim 03-TC-04, the County of Los Angeles states (p. 18) that the costs in providing the services claimed "far exceed the minimum reimbursement amount of \$1000 per annum." In the attached declaration for *Transit Trash Receptacles*, the County declares (pp. 22-23) the following itemization of costs from December 13, 2001 to October 31, 2002:

- (1) Identify all transit stops in the jurisdiction: \$19,989.17;
- (2) Select proper trash receptacle design, evaluate proper placement, specification and drawing preparation: \$38,461.87;
- (3) Preliminary engineering works (construction contract preparation, specification reviewing process, bid advertising and awarding): \$19,662.02;
- (4) Construct and install trash receptacle units: \$230,755.58, construction management \$34,628.31;
- (5) Trash collection and receptacle maintenance in FY 2002-03, \$3,513.94, maintenance contractor costs for maintaining and collecting trash in FY 2002-03, \$93,982.50;
- (6) Projected costs for on-going maintenance in FY 2003-04, \$375,570.00.

Similarly, attached to claim 03-TC-19 (pp. 20-21) are declarations that itemize the County of Los Angeles' costs for *Inspection of Industrial/Commercial Facilities* program, from December 13, 2001 to September 15, 2003, as follows:

- (1) inspect 1744 restaurants: \$234,931.83;
- (2) inspect 1110 automotive service facilities: \$149,526.36;
- (3) inspect 249 retail gasoline outlets and automotive dealerships: \$33,542.45;

¹²⁷ *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

(4) Identify and inspect all Phase I (387 Tier 1 and 543 Tier 2) facilities within the jurisdiction: \$125,155.31;

(5) Total \$543,155.95.

These declarations illustrate that the costs associated with the permit activities exceed \$1,000. The Commission, however, cannot find "costs mandated by the state" within the meaning of Government Code section 17514 if any exceptions in Government Code section 17556 apply, which is discussed below.

A. Did the claimants request the activities in the permit within the meaning of Government Code section 17556, subdivision (a)?

The first issue is whether the claimants requested the activities in the permit. The Department of Finance and the State Water Board both asserted that they did. As discussed above, the claimants were required to submit a Report of Waste Discharge and Stormwater Quality Management Plan before the permit was issued.

Government Code section 17556, subdivision (a), provides that the Commission shall not find costs mandated by the state if:

(a) The claim is submitted by a local agency ... that requested legislative authority for that local agency ... to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency ... that requests authorization for that local agency ... to implement a given program shall constitute a request within the meaning of this subdivision.

Based on the language of the statute, section 17556, subdivision (a), does not apply because the permit is not a statute, the claimants did not request "legislative authority" to implement the permit, and the record lacks any resolutions adopted by the claimants. Therefore, the Commission finds that the claimants did not request the activities in the permit within the meaning of Government Code section 17556, subdivision (a).

B. Do the claimants have fee authority for the permit activities within the meaning of Government Code section 17556, subdivision (d)?

Government Code section 17556, subdivision (d), states:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency ... if, after a hearing, the commission finds any one of the following: [¶]...[¶] (d) The local agency ... has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

The constitutionality of Government Code section 17556, subdivision (d), was upheld by the California Supreme Court in *County of Fresno v. State of California*,¹²⁸ in which the court held

¹²⁸ *County of Fresno v. State of California*, *supra*, 53 Cal.3d 482.

that the term "costs" in article XIII B, section 6, excludes expenses recoverable from sources other than taxes. The court stated:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.

In view of the foregoing analysis, the question of the facial constitutionality of section 17556(d) under article XIII B, section 6, can be readily resolved. As noted, the statute provides that "The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Considered within its context, the section effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound. As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes. It follows that section 17556(d) is facially constitutional under article XIII B, section 6.¹²⁹

In *Connell v. Superior Court*,¹³⁰ the dispute was whether local agencies had sufficient fee authority for a mandate involving increased purity of reclaimed wastewater used for certain types of irrigation. The court cited statutory fee authority for the reclaimed wastewater, and noted that the water districts did not dispute their fee authority. Rather, the water districts argued that they lacked "sufficient" fee authority in that it was not economically feasible to levy fees sufficient to pay the mandated costs. In finding the fee authority issue is a question of law, the court stated that Government Code section 17556, subdivision (d), is clear and unambiguous, in that its plain language precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program." The court rejected the districts' argument that "authority" as used in the statute should be construed as a "practical ability in light of surrounding economic circumstances" because that construction cannot be reconciled with the plain language of section 17556, and would create a vague

¹²⁹ *County of Fresno v. State of California, supra*, 53 Cal.3d 482, 487.

¹³⁰ *Connell v. Superior Court* (1997) 59 Cal.App.4th 382.

standard not capable of reasonable adjudication. The court also said that nothing in the fee authority statute (Wat. Code, § 35470) limited the authority of the Districts to levy fees "sufficient" to cover their costs. Thus, the court concluded that the plain language of section 17556 made the fee authority issue solely a question of law, and that the water districts could not be reimbursed due to that fee authority.¹³¹

In its April 18, 2008 comments (p. 19), the State Board asserted that the claimants have fee authority to pay for the trash receptacle and inspection programs in the permit. Likewise, the Department of Finance, in its March 2008 comments, states that "some local agencies have set fees to be used toward funding the claimed permit activities" that should be considered offsetting revenues.

Los Angeles County, in its comments submitted in June 2008, states (p. 2) that it is "without sufficient fee authority to recover its costs." The County points out that the state or regional board has fee authority in Water Code section 13260, subdivision (d)(2)(B)(iii) for inspections of industrial and commercial facilities, but those fees are not shared with the County or the cities.¹³² The County also states that the inspections are to determine compliance with the general industrial permit that is enforced by the regional boards.¹³³

In their comments received June 25, 2008, the city claimants assert that they do not have fee authority. The cities first note that, for facilities that hold state-issued general industrial or general construction stormwater permits, the state already imposes an annual fee and therefore has occupied the field (Wat. Code, § 13260, subd. (d)(2)(B)(iii)). The cities also relate the difficulty of imposing a fee for inspecting restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships because, although the cities could enact a general businesses license on all businesses, "the cities could not charge other businesses for the cost of inspecting this subgroup without again running the risk of charging fees on the other businesses for services not related to regulation of them." The cities also dispute the State Water Board's

¹³¹ *Connell v. Superior Court*, *supra*, 59 Cal.App.4th 382, 398-402.

¹³² Water Code section 13260, subdivision (d)(2)(B)(i) - (iii) states:

- (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund. (ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in the region. (iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs.

¹³³ Page 3 of the General Industrial Permit states in part: "Following adoption of this General Permit, the Regional Water Boards shall enforce its provisions."

assertion that transit users could be charged a fee for the transit trash receptacles because the County and cities do not operate the transit system.

In comments on the draft staff analysis submitted in June 2009, the League of California Cities and California State Association of Counties (CSAC) question whether the decisions in *Connell* (1997), and *County of Fresno* (1991), can any longer be cited as good authority for the constitutionality of Government Code section 17556, subdivision (d), given the voter-approval requirement of Proposition 218 (discussed below) added to the state Constitution in 1996. Proposition 218 requires, among other things, that new or increased property-related fees be approved by a majority of the affected property owners, or two-thirds registered voter approval, or weighted ballot approval by the affected property owners, except for property-related fees for sewer, water, or refuse collection services (Cal. Const., art. XIII D, § 6, subd. (c)).

The League and CSAC also urge the Commission, to the extent there may be legal doubt whether a local agency has the authority to impose a fee, to not find that the fee authority exception to reimbursement in Government Code section 17556, subdivision (d), applies.

The Commission disagrees with the League and CSAC. The Commission cannot ignore the precedents of *Connell* or *County of Fresno*, or find that they conflict with article XIII D of the California Constitution (Proposition 218), until the issue is decided by a court of law. With regards to Government Code section 17556, subdivision (d), article III, section 3.5 of the California Constitution forbids the Commission or any state agency from declaring a statute unenforceable or refusing to enforce it on the basis of its unconstitutionality unless an appellate court declares that it is unconstitutional. Since no appellate court has so declared, the Commission is bound to uphold and analyze the application of Government Code section 17556, subdivision (d), to this test claim.

The issue of local fee authority for the municipal stormwater permit activities, however, is one of first impression for the Commission. Although there are no authorities directly on point, some legal principles emerge that guide the analysis, as discussed below.

1. Local fee authority to inspect commercial and industrial and construction sites (parts 4C2a, 4C2b & 4E)

Fee authority to inspect under the police power: The law on local government fee authority begins with article XI, section 7, of the California Constitution, which states: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

The Third District Court of Appeal has stated that article XI, section 7, includes the authority to impose fees. In *Mills v. Trinity County*,¹³⁴ a taxpayer challenged a county ordinance that imposed new and increased fees for county services in processing subdivision, zoning, and other land-use applications that had been adopted without the two-thirds affirmative vote of the county electors. In upholding the fees, the court stated:

[S]o long as the local enactments are not in conflict with general laws, the power to impose valid regulatory fees does not depend on legislatively authorized taxing

¹³⁴ *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656.

power but exists pursuant to the direct grant of police power under article XI, section 7, of the California Constitution.¹³⁵

In addition to the *Mills* case, courts have held that water pollution prevention is a valid exercise of government police power.¹³⁶ And municipal inspections in furtherance of sanitary regulations have been upheld as “an exercise of that branch of the police power which pertains to the public health.”¹³⁷

In *Sinclair Paint v. State Board of Equalization*,¹³⁸ the California Supreme Court upheld a fee imposed on manufacturers of paint that funded a child lead-poisoning program, ruling it was a regulatory fee and not a special tax requiring a two-thirds vote under article XIII A, section 4, of the California Constitution (Proposition 13). The court recognized that determining under Proposition 13 whether impositions were fees or taxes is a question of law. In holding that the fee on paint manufacturers was “regulatory” and not a special tax, the court stated:

From the viewpoint of general police power authority, we see no reason why statutes or ordinances calling on polluters or producers of contaminating products to help in mitigation or cleanup efforts should be deemed less “regulatory” in nature than the initial permit or licensing programs that allowed them to operate.

Viewed as a mitigating effects measure, [the fee] is comparable in character to several police power measures imposing fees to defray the actual or anticipated adverse effects of various business operations.¹³⁹ [Emphasis added.]

The *Sinclair Paint* court also recognized that regulatory fees help to prevent pollution when it stated: “imposition of ‘mitigating effects’ fees in a substantial amount ... also ‘regulates’ future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products.”¹⁴⁰

Although the court’s holding in *Sinclair Paint* applied to a state-wide fee, the language it used (putting “ordinances” in the same category as “statutes”) recognizes that local agencies also have the police power to impose regulatory fees. Moreover, the court relied on local government police power cases in its analysis.¹⁴¹

¹³⁵ *Mills v. County of Trinity*, *supra*, 108 Cal.App.3d 656, 662.

¹³⁶ *Freeman v. Contra Costa County Water Dist.* (1971) 18 Cal.App.3d 404, 408.

¹³⁷ *Sullivan v. City of Los Angeles Dept. of Bldg. & Safety* (1953) 116 Cal.App.2d 807, 811.

¹³⁸ *Sinclair Paint v. State Board of Equalization* (1997) 15 Cal.4th 866.

¹³⁹ *Sinclair Paint v. State Board of Equalization*, *supra*, 15 Cal.4th 866, 877.

¹⁴⁰ *Sinclair Paint v. State Board of Equalization*, *supra*, 15 Cal.4th 866, 877.

¹⁴¹ *Sinclair Paint v. State Board of Equalization*, *supra*, 15 Cal.4th 866, 873. The Court stated: “Because of the close, ‘interlocking’ relationship between the various sections of article XIII A (Citation omitted) we believe these “special tax” cases [under article XIII A, § 3, state taxes] may be helpful, though not conclusive, in deciding the case before us. The reasons why particular fees are, or are not, “special taxes” under article XIII A, section 4, [local government taxes] may apply equally to section 3 cases.”

A regulatory fee is an imposition that funds a regulatory program¹⁴² and is “enacted for purposes broader than the privilege to use a service or to obtain a permit. ...the regulatory program is for the protection of the health and safety of the public.”¹⁴³ Courts will uphold regulatory fees if they comply with the following principles:

Fees charged for the associated costs of regulatory activities are not special taxes under an article XIII A section 4 analysis if the “fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and [they] are not levied for unrelated revenue purposes.” [Citations omitted] “A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation.” [Citations omitted] “Such costs ... include all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement.” [Citations omitted] Regulatory fees are valid despite the absence of any perceived “benefit” accruing to the fee payers. [Citations omitted] Legislators “need only apply sound judgment and consider ‘probabilities according to the best honest viewpoint of informed officials’ in determining the amount of the regulatory fee.”¹⁴⁴ [Emphasis added.]

Local fees for inspections of commercial and industrial facilities, and construction sites, would be preventative and could be imposed to comply with the criteria the courts have used to uphold regulatory fees, articulated above. And the regulatory fees fall within the local police power to prevent, clean up, or mitigate pollution.

Therefore, pursuant to article XI, section 7, the Commission finds that the claimants have fee authority within the meaning of Government Code section 17556, subdivision (d), sufficient to carry out the mandated activities in parts 4C2a, 4C2b and 4E of the permit. Therefore, the Commission finds that there are no “costs mandated by the state” within the meaning of Government Code section 17514 and 17556 to perform the activities in those parts of the permit (commercial, phase I, and construction site inspections and related activities).

In fact, in June 2005, claimant Covina adopted stormwater inspection fees on restaurants, retail gasoline outlets, automotive service facilities, etc., as part of its business license fee, expressly for the purpose of complying with the permit at issue in this test claim.¹⁴⁵

Statutory fee authority to operate and maintain storm drains: Health and Safety Code section 5471 expressly authorizes cities and counties to charge fees for storm drainage maintenance and operation services:

¹⁴² *California Assn. of Prof. Scientists v. Dept. of Fish and Game* (2000) 79 Cal.App.4th 935, 950.

¹⁴³ *Ibid.*

¹⁴⁴ *California Assn. of Prof. Scientists v. Dept. of Fish and Game, supra*, 79 Cal.App.4th 935, 945.

¹⁴⁵ City of Covina, Resolution No. 05-6455.

[A]ny entity¹⁴⁶ shall have power, by an ordinance approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges for services and facilities furnished by it, either within or without its territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system. ... Revenues derived under the provisions in this section, shall be used only for the acquisition, construction, reconstruction, maintenance, and operation of water systems and sanitation, storm drainage, or sewerage facilities

The statute makes no mention of "inspecting" commercial or industrial facilities or construction sites. Rather, the fee revenues are used for "maintenance and operation" of storm drainage facilities. Thus, for the types of businesses regulated by the permit (restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I facilities, as defined, and construction sites) the Commission cannot find that pursuant to Health and Safety Code section 5471, the claimants have fee authority "sufficient" to pay for the mandated inspection program within the meaning of Government Code section 17556. The statute's "operation and maintenance" of storm drainage facilities does not encompass the state-mandated inspections of the facilities or construction sites specified in the permit.

2. Local fee authority under the police power and the Public Resources Code to place and maintain trash receptacles at transit stops (Permit, 4F5c3)

As discussed above, part 4F5c3 of the permit requires the County and cities to place and maintain trash receptacles at transit stops in their jurisdictions. Public Resources Code section 40059, subdivision (a), suggests that the County and cities have fee authority to perform this activity as follows:

(a) Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following: (1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.

The statute gives local governments the authority over the "nature, location and extent of providing solid waste handling services" and is broad enough to encompass "placing and maintaining" receptacles at transit stops. The statute also provides local governments with broad authority over the "level of services, charges and fees."

The draft staff analysis determined that the claimants had fee authority under Public Resources Code section 40059 and the police power (Cal. Const. art. XI, § 7) to install and maintain trash receptacles at transit stops and recommended that the Commission deny the test claim with respect to part 4F5c3 of the permit.

¹⁴⁶ Entity is defined to include "counties, cities and counties, cities, sanitary districts, county sanitation districts, sewer maintenance districts, and other public corporations and districts authorized to acquire, construct, maintain and operate sanitary sewers and sewerage systems." Health and Safety Code section 5470, subdivision (e).

The city claimants, in June 2009 comments on the draft staff analysis, argue that section 40059, subdivision (a), does not apply here because it was adopted as a "savings provision" in legislation establishing the Integrated Waste Management Board (IWMB) in order to ensure that local trash collection agreements would not be affected by the IWMB legislation. The cities also cite *Waste Resources Technologies v. Department of Public Health* (1994) 23 Cal.app.4th 299, which held that the statute reflected the Legislature's intent to allow for local regulation of waste collection. According to the cities, the statute "was not intended as an *imprimatur* for local agencies to assess fees on their residents or on businesses to pay for the costs of trash generated by transit users when that requirement was established not as a matter of local choice but rather state mandate." (Comments, p. 7.)

The cities also argue that a valid fee must have a causal connection or nexus between the person or entity paying the fee, and the benefit or burden being addressed. Claimants assert that there is no group on which the claimants can assess a fee that has a relationship with the trash receptacles because the burden is created by the transit riders but benefits the public at large. City claimants also argue that they cannot assess fees on transit agencies or increase transit fares to recoup the cost of installing and maintaining trash receptacles because they have no authority to do so. As an example, the claimants cite the Metropolitan Transit Authority's (the largest public transit operator in Los Angeles County) authority to set fares (Pub. Util. Code, § 30638) that rests exclusively with the MTA's board.

As to the police power, City claimants argue that they cannot use it to assess fees on property owners or businesses for the cost of transit trash receptacles because doing so would collect more than the actual cost of the collection and thereby create a special tax that would require a two-thirds vote (Cal. Const. art. XIII A, § 4). And according to the claimants, they do not have statutory fee authority to assess property owners for the cost of installing and maintaining trash receptacles. Finally, claimants assert that a fee on property owners for transit stop trash receptacles, even if it were not a special tax, would require a vote under Proposition 218 (Cal. Const., art. XIII D).

The County of Los Angeles, in its June 2009 comments on the draft staff analysis, argues that local agencies do not have fee authority over bus operators, and for support cites *Biber Electric Co. v. City of San Carlos* (1960) 181 Cal.App.2d 342, which held that a local fee would conflict with a general state Vehicle Code provision. The County also asserts that no fee could be imposed on bus riders because the pollution prevention would benefit all county residents, not only those riding buses, and that such a fee would require a vote under Proposition 218 because the fee's purpose would be excluding trash from storm drains rather than routine collection.

The League of California Cities and CSAC, in their June 2009 comments on the draft staff analysis, criticize the conclusion that fee authority exists for transit trash receptacles because the analysis does not discuss upon whom the fee would be imposed. They also dispute the application of the *Connell* case because the issue is not whether the fee is economically feasible, but whether it is legally feasible. The League and CSAC point out that local agencies have no authority to impose the fee on transit agencies or their ridership, and that Proposition 218 imposes procedural and substantive requirements on adjacent business owners and residences, so that the local agency could not impose the fee or assessment on them without their consent. Thus, the League and CSAC argue that the local agencies do not have fee authority pursuant to

Government Code section 17556, subdivision (d): "sufficient to pay for the mandated program or increased level of service."

After considering these arguments, the Commission agrees that Government Code section 17556, subdivision (d), does not apply to the placement and maintenance of transit trash receptacles as specified in the permit because the claimants do not have the authority to impose fees.

Michael Lauffer was asked at the Commission hearing on July 31, 2009, why the transit trash requirement in the permit was not imposed on transit agencies. Mr. Lauffer testified that transit agencies were not named historically on the permits, and that the Board, at the time it established the requirements, thought it was appropriate to place them on municipalities. He also testified that nothing would prevent the municipalities under the permit from working with Metropolitan Transit Authority (MTA) to cooperatively implement the transit trash requirement, or to have the MTA carry out the primary obligation for meeting it. He added that the transit stops were public facilities, the language used in the federal regulations, which is why the permit included the requirement to place the trash receptacles there.¹⁴⁷

Because the trash receptacles are required to be placed at transit stops that would typically be on city property (sidewalks)¹⁴⁸ or transit district property (for bus or metro or subway stations), there are no entities on which the claimants would have authority to impose the fees. The plain language of Public Resources Code section 40059 provides no fee authority over transit districts or transit riders, and the Metropolitan Transit Authority's fee statutes grant fee authority exclusively to its board (Pub. Util. Code, §§ 30638 & 130051.12).

Additionally, the claimants do not have fee authority under the police power because they do not provide the "services necessary to the activity for which the fee is charged."¹⁴⁹

Thus, the Commission finds that part 4F5c3 of the permit imposes costs mandated by the state within the meaning of Government Code section 17514 and 17556.

The remainder of this analysis addresses the arguments raised by the claimants that their local fee authority for inspections would be preempted by a statute granting the state fee authority, and that a local fee would be a special tax. The application of Proposition 218 on the fee authority for inspection is also discussed.

¹⁴⁷ Commission on State Mandates, Public Hearing, Reporter's Transcript of Proceedings, July 31, 2009, pages 52-53.

¹⁴⁸ "The general rule views the sidewalk as part of the street; it ... holds the city liable for pedestrian injuries caused by the dangerous condition of the sidewalk." *Low v. City of Sacramento* (1970) 7 Cal.App.3d 826, 832.

¹⁴⁹ *California Assn. of Prof. Scientists v. Dept of Fish and Game, supra*, 79 Cal.App.4th, 935, 945.

3. Local fee authority to inspect industrial or construction sites (parts 4C2a, 4C2b & 4E) performed under the statewide general permits would not be preempted by state fee authority in Water Code section 13260, subdivision (b)(2)(B)

In their comments submitted in June 2008 (p. 14), the city claimants argue that the permittees cannot impose fees for inspections of industrial or commercial or construction sites as follows:

[W]ith respect to facilities that hold state-issued general industrial or general construction stormwater permits, the state had occupied the field. ...[T]he state already imposes an annual fee on general industrial and general construction stormwater permittees. That fee is explicitly designated, in part, to cover inspections of these facilities and regulatory compliance. Water Code § 13260(d)(2)(B).

This state fee thus preempts any fee that the Cities or County could charge for inspection of these facilities.

The cities also assert that in 2001, the regional board initiated negotiation of a contract with the County whereby the regional board would pay the County to perform inspections of facilities that held general industrial stormwater permits (the 'Phase I facilities') on the regional board's behalf. Immediately after the permit was issued, the regional board terminated those negotiations.

In comments submitted in June 2009 on the draft staff analysis, city claimants clarify that their comments "are not directed towards the claimants' ability to assess fees for inspections of the other commercial establishments, i.e., restaurants and automotive service facilities, retail gasoline outlets and automobile dealerships, or Phase I facilities or construction sites that are not required to hold a state-issued general industrial or general construction stormwater permit."

According to the city claimants, fees for inspecting the phase I industrial facilities and construction sites under the statewide permits (the GIASP and GCASP) would be preempted by state fee authority in Water Code section 13260, under which the State Board collects fees for inspecting those sites. The city claimants state the fact that the specific destination of the funds from the fees in Water Code section 13260, subdivision (d)(2)(iii) is spelled out is evidence of intent that the Legislature fully occupied the field for inspections of GIASP and GCASP permit holders.

Because the fee authority to inspect commercial facilities (identified in the permit as restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships) is not contested by the city claimants, the discussion below is limited to industrial and construction site inspections performed under the statewide permits concurrently with the permit at issue in this claim.

The California Supreme Court has outlined the following rules as to when a statute preempts a local ordinance by fully occupying the field:

A local ordinance *enters a field fully occupied* by state law in either of two situations-when the Legislature "expressly manifest[s]" its intent to occupy the legal area or when the Legislature "impliedly" occupies the field. (*Sherwin-Williams, supra*, 4 Cal.4th at p. 898, 16 Cal.Rptr.2d 215, 844 P.2d 534; see also 8 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 986, p.

551[“[W]here the Legislature has manifested an intention, expressly or by implication, wholly to occupy the field ... municipal power [to regulate in that area] is lost.”].)

When the Legislature has not expressly stated its intent to occupy an area of law, we look to whether it has *impliedly* done so. This occurs in three situations: when “(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.” (*Sherwin-Williams, supra*, 4 Cal.4th at p. 898, 16 Cal.Rptr.2d 215, 844 P.2d 534.)¹⁵⁰

The state statute at issue, the stormwater fee statute, in subdivision (d) of section 13260 of the Water Code, reads in pertinent part:

(d)(1)(A) Each person who is subject to subdivision (a) [who discharges waste that affects the quality of waters of the state] or (c) shall submit an annual fee according to a fee schedule established by the state board.

(B) The total amount of annual fees collected pursuant to this section shall equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waste discharge requirements and waivers of waste discharge requirements.

(C) Recoverable costs include, but are not limited to, costs incurred in reviewing waste discharge reports, prescribing terms of waste discharge requirements and monitoring requirements, enforcing and evaluating compliance with waste discharge requirements and waiver requirements, conducting surface water and groundwater monitoring and modeling, analyzing laboratory samples, and reviewing documents prepared for the purpose of regulating the discharge of waste, and administrative costs incurred in connection with carrying out those actions. [¶]...[¶]

(2) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, for the purposes of carrying out this division.

(B) (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.

¹⁵⁰ *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068. Emphasis in original.

(ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in that region. (iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs. (Wat. Code, § 13260, subs. (d)(1) & (d)(2).) [Emphasis added.]

The State Water Board has adopted regulations to implement the stormwater fee that include fee schedules based on the threat to water quality and a complexity rating.¹⁵¹ At the hearing on July 31, 2009, Michael Lauffer of the State Water Board testified that the fee is established annually by the State Board, based on the legislative appropriation for the boards to carry out their responsibilities. Mr. Lauffer testified that the annual fee for industrial facilities under this Water Code statute is \$833, and the fee for construction facilities is variable, starting at \$238, plus \$24 per acre, with a cap of \$2,600.¹⁵²

The issue is whether Water Code section 13260, subdivision (d)(1) and (d)(2), preempts local fee authority. In resolving this, we look for express or implied preemption or intent to occupy the field.¹⁵³

First, there is no express intent on the face of the Water Code statute to preempt any local fee ordinance because the statute is silent on local fees. As to implied intent to occupy the field of law, the Supreme Court has stated that it may be found if:

(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.¹⁵⁴

The city claimants, in their comments on the draft staff analysis submitted in June 2009, argue as follows with regard to Water Code section 13260:

Here, the Legislature adopted a statute that specifically established a mechanism for fees to be assessed on GIASP and GCASP holders, for those funds to be

¹⁵¹ Fees for NPDES permits for municipal separate stormwater sewer systems are in subdivision (b) of section 2200 of title 23 of the California Code of Regulations.

¹⁵² Commission on State Mandates, Public Hearing, Reporter's Transcript of Proceedings, July 31, 2009, page 111.

¹⁵³ *O'Connell v. City of Stockton*, *supra*, 41 Cal.4th 1061, 1068.

¹⁵⁴ *O'Connell v. City of Stockton*, *supra*, 41 Cal.4th 1061, 1068.

segregated and sent to the regional boards, and for a specified amount of those funds ("not less than 50 percent of the money") to be used by the regional boards "solely" on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs. Water Code section 13260(d)(2)(iii). Such a specific determination as to the destination of the funds for the purposes of inspection and compliance evidences the intent of the Legislature that the issue of funding for GLASP and GCASP inspections be "fully occupied."

The Commission disagrees. Specific determination of funds is not a factor the courts use to determine whether a state statute fully occupies the field. Applying the Supreme Court's factors from the *O'Connell v. City of Stockton* case, the subject matter of stormwater fees has not been "so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern."¹⁵⁵ The Water Code's single fee statute for state permit holders does not rise to that level. Second, the Commission cannot find that "the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action."¹⁵⁶ No clear indication of a paramount state concern can be found on the face of the Water Code fee statute. And the third instance does not apply because the subject is not "of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality."

The legislative history of the Water Code provision does not indicate any intent to occupy the field. The legislative history of the amendment to require 50 percent of the fees to be used for stormwater inspection and regulatory compliance issues indicated as follows:

...California's 1994 Water Quality Inventory Report states that storm waters and urban run-off are the leading sources of pollution in California estuaries and ocean waters. Proponents argue that non-compliance is rampant, with approximately 10,000 industries in the Los Angeles area alone who are required but have failed to obtain storm water permits. Further, proponents point out that the Los Angeles Regional Water Quality Control Board has only two staff to contact, educate, and control each site and question whether adequate revenues are returned to the regional boards for this program.¹⁵⁷

The Legislature acknowledged that the state inspections at the time the statute was enacted were inadequate to prevent the pollution that the statewide permits were intended to prevent.

And the regional board, via the permit, acknowledges the role of both local regulation and state regulation under the general permits. Page 11 of the permit states:

¹⁵⁵ *O'Connell v. City of Stockton, supra*, 41 Cal.4th 1061, 1068.

¹⁵⁶ *Ibid.*

¹⁵⁷ Senate Rules Committee, Office of Senate Floor Analyses, third reading analysis of Assem. Bill No. 1186 (1997-1998 Reg. Sess.) as amended August 6, 1997.

The U.S. EPA guidance anticipates coordination of the state-administered programs for industrial and construction activities with the local agency program to reduce pollutants in stormwater discharges to the MS4. The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES stormwater and non-stormwater permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations.

As to inspection of construction sites, section 4E of the permit states:

If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

Moreover, the Water Code statute provides broader fee authority than a local inspection fee. The statute requires the regional board to "spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs." (Wat. Code, § 13260, subd. (d)(2)(iii). Emphasis added.) Because the fees for GIASP and GCASP permit holders may also be spent on "regulatory compliance issues" in addition to the inspections, the Commission cannot find that a local fee ordinance would duplicate or be "coextensive" with state fee authority, and therefore cannot find that the state fee statute occupies the field. A local fee would merely partially overlap with the state fee.

As for the phase I facilities¹⁵⁸ subject to inspection, the inspections do not occupy the field because the permit specifies that these need not be inspected if the regional board has inspected them within the past 24 months.

According to the State Board's April 2008 comments, the overlapping fees were envisioned by U.S./EPA.

In addition to the requirements for permits issued to municipalities, the Water Boards are also mandated to issue permits to entities that discharge stormwater "associated with industrial activity." (fn. CWA § 402(p)(2)(B)). As part of its responsibilities for its in lieu program, the State Boards must administer and enforce all of its permits. (fn. CWA § 402(p).) The State Water Board has issued

¹⁵⁸ On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

permits for industrial and construction discharges of stormwater, and the Los Angeles Water Board administers those permits within its jurisdiction. Therefore, the Los Angeles Water Board does conduct inspections at businesses in Los Angeles County to ensure compliance with the state permits. In addition, the MS4 Permit requires the permittees also to conduct inspections. This approach, which may result in two different entities inspecting the same businesses to review stormwater practices, was specifically envisioned and required by U.S. EPA in adopting its stormwater regulations.

U.S./EPA, in its "MS4 Program Evaluation Guidance" document, acknowledged regulation at both the local and state levels as follows:¹⁵⁹

In addition to regulation of construction site stormwater at the local level, EPA regulations also require construction sites disturbing greater than one acre to obtain an NPDES permit. This permit can be issued by the state permitting authority or EPA, depending on whether the state has been delegated the NPDES authority. This dual regulation of construction sites at both the local and state or federal level can be confusing to permittees and construction operators.¹⁶⁰

In fact, as to inspection duties and costs under two permit systems, one court has stated regarding a permit similar to the one in this claim:

Rancho Cucamonga and the other permittees are responsible for inspection construction and industrial sites and commercial facilities within their jurisdiction for compliance with the enforcement of local municipal ordinance and permits. But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits.¹⁶¹

The reasoning of the *City of Rancho Cucamonga* case is instructive because a local regulatory fee could be used for local-government inspections, and the state fee is for state or regional inspections under the general statewide permits.

The state permit program and local inspection program under the regional board's permit can be viewed as two programs with similar, overlapping goals. Viewed in this way, the fees for two sets of inspections for construction sites (or for phase I facilities not inspected by the regional board within the past two years) would not necessarily exceed the costs of both sets of inspections.

In short, a local regulatory fee ordinance that provided for inspections of the industrial facilities and construction sites specified in the permit (parts 4C2a, 4C2b & 4E) would not be preempted

¹⁵⁹ State Water Resources Control Board, comments submitted April 18, 2008, attachment 33.

¹⁶⁰ *Ibid.*

¹⁶¹ *City of Rancho Cucamonga v. Regional Water Quality Control Board, supra*, 135 Cal.App.4th 1377. The test claim record is silent as to the number of facilities within the permit area that are subject to the General Industrial Activity Storm Water Permit, or how many construction sites within the permit area are subject to the General Construction Activity Storm Water Permit.

by the state fee authority in Water Code section 13260 or in title 23 of the California Code of Regulations.

4. Local fee authority to inspect industrial or construction sites covered under the state permits would not be a "special tax" under article XIII A, section 4, of the California Constitution

In their June 2008 rebuttal comments, the city claimants assert that they do not have sufficient fee authority under Government Code section 17556, subdivision (d). They focus on facilities that hold state-issued general industrial or construction stormwater permits and pay the state-imposed fees pursuant to Water Code section 13260, arguing that an additional local fee for inspecting these facilities would be considered a special tax. According to the city claimants:

In order for a fee to be considered a "fee" as opposed to a "special tax," the fee cannot exceed the reasonable cost of providing the services necessary for which the fee is charged. See *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 659-660. Any fee assessed by the Cities or the County for inspection of these facilities would be a double assessment, and thus run afoul of this rule.

The city claimants, in their June 2009 comments on the draft staff analysis, again assert that forcing claimants to recover their costs for inspecting the state-permitted GIASP and GCASP facilities and sites, the regional board is creating a special tax on holders of those state permits.

Special taxes are governed by article XIII A, section 4, of the California Constitution:

Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

Government Code section 50076 states that a fee is not a special tax under article XIII A, section 4, if the fees are: (1) "charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged," and (2) "are not levied for unrelated revenue purposes." The California Supreme Court has reaffirmed this rule.¹⁶²

The Commission finds that a local regulatory stormwater fee, if appropriately calculated and charged, would not be a special tax within the meaning of article XIII A, section 4. There is no evidence in the record that a local regulatory fee charged for the stormwater inspections would exceed the reasonable cost of providing the inspections and related services or would otherwise violate the criteria in section 50076.

As the court stated in the *Connell v. Superior Court* case discussed above:

¹⁶² *Sinclair Paint v. State Board of Equalization*, *supra*, 15 Cal.4th at p. 876: "[T]he term 'special taxes' in article XIII A, section 4, does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes."

The [Water] Districts argue any fees levied by the districts "cannot exceed the cost to the local agency to provide such service," because such excessive fees would constitute a special tax. However, the districts fail to explain how this is an issue. No one is suggesting the districts levy fees that exceed their costs.¹⁶³

Similarly, in this claim no one is suggesting that the local agencies levy regulatory fees that exceed their costs. Therefore, the Commission finds that a local regulatory fee for stormwater would not be a "special tax" under article XIII A, section 4, of the California Constitution for the activities at issue in the permit.

5. The local fee to inspect industrial and construction sites would not be subject to voter approval under article XIII D (Proposition 218) of the California Constitution

Some local government fees are subject to voter approval under article XIII D of the California Constitution, as added by Proposition 218 (1996). Article XIII D defines a property-related fee or charge as any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency on a parcel or a person as an incident of property ownership, including a user fee or charge for a property-related service. Among other things, new or increased property-related fees require a majority-vote of the affected property owners, or two-thirds registered voter approval, or weighted ballot approval by the affected property owners (article XIII D, § 6, subd. (c)). Exempt from voter approval, however, are property-related fees for sewer, water, or refuse collection services (*Ibid*).

In 2002, an appellate court decision in *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351, found that a city's charges on developed parcels to fund stormwater management were property-related fees, and were not covered by Proposition 218's exemption for "sewer" or "water" services. This means that an election would be required to impose storm water fees if they are imposed "as an incident of property ownership."

The Commission finds that local fees for inspections of phase I facilities, restaurants, retail gasoline outlets, automotive dealerships, etc., would not be subject to the vote requirement of Proposition 218. In a case involving inspections of apartments in the City of Los Angeles in which a fee was charged to landlords, the California Supreme Court ruled that the regulatory fee for inspecting apartments was not a "levy ... upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service"¹⁶⁴ within the meaning of Proposition 218. The court interpreted the phrase "incident of property ownership" as follows:

The foregoing language means that a levy may not be imposed on a property owner as such-i.e., in its capacity as property owner-unless it meets constitutional prerequisites. In this case, however, the fee is imposed on landlords not in their capacity as landowners, but in their capacity as business owners. The exaction at issue here is more in the nature of a fee for a business license than a charge

¹⁶³ *Connell v. Superior Court*, *supra*, 59 Cal.App.4th 382, 402.

¹⁶⁴ That is the definition of "fee" or "charge" in article XIII D, section 2, subdivision (e).

against property. It is imposed only on those landowners who choose to engage in the residential rental business, and only while they are operating the business.¹⁶⁵

[¶]...[¶] In other words, taxes, assessments, fees, and charges are subject to the constitutional strictures when they burden landowners *as landowners*. The [City of Los Angeles] ordinance does not do so: it imposes a fee on its subjects by virtue of their ownership of a business-i.e., because they are landlords.¹⁶⁶

Following the reasoning of the *Apartment Assoc.* case, the inspection fees on restaurants, retail gasoline outlets, automotive dealerships, phase I facilities, etc., like the fee in *Apartment Assoc.*, would not be imposed on landowners as landowners, nor as an incident of property ownership, but by virtue of business ownership. Thus, the inspection fee would fall outside the voter requirement of Proposition 218.

As to the fees for inspecting construction sites, the Commission finds that they too would not be subject to Proposition 218's voter requirement. Article XIII D of the California Constitution states that it shall not be construed to "affect existing laws relating to the imposition of fees or charges as a condition of property development."¹⁶⁷

Moreover, the California Supreme Court, in determining whether water connection fees are within the purview of Proposition 218, reasoned that "water service" fees were within the meaning of "property-related services" but "water connection" fees were not.

Rather, we conclude that a water service fee is a fee or charge under article XIII D if, but only if, it is imposed "upon a person as an incident of property ownership." (Art. XIII D, § 2, subd. (e).) A fee for ongoing water service through an existing connection is imposed "as an incident of property ownership" because it requires nothing other than normal ownership and use of property. But a fee for making a new connection to the system is not imposed "as an incident of property ownership" because it results from the owner's voluntary decision to apply for the connection.¹⁶⁸

The Supreme Court's reasoning applies to local stormwater fees for inspecting construction sites. That is, the fee would not be an incident of property ownership because it results from the owner's voluntary decision to build on or develop the property. Therefore, the Commission finds that local inspection fees for stormwater compliance at construction sites would not be within the purview of the election requirement of Proposition 218. A recent report by the Office of the Legislative Analyst concurs with this conclusion.¹⁶⁹

¹⁶⁵ *Apartment Assoc. of Los Angeles County v. City of Los Angeles* (2001) 24 Cal.4th 830, 839-840.

¹⁶⁶ *Id.* at 842 [Emphasis in original.]

¹⁶⁷ Article XIII D, section 1, subdivision (b).

¹⁶⁸ *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 427.

¹⁶⁹ "Local governments finance stormwater clean-up services from revenues raised from a variety of fees and, less frequently, through taxes. Property owner fees for stormwater services typically require approval by two-thirds of the voters, or a majority of property owners.

In its June 2009 comments, the County disagrees that stormwater pollution fees would not be subject to the voter requirement in Proposition 218, or that fee authority exists. In support, the County points to unadopted legislation pending in the current or in past legislative sessions that would provide fee authority or expressly exempt stormwater fees from the Proposition 218 voting requirement. For example SCA 18 (2009) would add "stormwater and urban runoff management" fees to those expressly exempted from the vote requirement in article XIII D, putting them in the same category as trash and sewer fees. SB 2058 (2002) would have required the regional water boards to share their fees with counties and cities. And SB 210 (2009) would provide cities and counties with stormwater regulatory or user-based fee authority.

The Commission finds that the unadopted legislative proposals cited by the County are unconvincing to show a lack of regulatory fee authority for business inspections as discussed above. First, courts have said that "As evidence of legislative intent, unadopted proposals have been held to have little value."¹⁷⁰ Second, if they were enacted, the legislative proposals would grant broader fee authority than is found in this analysis. For example, SCA 18, by adding a stormwater exception from the vote requirement in Proposition 218, would authorize *user* fees on residential property for stormwater and urban runoff programs, whereas this analysis addresses the much narrower issue of *regulatory* fees on businesses for inspections. Likewise, SB 2058 would have required the State Board's permit fees to be shared with "counties and cities" for the broad purpose of carrying out stormwater programs rather than for the narrower purpose of inspecting businesses. And SB 210 would likewise provide fee authority that is broader than regulatory fees; as the May 28, 2009 version expressly states in proposed section 16103, subdivision (c), of the Water Code: "The fees authorized under subdivision (a) may be imposed as user-based or regulatory fees consistent with this chapter." In short, the legislative proposals cited by the County do not indicate that fee authority does not exist. Rather, the proposals would, if enacted, provide broader fee authority than now exists.

In comments received June 3, 2009, the Bay Area Stormwater Management Agencies Association (BASMAA) contends that many permit requirements relate to local communities and their residents rather than specific business activities, and require public services that are essentially incident to real property ownership, and/or may only be financed via fees that remain subject to the voting requirements of Proposition 218 or increased property taxes. BASMAA also states that many permit activities would fall on joint power authorities or special districts that have no fee authority, or for which exemptions from Proposition 218 would not be applicable. BASMAA requests that the analysis be revised to revisit the conclusions regarding "funded vs. unfunded" requirements, and to recognize and distinguish the many types of stormwater activities for which regulatory fees would not apply.

Developer fees and fees imposed on businesses that contribute to urban runoff, in contrast, are not restricted by Proposition 218 and may be approved by a vote of the governing body. Taxes for stormwater services require approval by two-thirds of the electorate." Office of the Legislative Analyst. *California's Water: An LAO Primer* (October 22, 2008) page 56.

¹⁷⁰ *County of Sacramento v. State Water Resources Control Board* (2007) 153 Cal.App.4th 1579, 1590.

The Commission disagrees. BASMAA raises issues that are outside the scope of the portions of the Los Angeles stormwater permit (parts 4C2a, 4C2b, 4E & 4Fc3) that were pled by the test claimants. Because the Commission's jurisdiction is limited by those parts of the permit pled in the test claim, it cannot opine on other issues outside the pleadings, even if it would raise issues closely related to other NPDES permits (or even other parts of this NPDES permit).

In sum, the Commission finds that the inspections and related activities at issue in the Los Angeles stormwater permit are not subject to voter approval in article XIII D of the California Constitution (Proposition 218), so a regulatory fee ordinance for stormwater inspections would not be subject to voter approval.

Given the existence of local regulatory fee authority under the police power (Cal. Const. art. XI, § 7), and lacking any evidence or information to the contrary, the Commission finds that the claimants' authority to adopt a regulatory fee is sufficient (pursuant to Gov. Code, § 17556, subd. (d)) to pay for the inspections of restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I facilities, as defined, and construction sites, and related activities specified in the permit. Therefore, for the inspections and related activities at issue, the Commission finds that there are no "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556.

CONCLUSION

For the reasons discussed above, the Commission finds that the following activity in part 4F5c3 of the permit is a reimbursable state mandate within the meaning of Government Code sections 17514 and 17556: For local agencies subject to the permit that are not subject to a trash TMDL¹⁷¹ to: "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

The Commission also finds that the remainder of the permit (parts 4C2a, 4C2b & 4E) does not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution because the claimants have fee authority (under Cal. Const. article XI, § 7) within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the activities in those parts of the permit.

¹⁷¹ A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

Abbreviations

BMP - Best management practice
CWA - Clean Water Act
GCASP - General Construction Activity Storm Water Permit
GIASP - General Industrial Activity Storm Water Permit
MS4 - Municipal Separate Storm Sewer Systems
NOI - Notice of Intent for coverage under the GCASP
NPDES - national pollutant discharge elimination system
RGO - Retail Gasoline Outlet
ROWD - Report of Waste Discharge
SQMP - Storm Water Quality Management Program
SWPPP - Storm Water Pollution Prevention Plan
TMDL - Total Maximum Daily Load
U.S. EPA - United States Environmental Protection Agency
WDID - Waste Discharger Identification

Tab 4

In addition to the congestion management plan, local agencies are also required to develop a deficiency plan when roadway level of service standards are not maintained. However, when analyzing the cause to the deficiency, local agencies shall not consider "traffic signal coordination by the state or multi-jurisdictional agencies" (Gov. Code, §65089.4, subd. (f)(4)).

Finally, Government Code section 65089.5, subdivision (c), describes how the local agency shall use the gas tax funds apportioned to them. Funds are to be used for projects included in the seven-year capital improvement program or for projects included in the deficiency plan adopted by the agency. The local agency has the *discretion* to prioritize the projects to be funded within the above categories.

In the present case, Caltrans contends that since the standardization of traffic control communication is entirely a part of the CMP process, the nine cent tax is already available to cover whatever increased cost might result from conforming to a standard protocol.

The claimant disagrees with the above assertion. The claimant contends that traffic signal coordination by multi-jurisdictional agencies is specifically excluded from deficiency plans and, therefore, any monies apportioned to local governments for the purpose of funding congestion management plans cannot be used to pay for two-way communication.

The Commission agreed that funds apportioned to local agencies for projects included in their deficiency plans cannot be used to pay for the installation of the standard two-way traffic signal communication software. Government Code section 65089.4, subdivision (f)(4) provides that traffic problems related to signal coordination between jurisdictions are *not* considered deficiencies.

However, local agencies are receiving funds for seven-year capital improvement projects that benefit their congestion management plans. (Govt. Code § 65089.5, subd. (c).) Funding is provided to local agencies for *any* project, at the *discretion* of the local agency, that will increase the capacity of the multimodal system.

Since the congestion management legislation addresses traffic coordination, cooperation between jurisdictions and standardization of traffic control, goals that are also outlined in the test claim legislation, the Commission found that the standardization of two-way traffic signal communication is part of the CMP process and can be included as a seven-year capital improvement project.

multimodal system. It is the intent of the Legislature that, when roadway projects are identified in the program, consideration be given for maintaining bicycle access and safety at a level comparable to that which existed prior to the improvement or alternation. The capital improvement program may also include safety, maintenance, and rehabilitation projects that do not enhance the capacity of the system but are necessary to preserve the investment in existing facilities." (Emphasis added.)

However, there is *no* mandate requiring local agencies to use the gas tax funds specifically for the two-way communications program. Rather, local agencies have the discretion to prioritize the projects to be funded.¹⁷

Therefore, the Commission concluded that the funds received by local agencies from the gas tax *may* be used to fund the cost of obtaining the standard two-way traffic signal communications software. Accordingly, reimbursement is not required to the extent local agencies use their gas tax proceeds to fund the test claim legislation.

Federal Funding

As part of the Federal Highway Administration's efforts to achieve systematic upgrading of traffic control devices on streets and highways, certain federal-aided highway funds are available for the installation of traffic control devices that conform with the Federal Manual (23 CFR, sections 655.605 and 655.607).

Therefore, the Commission found that reimbursement is not required to the extent local agencies receive federal funds and use them for the activities required under the test claim legislation.

CONCLUSION

The Commission concluded that Vehicle Code section 21401, subdivision (b), and the executive order issued by Caltrans on October 15, 1995, impose a reimbursable state mandated program upon local governmental entities within the meaning of article XIII B, section 6, of the California Constitution, by requiring that non-exempt traffic signal controllers which are "newly installed or upgraded" (as defined by Caltrans) due to damage or an approved congestion management plan have two-way traffic signal communication capabilities after January 1, 1996. Reimbursement shall be limited to the following activities:

- ✓ Obtaining the software feature capable of two-way communications by either:
 - (a) Accepting Caltrans' free offer by downloading the program from the internet and testing the program to ensure compatibility;
 - (b) Developing and testing their own software program which provides the *limited* subset of messages identified on page 5 of Caltrans' executive order dated October 15, 1995;
 - (c) Purchasing a new controller which contains software with the standard two-way communications feature; or

¹⁷ In this respect, the Commission disagreed with Caltrans' assertion that the funds received by local agencies from the gas tax increase fully fund and must be used toward the two-way communications program.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

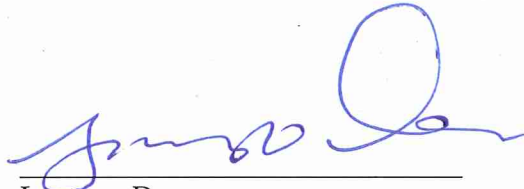
On October 22, 2019, I served the:

- **Controller's Late Comments on the Incorrect Reduction Claim filed October 21, 2019**

Municipal Storm Water and Urban Runoff Discharges, 18-0304-I-01
Los Angeles Regional Quality Control Board Order No. 01-182,
Permit CAS004001, Part 4F5c3
Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007,
2007-2008, 2008-2009, and 2009-2010
City of Bellflower, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 22, 2019 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/3/19

Claim Number: 18-0304-I-01

Matter: Municipal Storm Water and Urban Runoff Discharges

Claimant: City of Bellflower

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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May 14, 2021

Mr. Bernardo Iniguez
City of Bellflower
16600 Civic Center Drive
Bellflower, CA 90706

Ms. Natalie Sidarous
State Controller's Office
Local Government Programs and Services
Division
3301 C Street, Suite 740
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Municipal Storm Water and Urban Runoff Discharges, 18-0304-I-01
Los Angeles Regional Quality Control Board Order No. 01-182,
Permit CAS004001, Part 4F5c3
Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007,
2007-2008, 2008-2009, and 2009-2010
City of Bellflower, Claimant

Dear Mr. Iniguez and Ms. Sidarous:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision not later than **5:00 p.m. on June 4, 2021**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

¹ 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.

Mr. Iniguez and Ms. Sidarous

May 14, 2021

Page 2

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, July 23, 2021**, at 10:00 a.m. via Zoom. The Proposed Decision will be issued on or about July 9, 2021.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list and so that detailed instructions regarding how to participate as a witness in this meeting on Zoom can be provided to them. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director

ITEM ____
INCORRECT REDUCTION CLAIM
DRAFT PROPOSED DECISION

Los Angeles Regional Quality Control Board Order No. 01-182 Permit CAS004001
Part 4F5c3

Municipal Storm Water and Urban Runoff Discharges

Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007,
2007-2008, 2008-2009, 2009-2010

18-0304-I-01

City of Bellflower, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction to reimbursement claims filed by the City of Bellflower (claimant) for fiscal years 2002-2003 to 2009-2010 for the *Municipal Storm Water and Urban Runoff Discharges* program. The mandate requires local governments in Los Angeles County to install and maintain trash receptacles at all transit stops.

The claimant used its share of local return funds from the Los Angeles Metropolitan Transit Authority's (Metro's) Proposition C transaction and use (i.e., sales) tax revenue to pay for the mandate to install and maintain trash receptacles at all transit stops. This IRC and Decision address the issue of whether the revenues received by the claimant from Metro under the Proposition C local return program, which were used to fund the costs of the mandated program, are required to be identified as offsetting revenues.

The Controller found that the claimant should have but failed to identify and deduct as offsetting revenue the Proposition C local return funds it used to pay for the state-mandated ongoing maintenance of transit stops.¹ Thus, of the \$533,742 claimed, the Controller found that \$530,321 was not allowable.²

Staff finds that the Controller's reduction is correct as a matter of law and recommends that the Commission deny this IRC.

¹ Exhibit A, IRC, filed August 17, 2018, page 82 (Audit Report).

² Exhibit A, IRC, filed August 17, 2018, page 80-81 (Audit Report).

Procedural History

The claimant signed the reimbursement claims for fiscal years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, and 2009-2010, on September 28, 2011.³ The Controller notified the claimant of the desk review on September 21, 2016,⁴ and issued the desk review report on October 25, 2016.⁵ The claimant filed this IRC on August 17, 2018.⁶

The Controller filed late comments on the IRC on October 21, 2019.⁷ The claimant did not file rebuttal comments. Commission staff issued the Draft Proposed Decision on May 14, 2021.

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.⁸ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitution 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."⁹

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

³ Exhibit A, IRC, filed August 17, 2018, pages 26-47 (Annual Reimbursement Claims).

⁴ Exhibit A, IRC, filed August 17, 2018, page 76 (Audit Report Cover Letter).

⁵ Exhibit A, IRC, filed August 17, 2018, pages 76-82 (Audit Report Cover Letter and Report).

⁶ Exhibit A, IRC, filed August 17, 2018, page 1.

⁷ Exhibit B, Controller's Late Comments on the IRC, filed October 21, 2019, page 1.

⁸ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁹ *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.

the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.¹⁰

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.¹¹ In addition, section 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.¹²

Claims

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

Issue	Description	Staff Recommendation
Was the IRC timely filed?	Section 1185.1 of the Commission's regulations requires IRCs to be filed no later than three years after the claimant first receives from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim that complies with Government Code section 17558.5(c).	<i>Timely filed</i> – The Audit Report of October 25, 2016, complies with the notice requirements in Government Code section 17558.5(c). The IRC was filed on August 17, 2018, less than three years from the date of the Audit Report, and is therefore timely filed.
Was the Controller's reduction of costs claimed, based on the determination that Proposition C local return funds used by the claimant to pay for the mandate are offsetting revenues that should have	The claimant used Local Return funds from the Proposition C sales tax rather than revenue from its general fund to maintain trash receptacles in accordance with the mandate. ¹³ The claimant did not identify and	<i>Correct as a matter of law</i> – The Proposition C local return funds used by the claimant to pay for the mandated activities are offsetting revenues that should have been identified and deducted from their

¹⁰ *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.

¹¹ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹² 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.

¹³ Exhibit A, IRC, filed August 17, 2018, page 3, 7 (Declaration of Bernardo Iniguez, Public Works Director for the City of Bellflower).

Issue	Description	Staff Recommendation
<p>been identified and deducted from the reimbursement claim, correct as a matter of law?</p>	<p>deduct the Proposition C Local Return funds as offsetting revenues in its reimbursement claims.¹⁴</p> <p>Section VIII of the Parameters and Guidelines states: “reimbursement for this mandate received from any federal, state or <i>nonlocal</i> source shall be identified and deducted from this claim.”¹⁵</p> <p>The claimant argues that the Controller improperly classified the Proposition C funds as “offsetting” revenues because the revenue from Proposition C is not in the same program as the <i>Municipal Storm Water and Urban Runoff Discharges</i> mandate.</p>	<p>reimbursement claims. Article XIII B, section 6 requires reimbursement only when the state-mandated program forces local governments to incur increased actual expenditures of their limited “proceeds of taxes,” which are counted against the local governments’ spending limit.¹⁶ Proposition C local return program funds are not the claimants’ “proceeds of taxes” because these taxes are not imposed pursuant to the claimant’s authority to levy taxes, nor are the revenues distributed to the claimant subject to the claimant’s appropriations limit.¹⁷ Thus, the reference in the Parameters and Guidelines to “nonlocal” funds to pay for a state-mandated program means that the funds for the program are not the claimant’s own proceeds of taxes, nor are they subject to the claimant’s appropriations limit imposed by article XIII B. Nonlocal funds, when used to pay for a state-mandated program, are</p>

¹⁴ Exhibit A, IRC, filed August 17, 2018, pages 81-82 (Audit Report).

¹⁵ Exhibit A, IRC, filed August 17, 2018, page 94 (Parameters and Guidelines). Emphasis added.

¹⁶ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

¹⁷ California Constitution, article XIII B, sections 8(b) and 8(c); *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451.

Issue	Description	Staff Recommendation
		<p>required to be identified and deducted from reimbursement claims as offsetting revenue.</p> <p>Since these Proposition C sales tax revenues (i.e., local return funds) do not constitute the claimant's proceeds of taxes, nor are they subject to the claimant's appropriation limit, they are "nonlocal" sources of revenue.</p>

Staff Analysis

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

Section 1185.1 of the Commission's regulations requires IRCs to be filed no later than three years after the claimant first receives from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim that complies with Government Code section 17558.5(c). The Audit Report, dated October 25, 2016, specifies the claim components and amounts adjusted, and the reasons for the adjustments,¹⁸ and thereby complies with the notice requirements in section 17558.5(c). Because the claimant filed the IRC on August 17, 2018,¹⁹ within three years of date of the Audit Report, staff finds that the IRC was timely filed.

B. The Controller's Reduction, Based on the Determination that Proposition C Local Return Funds Are Offsetting Revenue that Should Have Been Identified and Deducted from the Reimbursement Claims, Is Correct as a Matter of Law.

The Controller reduced the claimant's reimbursement claim because the claimant used revenues from the Metro's Proposition C local return program to perform the mandated activities of maintaining transit-stop trash receptacles.²⁰ The claimant agrees that it used Proposition C local return funds rather than its general fund to maintain its trash receptacles in accordance with the mandate.²¹ The claimant did not identify and deduct the Proposition C local return funds as

¹⁸ Exhibit A, IRC, filed August 17, 2018, pages 76-82 (Audit Report Cover Letter and Report).

¹⁹ Exhibit A, IRC, filed August 17, 2018, page 1.

²⁰ Exhibit A IRC, filed August 17, 2018, page 81-82 (Audit Report).

²¹ Exhibit A, IRC, filed August 17, 2018, page 3, 7 (Declaration of Bernardo Iniguez, Public Works Director for the City of Bellflower).

offsetting revenues in its reimbursement claims.²² However, the claimant alleges that the Controller improperly designated the Proposition C local return funds as offsetting revenue because the revenue is not in “the same program” as the mandated program, as the claimant argues is required under the Parameters and Guidelines, because Proposition C does not require the city to maintain the trash receptacles.²³

Staff finds that Proposition C local return tax revenues are not the claimant’s “proceeds of taxes” within the meaning of article XIII B of the California Constitution because the taxes are not levied by the claimant nor are they subject to the claimant’s appropriations limit. Therefore, staff finds that the Proposition C local return revenue used by the claimant is offsetting revenue that should have been identified and deducted from the reimbursement claims and thus, the Controller’s reduction is correct as a matter of law.

Section VIII of the Parameters and Guidelines requires that “reimbursement for this mandate received from any federal, state or *nonlocal source* shall be identified and deducted from this claim” as offsetting revenue. To understand the meaning of *nonlocal* revenue, the Parameters and Guidelines must be read consistently with the constitutional and legal principles underlying the reimbursement of state-mandated costs.²⁴

The purpose of article XIII B, section 6 is to preclude “the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities *because of the taxing and spending limitations that articles XIII A and XIII B impose.*”²⁵ Thus, the courts have held that article XIII B, section 6 requires reimbursement only when the state-mandated program forces local government to incur increased actual expenditures of their limited “proceeds of taxes,” which are counted against the local government’s spending limit.²⁶ “Appropriations subject to limitation” for local government means “any authorization to expend during a fiscal year the ‘proceeds of taxes levied by or for that entity’ and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes.”²⁷ Except for state subventions, “proceeds of taxes” consist of charges levied to raise general revenues for the local entity.²⁸ Expenditures

²² Exhibit A, IRC, filed August 17, 2018, pages 81-82 (Audit Report).

²³ Exhibit A, IRC, filed August 17, 2018, page 4.

²⁴ See *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 974, 811 and 812, where the court states that the parameters and guidelines must be read in context, and with the fundamental legal principles underlying state-mandated costs.

²⁵ *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81. Emphasis added. See also, *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

²⁶ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

²⁷ California Constitution, article XIII B, section 8(b) (emphasis added).

²⁸ California Constitution, article XIII B, section 8(c); *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451.

that are not from a local agency's own proceeds of taxes are not subject to the local agency's appropriation limit, and a local agency that spends non-tax proceeds is not eligible for reimbursement under article XIII B, section 6.²⁹ Thus, the reference in the Parameters and Guidelines to "nonlocal" funds for a state-mandated program means that the funds to pay for the program are not the claimant's proceeds of taxes, nor are they subject to the claimant's appropriations limit imposed by article XIII B. When nonlocal funds are used to pay for a state-mandated program, they are required to be identified and deducted from a reimbursement claim as offsetting revenue.

Revenues from Proposition C are not the claimants' "local taxes" because they are neither levied by or for the claimant and they are not subject to the claimant's appropriations limits.³⁰ As such, any costs incurred by the claimant in performing the mandated activities that are funded by Proposition C, which is funded with non-local taxes, are excluded from mandate reimbursement under article XIII B, section 6.

The power of a local government to tax is derived from the Constitution, upon the Legislature's authorization.³¹ "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."³² In other words, a local government's taxing authority is derived from statute. Metro, as the successor to the Los Angeles County Transportation Commission, is authorized by statute to levy the Proposition C transactions and use taxes throughout Los Angeles County.³³ Under the Proposition C ordinance, twenty percent of Proposition C taxes are allocated to the local return programs funds for the cities and the County to use for public transit purposes.³⁴ Permissible uses include bus stop improvements and maintenance projects, which include the "installation, replacement, and/or maintenance of trash receptacles."³⁵

In addition, Government Code section 7904 states: "In no event shall the appropriation of the same proceeds of taxes be subject to the appropriations limit of more than one local jurisdiction or the state." Because the Proposition C ordinance establishes an appropriations limit for the

²⁹ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

³⁰ *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d. 24, 32-33.

³¹ California Constitution, article XIII, section 24(a).

³² *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450 ["Taxes are levied by the Legislature, or by counties and municipalities under their delegated power, for the support of the state, county, or municipal government"].

³³ Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

³⁴ Exhibit X, Los Angeles Metropolitan Transportation Authority, "An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes," November 1990, page 6.

³⁵ Exhibit X, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 13.

Metro,³⁶ section 7904 prohibits the claimant from establishing an appropriations limit on the same Local Return funds.

Accordingly, the claimant's Proposition C local return revenues do not constitute the claimant's proceeds of taxes, are not subject to the claimant's appropriation limit, and are, therefore, "nonlocal" sources of revenue. Accordingly, those funds should have been identified and deducted as offsetting revenues. Therefore, the Controller's reduction is correct as a matter of law.

Conclusion

Staff concludes that the Controller's reduction is correct as a matter of law.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to deny the IRC. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

³⁶ Exhibit X, Los Angeles Metropolitan Transportation Authority, "An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes," November 1990, page 6.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM	Case No.: 18-0304-I-01
Los Angeles Regional Quality Control Board Order No. 01-182 Permit CAS004001, Part 4F5c3	<i>Municipal Storm Water and Urban Runoff Discharges</i>
Fiscal Years 2002-2003, 2003-2004, 2004- 2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010	DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.
Filed on August 17, 2018	(Adopted July 23, 2021)
City of Bellflower, Claimant	

DECISION

The Commission in State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 23, 2021. [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 sections 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 will be included in the adopted Decision], as follows:

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

Summary of the Findings

This IRC challenges the State Controller's Office (Controller's) reduction to reimbursement claims filed by the City of Bellflower (claimant) for the *Municipal Storm Water and Urban Runoff Discharges* program for fiscal years 2002-2003 to 2009-2010 (the audit period).

The Controller found that the claimant failed to identify and deduct as offsetting revenues the Proposition C local return funds received from the Los Angeles County Metropolitan Transportation Authority (Metro) under the Proposition C local return program that the claimant

used to pay for the maintenance of trash receptacles at transit stops as required by the mandated program. During the audit period, the claimant filed reimbursement claims totaling \$533,742 to perform the mandated activities of maintaining trash receptacles at each of its transit stops.³⁷ The claimant used \$530,321 in Proposition C local return funds to pay for the ongoing mandated trash receptacle maintenance, so the Controller reduced the claims by \$530,321.³⁸

The Commission finds that the IRC was timely filed within three years of the date the Controller notified the claimant of the reduction.

The Commission also finds that Proposition C local return revenue used by the claimant is offsetting revenue that should have been identified and deducted from the reimbursement claims and thus, the Controller's reduction is correct as a matter of law. Section VIII of the Parameters and Guidelines requires that "reimbursement for this mandate received from any federal, state or *nonlocal source* shall be identified and deducted from this claim" as offsetting revenue.

To understand the meaning of *nonlocal* revenue, the Parameters and Guidelines must be read consistently with the constitutional legal principles underlying the reimbursement of state-mandated costs.³⁹ The purpose of article XIII B, section 6 is to preclude "the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities *because of the taxing and spending limitations that articles XIII A and XIII B impose.*"⁴⁰ Thus, the courts have held that article XIII B, section 6 requires reimbursement only when the state-mandated program forces local governments to incur increased actual expenditures of their limited "proceeds of taxes," which are counted against the local governments' spending limit.⁴¹ "Appropriations subject to limitation" for local government means "any authorization to expend during a fiscal year the 'proceeds of taxes levied by or for that entity'"⁴² Except for state subventions, the items that make up "proceeds of taxes" are charges levied to raise general revenues for the local entity.⁴³ The expenditure of funds that are not from the entity's proceeds of taxes are not subject to the appropriation limit, nor are entities that spend nontax proceeds eligible for reimbursement

³⁷ Exhibit A, IRC, filed August 17, 2018, pages 78-80 (Audit Report).

³⁸ Exhibit A, IRC, filed August 17, 2018, pages 81-82 (Audit Report).

³⁹ See *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 974, 811 and 812, where the court states that the parameters and guidelines must be read in context, and with the fundamental legal principles underlying state-mandated costs.

⁴⁰ *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81. Emphasis added. See also, *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

⁴¹ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

⁴² California Constitution, article XIII B, section 8(b) (emphasis added).

⁴³ Article XIII B, section 8(c), of the California Constitution; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451.

under article XIII B, section 6.⁴⁴ The reference in the Parameters and Guidelines to “nonlocal” funds for a state-mandated program means that the funds used for the program are not the claimant’s proceeds of taxes, nor are subject to the claimant’s appropriations limit imposed by article XIII B, and entities that spend the nonlocal funds are not eligible for reimbursement under article XIII B, section 6. When used to pay for a state-mandated program, nonlocal funds are required to be identified and deducted from a reimbursement claim as offsetting revenue.

Proposition C is a transactions and use (or sales) tax levied by Metro and subject to Metro’s spending limitation. These taxes are not levied by or for the claimant and are not subject to the claimant’s appropriation limit.⁴⁵ Rather, a portion of Metro’s Proposition C tax revenues are distributed to the claimant as “local return” funds for use on eligible transportation projects. The only entity with power and authority to levy the Proposition C sales tax is Metro.⁴⁶ In addition, Government Code section 7904 states: “In no event shall the appropriation of the same proceeds of taxes be subject to the appropriations limit of more than one local jurisdiction or the state.” Because the Proposition C ordinance establishes an appropriations limit for Metro,⁴⁷ section 7904 prohibits the claimant from establishing an appropriations limit on the same Local Return funds. Accordingly, the claimant’s local return revenues do not constitute the claimant’s proceeds of taxes, nor are they subject to the claimant’s appropriation limit, and are, therefore, “nonlocal” sources of revenue. Thus, expenditures from these “nonlocal” Proposition C local return funds should have been identified and deducted as offsetting revenues and the Controller’s reduction is correct as a matter of law.

Accordingly, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

- | | |
|------------|--|
| 09/28/2011 | The claimant signed its fiscal year 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010 reimbursement claims. ⁴⁸ |
| 09/21/2016 | The Controller notified the claimant of the desk review. ⁴⁹ |

⁴⁴ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

⁴⁵ *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d. 24, 32-33.

⁴⁶ Public Utilities Code section 130231.

⁴⁷ Exhibit X, Los Angeles Metropolitan Transportation Authority, “An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes,” November 1990, page 6.

⁴⁸ Exhibit A, IRC, filed August 17, 2018, pages 26-47 (Annual Reimbursement Claims).

⁴⁹ Exhibit A, IRC, filed August 17, 2018, page 76 (Audit Report cover letter).

10/25/2016	The Controller issued the desk review report. ⁵⁰
08/17/2018	The claimant filed the IRC. ⁵¹
10/21/2019	The Controller filed late comments on the IRC. ⁵²
05/14/2021	Commission staff issued the Draft Proposed Decision.

II. Background

A. The Municipal Storm Water and Urban Runoff Discharges Program

Under the *Municipal Storm Water and Urban Runoff Discharges* mandate, claimants (local agencies in Los Angeles County subject to Order No. 01-182, Permit CAS004001, and not subject to a trash total maximum daily load (TMDL)) may be reimbursed for installing trash receptacles at transit stops and maintaining the receptacles and pads, including trash disposal no more than three times per week, beginning July 1, 2002. According to the Parameters and Guidelines:

For each eligible local agency, the following activities are reimbursable:

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

⁵⁰ Exhibit A, IRC, filed August 17, 2018, pages 76-82 (Audit Report cover letter and Report).

⁵¹ Exhibit A, IRC, filed August 17, 2018, page 1.

⁵² Exhibit B, Controller's Late Comments on the IRC, filed October 21, 2019, page 1.

3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. *Graffiti removal is not reimbursable.*
4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.⁵³

The Parameters and Guidelines for this program also require offsetting revenues to be identified and deducted from reimbursement claims:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or nonlocal source shall be identified and deducted from this claim.⁵⁴

The Test Claim permit expired on December 27, 2012 with the adoption of a new storm water permit.⁵⁵

B. Proposition C Local Return Funds

In 1977, the Legislature created the Los Angeles County Transportation Commission (Transportation Commission) as a countywide transportation improvement agency⁵⁶ and authorized the Transportation Commission to levy a transactions and use (or sales) tax throughout Los Angeles County.⁵⁷ One such tax levied by the Transportation Commission is the Proposition C sales tax, the purpose of which is to “improve transit service and operations, reduce traffic congestion, improve air quality, efficiently operate and improve the condition of

⁵³ Exhibit A, IRC, filed August 17, 2018, page 91 (Parameters and Guidelines). Emphasis in original. The reasonable reimbursement methodology (RRM) reimburses a unit cost of \$6.74, during the period of July 1, 2002 to June 30, 2009, for each trash collection or “pickup,” multiplied by the annual number of trash collections, subject to the limitation of no more than three pickups per week. Beginning in fiscal year 2009-2010, the RRM shall be adjusted annually by the implicit price deflator as forecast by the Department of Finance.

⁵⁴ Exhibit A, IRC, filed August 17, 2018, page 94 (Parameters and Guidelines).

⁵⁵ The new permit took effect December 28, 2012. See Exhibit X., Los Angeles Regional Water Quality Control Board, Transmittal of Final Order No. R4-2012-0175, December 5, 2012, https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/la_ms4/Dec5/Transmittal%20memo.pdf (accessed on August 26, 2019).

⁵⁶ Public Utilities Code section 130050.

⁵⁷ Public Utilities Code sections 130231(a), 130350.

the streets and freeways utilized by public transit, and reduce foreign fuel dependence.”⁵⁸ The enumerated purposes of the tax include:

- (1) Meeting operating expenses; purchasing or leasing supplies, equipment or materials; meeting financial reserve requirements; obtaining funds for capital projects necessary to maintain service within existing service areas;
- (2) Increasing funds for existing public transit service programs;
- (3) Instituting or increasing passenger or commuter services on rail or highway rights of way;
- (4) Continued development of a regional transportation improvement program.⁵⁹

Under the Proposition C Ordinance, tax revenues are allocated as follows:

- (1) Forty percent to improve and expand rail and bus transit, including fare subsidies, graffiti prevention and removal, and increased energy-efficiency;
- (2) Five percent to improve and expand rail and bus security;
- (3) Ten percent to increase mobility and reduce congestion;
- (4) Twenty percent to the Local Return Program; and
- (5) Twenty-five percent to provide transit-related improvements to freeways and state highways.⁶⁰

In 1993, the Transportation Commission merged with the Southern California Rapid Transit District to form the Los Angeles County Metropolitan Transportation Authority (Metro).⁶¹ Since becoming the successor agency to the Transportation Commission, Metro has continued to levy the Transportation Commission taxes, including Proposition C taxes.⁶²

⁵⁸ Exhibit X, Los Angeles Metropolitan Transportation Authority, “An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes,” November 1990, page 3.

⁵⁹ Exhibit X, Los Angeles Metropolitan Transportation Authority, “An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes,” November 1990, page 3.

⁶⁰ Exhibit X, Los Angeles Metropolitan Transportation Authority, “An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes,” November 1990, pages 3-4.

⁶¹ Public Utilities Code sections 130050.2, 130051.13. Section 130050.2 states as follows: “There is hereby created the Los Angeles County Metropolitan Transportation Authority. The authority shall be the single successor agency to the Southern California Rapid Transit District and the Los Angeles County Transportation Commission as provided by the act that enacted this section.”

⁶² Exhibit X, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 7.

Local jurisdictions receive transportation funding from Metro through the Proposition C local return program. Twenty percent of Proposition C funds are allocated to the local return program for cities and the County for use “in developing and/or improving public transit, paratransit, and the related transportation infrastructure.”⁶³ Metro allocates and distributes local return funds to cities and the County of Los Angeles (for unincorporated areas) each month, on a “per capita” basis.⁶⁴

The Proposition C Ordinance requires that Proposition C local return funds be used to benefit “public transit, paratransit, and related services including to improve and expand supplemental paratransit services to meet the requirements of the Federal Americans With Disabilities Act.”⁶⁵ Eligible projects include “Congestion Management Programs, bikeways and bike lanes, street improvements supporting public transit service, and Pavement Management System projects.”⁶⁶

Amongst the eligible uses of Proposition C local return funds are bus stop improvements and maintenance projects.⁶⁷ The Local Return Guidelines provide as follows:

Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:

- Concrete landings – in street for buses and at sidewalk for passengers
- Bus turn-outs
- Benches
- Shelters
- *Trash receptacles*
- Curb cut
- Concrete or electrical work directly associated with the above items.⁶⁸

Proposition C funds cannot be traded.⁶⁹ However, jurisdictions are permitted to use local return funds to advance eligible projects that will be reimbursed by “federal, state, or local grant

⁶³ Exhibit X, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 7.

⁶⁴ Exhibit X, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 13.

⁶⁵ Exhibit X, Exhibit X, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 4.

⁶⁶ Exhibit X, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 7.

⁶⁷ Exhibit X, Exhibit X, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 13.

⁶⁸ Exhibit X, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 13. Emphasis added.

⁶⁹ Exhibit X, Exhibit X, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 7.

funding, or private funds.”⁷⁰ Subsequent reimbursement funds must then be returned to the Proposition C local return fund.⁷¹

C. The Controller’s Audit and Summary of the Issues

The Controller performed an audit of reimbursement claims filed by the claimant for fiscal years 2002-2003 through 2009-2010 and found that of the total of \$533,742 claimed, \$530,321 was unallowable because the claimant used \$530,321 of Proposition C revenues, which should have been identified and deducted as offsetting revenues, to pay for the ongoing trash receptacle maintenance.⁷²

The Controller’s audit in this case was limited to verifying the funding sources used to pay for the mandated activities.⁷³ The Controller found that the claimant “should have offset \$530,321 in Proposition C funding used to pay for the ongoing maintenance of transit stop trash receptacles during the review period.”⁷⁴ The Controller noted that under Proposition C’s Local Return Guidelines, bus stop improvements and maintenance are authorized expenditures, and concluded:

We confirmed that there were no general fund transfers into the Proposition C Fund during the review period. Therefore, as the city used Proposition C funds authorized to be used on the mandated activities, it did not have to rely on the use of discretionary general funds to pay for the mandated activities.⁷⁵

III. Positions of the Parties

A. City of Bellflower

The claimant admits that it used Proposition C funds to pay for the costs to comply with the mandate, which is permissible under the Proposition C Local Return guidelines.⁷⁶ But the claimant alleges that the Controller improperly classified the Proposition C funds as offsetting revenue because Proposition C tax revenue does not conform to the description of offsetting revenue in the Parameters and Guidelines, which state “offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed.”⁷⁷ In asserting that the

⁷⁰ Exhibit X, Exhibit X, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 36.

⁷¹ Exhibit X, Exhibit X, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 36.

⁷² Exhibit A, IRC, filed August 17, 2018, pages 78-82 (Audit Report).

⁷³ Exhibit A, IRC, filed August 17, 2018, page 76 (Audit Report cover letter).

⁷⁴ Exhibit A, IRC, filed August 17, 2018, page 81 (Audit Report).

⁷⁵ Exhibit A, IRC, filed August 17, 2018, page 82 (Audit Report).

⁷⁶ Exhibit A, IRC, filed August 17, 2018, pages 3, 7 (Declaration of Bernardo Iniguez, Public Works Director for the City of Bellflower).

⁷⁷ Exhibit A, IRC, filed August 17, 2018, page 94 (Parameters and Guidelines).

Proposition C revenue and the Stormwater mandate are not “in the same program,” the claimant argues:

The mandate at issue, which is intended to minimize discharge of waste from municipal storm sewer systems, derives from the Water Code, as implemented by the RWQCB [Regional Water Quality Control Board] through the Order. (Wat. Code § 13000 et seq.; see also Dept. of Finance, 1 Cal. 5th 749.)

By contrast, Proposition C never mandated that the City maintain the trash receptacles; it provided the City with discretionary authority to direct the LR [Local Return] funds towards certain enumerated transit-related projects. Moreover, because the Proposition C funds were expended to comply with the mandate in the Order, the City was unable to apply the LR funds towards other projects, as it would have done if it were not subject to the requirement to install and maintain trash receptacles.⁷⁸

B. State Controller’s Office

The Controller maintains that its audit findings are correct and that the claimant’s costs were overstated because it did not reporting any offsetting revenues. The Controller “concluded that the City [claimant] should have reported \$530,321 in offsets received from Proposition C Local Return Funds used to pay for the ongoing maintenance of transit stop trash receptacles.”⁷⁹ According to the Controller:

The ongoing maintenance costs are recorded in Fund 135 – Proposition C, which is a special revenue fund type. Special revenue funds are used to account for the proceeds of specific revenue sources that are legally restricted to expenditures for specified purposes. During the review, the SCO [Controller] confirmed that there were no General Fund transfers into the Proposition C Local Return Fund during the review period. As the City used only Proposition C funds authorized to be used on the mandated activities, it did not need to rely on the use of discretionary general funds to pay for the mandated activities.⁸⁰

The Controller disagrees with the claimant that its funds were improperly classified as offsetting revenue.⁸¹ In responding to the claimant, the Controller quotes the offsetting revenue section in the Parameters and Guidelines that states “reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.” The Controller “believes that Proposition C is a non-local source, as it is not revenue that the City generated through its own means, such as with unrestricted sales tax. Rather, Proposition C is a

⁷⁸ Exhibit A, IRC, filed August 17, 2018, page 4.

⁷⁹ Exhibit B, Controller’s Late Comments on the IRC, filed October 21, 2019, page 10.

⁸⁰ Exhibit B, Controller’s Late Comments on the IRC, filed October 21, 2019, page 11.

⁸¹ Exhibit B, Controller’s Late Comments on the IRC, filed October 21, 2019, pages 12-14.

special supplementary sales tax that was approved by Los Angeles County voters in 1980 and is restricted in its use.”⁸²

The Controller also points out that the claimant’s IRC itself states that Proposition C provided “discretionary authority” to direct the local return funds to enumerated transit-related projects, and that the claimant used the funds appropriately and at its own discretion as it saw fit.⁸³

According to the Controller:

The general premise of mandated costs is that claimants are entitled to reimbursement to the extent that they incur increased costs as the direct result of a mandated program. However, the city did not incur increased costs to the extent that it relied on revenues raised outside of its appropriations limit, which were dedicated to public transit purposes to fund such costs.⁸⁴

The Controller quotes the Commission’s Decision in *Two-Way Traffic Control Signal Communication*, CSM-4504 that gas tax funds received by local agencies may be used to fund the cost of obtaining the traffic signal software, but reimbursement is not required to the extent local agencies use their gas tax proceeds to “fund the test claim legislation.”⁸⁵ The Controller asserts that the same principle applies to the *Municipal Stormwater and Urban Runoff Discharges* program. The claimant used its discretion to apply Proposition C funds to the mandated activities, and reimbursement is not required to the extent Proposition C funds are used to pay for the mandated activities.⁸⁶

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

⁸² Exhibit B, Controller’s Late Comments on the IRC, filed October 21, 2019, page 13.

⁸³ Exhibit B, Controller’s Late Comments on the IRC, filed October 21, 2019, pages 13.

⁸⁴ Exhibit B, Controller’s Late Comments on the IRC, filed October 21, 2019, page 13.

⁸⁵ Exhibit B, Controller’s Late Comments on the IRC, filed October 21, 2019, page 14.

⁸⁶ Exhibit B, Controller’s Late Comments on the IRC, filed October 21, 2019, page 14.

the California Constitution.⁸⁷ 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.”⁸⁸

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.⁸⁹ Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support...” [Citations.] When making that inquiry, the “ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ [Citation.]”⁹⁰

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.⁹¹ 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.⁹²

⁸⁷ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁸⁸ *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.

⁸⁹ *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

⁹⁰ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

⁹¹ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁹² Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

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

Government Code section 17561 authorizes the Controller to audit the reimbursement claims and records of local government to verify the actual amount of the mandated costs, and to reduce any claim that the Controller determines is excessive or unreasonable. If the Controller reduces a claim on a state-mandated program, the Controller is required by Government Code section 17558(c) to notify the claimant in writing, specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment.⁹³ The claimant may then file an IRC with the Commission “pursuant to regulations adopted by the Commission” contending that the Controller’s reduction was incorrect and to request that the Controller reinstate the amounts reduced to the claimant.⁹⁴

In this case, the Audit Report, dated October 25, 2016, specifies the claim components and amounts adjusted, and the reasons for the adjustments and thus, complies with the notice requirements in Government Code section 17558.5(c).⁹⁵

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

All incorrect reduction claims shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reasons for the adjustment.⁹⁶

Because the claimant filed the IRC on August 17, 2018,⁹⁷ within three years of the October 25, 2016 Audit Report, the IRC was timely filed.

⁹³ Government Code section 17558.5(c).

⁹⁴ Government Code sections 17551(d), 17558.7; California Code of Regulations, title 2, sections 1185.1, 1185.9.

⁹⁵ Exhibit A, IRC, filed August 17, 2018, pages 76-82 (Audit Report cover letter and Audit Report).

⁹⁶ California Code of Regulations, title 2, sections 1185.1(c), 1185.2(a), as amended operative October 1, 2016.

⁹⁷ Exhibit A, IRC, filed August 17, 2018, page 1.

B. The Controller's Reduction, Based on the Determination that Proposition C Local Return Funds Are Offsetting Revenue that Should Have Been Identified and Deducted from the Reimbursement Claims, Is Correct as a Matter Of Law.

The Controller determined that the claimant received tax revenues from Metro's Proposition C local return program and used those funds to perform the mandated activities of installing and maintaining transit-stop trash receptacles. This finding is supported by the claimant.⁹⁸ However, the claimant did not identify and deduct the Proposition C local return funds as offsetting revenues in its reimbursement claims.⁹⁹ The claimant alleges that the Controller improperly designated the Proposition C local return funds as offsetting revenue because the revenue did not come from the mandated program, as the claimant argues is required by the Parameters and Guidelines. The claimant asserts that Proposition C is not in "the same program" as the mandated program because Proposition C does not require the claimant to maintain the trash receptacles. Rather, Proposition C provides the claimant with discretionary authority to apply Local Return funds to specified transit-related purposes.¹⁰⁰

The Commission finds that the Controller's reduction of costs claimed, based on the designation of Proposition C funds as offsetting revenues, is correct as a matter of law.

1. Proposition C local return funds constitute reimbursement from a nonlocal source, within the meaning of the Parameters and Guidelines, which are required to be identified and deducted from reimbursement claims as offsetting revenue.

Section VIII of the Parameters and Guidelines states:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or *nonlocal* source shall be identified and deducted from this claim.¹⁰¹

Thus, the Parameters and Guidelines identify two types of offsetting revenues that are required to be identified and deducted from a reimbursement claim: revenues received from the mandated program, and "reimbursement . . . received from any federal, state or *nonlocal* source" used to pay for the mandated costs. As described below, the second type of offsetting revenues (specifically, revenues received from nonlocal sources) is at issue here. To understand the

⁹⁸ Exhibit A, IRC, filed August 17, 2018, page 3, 7 (Declaration of Bernardo Iniguez, Public Works Director for the City of Bellflower).

⁹⁹ Exhibit A, IRC, filed August 17, 2018, pages 81-82 (Audit Report).

¹⁰⁰ Exhibit A, IRC, filed August 17, 2018, page 4.

¹⁰¹ Exhibit A, IRC, filed August 17, 2018, page 94 (Parameters and Guidelines). Emphasis added.

meaning of this phrase, the Parameters and Guidelines must be read consistently with the constitutional legal principles underlying the reimbursement of state-mandated costs.¹⁰²

The courts have made it clear that the reimbursement requirement in article XIII B, section 6 of the California Constitution must be interpreted in the context of articles XIII A and XIII B, which “work in tandem, together restricting California governments’ power both to levy and to spend taxes for public purposes.”¹⁰³ In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution to impose a limit on the state and local power to adopt and levy taxes.¹⁰⁴

Article XIII B was adopted by the voters in 1979 as Proposition 4, and was billed as “the next logical step to Proposition 13.”¹⁰⁵ Article XIII B imposes a limit on the amount of tax revenues or “proceeds of taxes” a government entity may spend each year. Thus, article XIII B established an “appropriations limit” on the “proceeds of taxes” for each “entity of local government” beginning in fiscal year 1980-1981.¹⁰⁶ Section 1 of article XIII B defines the appropriations limit as:

The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article.¹⁰⁷

Local governments may not make “appropriations subject to limitation” in excess of their appropriation limits, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.¹⁰⁸

“Appropriations subject to limitation” for local government means “any authorization to expend during a fiscal year the ‘proceeds of taxes levied by or for that entity’ and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes.”¹⁰⁹ “To levy taxes by or for an entity,” as used in article XIII B, section 8(b),

¹⁰² See *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 974, 811 and 812, where the court states that the parameters and guidelines must be read in context, and with the fundamental legal principles underlying state-mandated costs.

¹⁰³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 [quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81].

¹⁰⁴ California Constitution, article XIII A, section 1 (adopted June 6, 1978).

¹⁰⁵ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

¹⁰⁶ California Constitution, article XIII B, section 8(d), (h) (adopted Nov. 6, 1979; amended by Proposition 111, June 5, 1990).

¹⁰⁷ See also Government Code section 7901(a) and (b).

¹⁰⁸ California Constitution, article XIII B, section 2 (adopted Nov. 6, 1979; amended by Proposition 111, June 5, 1990).

¹⁰⁹ California Constitution, article XIII B, section 8(b). Emphasis added.

means that the entity for whom the taxes are levied has the authority to levy the tax itself. As the court in *Bell Community Redevelopment Agency v. Woosley* explained:

The phrase “to levy taxes by or for an entity” has a special meaning of long-standing. The concept of one entity levying taxes for another dates back to at least 1895 (stats. 1895, p. 219) and the adoption of an act providing for the levy of taxes “by or for” municipal corporations. This act allowed general law and charter cities to continue to exercise their taxing power directly or, if they so desired, to have the county levy and collect their taxes for them. [Citations omitted.] The legal effect of this arrangement, as explained by case law, was that the taxing power exercised was that of the city, and it remained in the city. The county officers in levying taxes for the city became ex-officio officers of the city and exercised the city's taxing power. [Citations omitted.] In levying taxes for the city the county was levying “municipal taxes” through the ordinary county machinery. [Citation omitted.]

Thus, the necessary characteristics of one entity levying taxes “by or for” another entity are: (1) the entity for whom the taxes are levied has the taxing power; (2) the levying officers of the county exercise the taxing power of the entity for whom they are levying; (3) they exercise such power as ex-officio officers of that entity, and (4) the taxes collected are those of the “levied for” entity.¹¹⁰

Except for state subventions, the items that make up “proceeds of taxes” are charges levied to raise general revenues for the local entity.¹¹¹ “Proceeds of taxes,” is defined to include “all tax revenues,” as well as “proceeds ... from ... regulatory licenses, user charges, and user fees [only] to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product or service...”¹¹² These “excess” regulatory or user fees are considered taxes that raise general revenue for the entity.¹¹³

Article XIII B does not impose spending limits on revenues that do *not* constitute the entity’s “proceeds of taxes.”¹¹⁴ In addition, article XIII B, section 9 identifies appropriations that are expressly excluded from the appropriations limit, including appropriations required to comply with a federal mandate.

Section 6 was included in article XIII B to require that “[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...” The purpose of section 6 is to preclude “the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities *because of the taxing and*

¹¹⁰ *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d. 24, 32-33.

¹¹¹ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451.

¹¹² California Constitution, article XIII B, section 8(c).

¹¹³ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451.

¹¹⁴ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

*spending limitations that articles XIII A and XIII B impose.”*¹¹⁵ In this respect, the courts have held that reimbursement under article XIII B, section 6 is required only when the mandated program forces local government to incur “increased actual expenditures of limited tax proceeds that are counted against the local government’s spending limit.”¹¹⁶

Thus, courts have focused on the source of funds used to pay for programs for which mandate reimbursement is sought, and have analyzed the source of funds to determine if they are proceeds of taxes that are subject to the local agency’s appropriations limit.¹¹⁷ For example, in *County of Fresno v. State*, the California Supreme Court determined that Government Code section 17556(d) (which provides there are no costs mandated by the state and reimbursement is not required when the local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program) is facially constitutional and consistent with the purpose of article XIII B, section 6.¹¹⁸ “Considered within its context, the section [section 6] effectively construes the term ‘costs’ in the constitutional provision as excluding expenses that are recoverable from sources other than taxes.”¹¹⁹

Similarly, in *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* and *City of El Monte v. Commission on State Mandates*, the courts focused on the source of funds used by redevelopment agencies to pay for activities required by state law to find that funds received through tax increment financing were not subject to the appropriations limit because the funds are not the “proceeds of taxes” and therefore, are not reimbursable under article XIII B, section 6.¹²⁰

Because of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any “proceeds of taxes.” Nor do they raise, through tax increment financing, “general revenues for the local entity.” [Citation omitted.]¹²¹

¹¹⁵ *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81. Emphasis added. See also, *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

¹¹⁶ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

¹¹⁷ See, *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 984-985, where the court disagrees with the argument by a redevelopment agency that the source of funds used was not relevant to the determination of reimbursement under article XIII B, section 6.

¹¹⁸ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

¹¹⁹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

¹²⁰ *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 984-986; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 280-282.

¹²¹ *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986.

Accordingly, reimbursement under article XIII B, section 6 is required only when the mandated program forces local government to incur increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit.¹²² Expenditures of funds that are not from the entity's proceeds of taxes are not subject to the appropriation limit, nor are entities that spend non-tax revenue eligible for reimbursement under article XIII B, section 6.

In this case, the offsetting revenue language in Section VIII of the Parameters and Guidelines, which requires that "reimbursement for this mandate received from any federal, state or nonlocal source shall be identified and deducted from this claim," is consistent with these constitutional principles.¹²³ "Nonlocal" revenue used for a state-mandated program means that the funds used for the program are not the claimant's proceeds of taxes nor are they subject to the claimant's appropriations limit imposed by article XIII B. Thus, nonlocal sources of funding used by a local agency for the state-mandated program are required to be identified and deducted from reimbursement claims as offsetting revenue.

2. The Proposition C local return funds that the claimant used for the mandated activities are not the claimant's "proceeds of taxes" within the meaning of article XIII B of the California Constitution because the taxes were not levied by or for the claimant nor are they subject to the claimant's appropriations limit; thus, the Controller's finding that expenditures of these funds are required to be identified and deducted as offsetting revenues is correct as a matter of law.

The power of a local government to tax is derived from the Constitution, upon the Legislature's authorization.¹²⁴ "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."¹²⁵ In other words, a local government's taxing authority is derived from statute.

Metro, as the successor to the Los Angeles County Transportation Commission, is authorized by statute to levy the Proposition C transactions and use tax throughout Los Angeles County.¹²⁶ Under the Proposition C ordinance, twenty percent of Proposition C taxes are allocated to the local return program funds for cities and the County to use for public transit purposes.¹²⁷ As discussed in the Background above, local jurisdictions are then permitted to use those funds on

¹²² *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

¹²³ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 974, 811 and 812.

¹²⁴ California Constitution, article XIII, section 24(a).

¹²⁵ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450 ("Taxes are levied by the Legislature, or by counties and municipalities under their delegated power, for the support of the state, county, or municipal government").

¹²⁶ Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

¹²⁷ Los Angeles Metropolitan Transportation Authority, "An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes," November 1990, pages 3-4.

public transit projects as prescribed by the Local Return Guidelines.¹²⁸ Permissible uses include bus stop improvements and maintenance projects, which include the installation, replacement and maintenance of trash receptacles,¹²⁹ as specified in the ordinance:

...[The] Local Return Program [is] to be used by cities and the County for public transit, paratransit, and related services including to improve and expand supplemental paratransit services to meet the requirements of the Federal Americans With Disabilities Act. At the option of each city and of the County funds can be used consistent with the County's Congestion Management Program to increase safety and improve road conditions by repairing and maintaining streets heavily used by public transit. Transportation system and demand management programs are also eligible.¹³⁰

The parties agree that the claimant is authorized to use the local return funds for the mandated program and they do not dispute that a portion of the claimant's local return funds were used for the mandated activities.¹³¹ Nonetheless, the claimant disputes the reduction, arguing that the Proposition C funds were not "specifically intended" to fund the mandated program.

However, Proposition C transactions and use taxes are non-local revenues because they are *not* the claimant's "local taxes" in that they are neither levied by nor for the claimants. As the Court of Appeal explained:

The phrase "to levy taxes by or for an entity" has a special meaning of long-standing. The concept of one entity levying taxes for another dates back to at least 1895 (stats. 1895, p. 219) and the adoption of an act providing for the levy of taxes "by or for" municipal corporations. This act allowed general law and charter cities to continue to exercise their taxing power directly or, if they so desired, to have the county levy and collect their taxes for them. (*Griggs v. Hartzoke* (1910) 13 Cal.App. 429, 430–432, 109 P. 1104; *County of Los Angeles v. Superior Court* (1941) 17 Cal.2d 707, 710–711, 112 P.2d 10.) The legal effect of this arrangement, as explained by case law, was that the taxing power exercised

¹²⁸ Exhibit X, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, pages 7, 11-16.

¹²⁹ Exhibit X, Los Angeles Metropolitan Transportation Authority, Proposition A and Proposition C Local Return Guidelines, 2007 Edition, page 13.

¹³⁰ Exhibit X, Los Angeles Metropolitan Transportation Authority, "An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes," November 1990, pages 3-5. Other uses of Proposition C funds include: improving and expanding rail and bus transit on a County-wide basis (40 percent), improve and expand rail and bus security (5 percent), commuter rail and building transit centers, park-and-ride lots, and freeway bus stops (10 percent), and essential County-wide transit-related improvements to freeways and state highways (25 percent).

¹³¹ Exhibit A, IRC, filed August 17, 2018, pages 3, 7 (Declaration of Bernardo Iniguez, Public Works Director for the City of Bellflower). Exhibit A, IRC, filed August 17, 2018, page 82 (Audit Report).

was that of the city, and it remained in the city. The county officers in levying taxes for the city became ex-officio officers of the city and exercised the city's taxing power. (*Madary v. City of Fresno* (1912) 20 Cal.App. 91, 93–94, 128 P. 340.) In levying taxes for the city the county was levying “municipal taxes” through the ordinary county machinery. (*Griggs, supra*, 13 Cal.App. at p. 432, 109 P. 1104.)

Thus, the salient characteristics of one entity levying taxes “for” another entity are: (1) the entity for whom the taxes are levied has the taxing power; (2) the levying officers of the county exercise the taxing power of the entity for whom they are levying; (3) they exercise such power as ex-officio officers of that entity, and (4) the taxes collected are those of the “levied for” entity.¹³²

Similar to the redevelopment agency in *Bell Community Redevelopment Agency v. Woosley*, the claimant here does not have the power to levy the Proposition C taxes.¹³³ Therefore, Metro is not levying the Proposition C taxes “for” the claimant. The claimant’s receipt and use of Proposition C tax revenues through the local return program does not change the nature of those funds as Metro’s “proceeds of taxes” and subject to Metro’s appropriations limit.

Article XIII B does not limit a local government’s ability to expend tax revenues that are not the claimant’s “proceeds of taxes.”¹³⁴ Where a tax is neither levied by nor for the local government claiming reimbursement, the resulting revenue is not the local government’s “proceeds of taxes” and is therefore not the local government’s “appropriations subject to limitation.”¹³⁵ Reimbursement under article XIII B, section 6 is only required to the extent that a local government must incur “increased actual expenditures of limited tax proceeds that are counted against the local government’s spending limit.”¹³⁶ Because the Proposition C local return funds are not the claimants’ “proceeds of taxes levied by or for that entity,” they are not part of the claimants’ “appropriations subject to limitation.”¹³⁷ The Proposition C Ordinance provides that the Proposition C funds are included in Metro appropriations limit:

3-10-080 Appropriations Limit. A [Los Angeles County Transportation] Commission appropriations limit is hereby established equal to the revenues collected and allocated during the 1990/91 fiscal year plus an amount equal to one

¹³² *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32.

¹³³ See *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 27 [Because redevelopment agency did not have the authority to levy a tax to fund its efforts, allocation and payment of tax increment funds to redevelopment agency by county, a government taxing agency, were not “proceeds of taxes levied by or for” the redevelopment agency and therefore were not subject to the appropriations limit of Article XIII B].

¹³⁴ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

¹³⁵ California Constitution, article XIII B, section 8.

¹³⁶ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

¹³⁷ California Constitution, article XIII B, section 8.

and a half times the taxes that would be levied or allocated on a one-half of one percent transaction and use tax in the first full fiscal year following enactment and implementation of this Ordinance.¹³⁸

In addition, Government Code section 7904 states that: “In no event shall the appropriation of the same proceeds of taxes be subject to the appropriations limit of more than one local jurisdiction or the state.” Because the Proposition C ordinance establishes an appropriations limit for Metro for the proposition C funds,¹³⁹ section 7904 prohibits the claimant from establishing an appropriations limit on the same proceeds of taxes.

Reimbursement under article XIII B, section 6 is required only when the mandated program forces local government to incur increased actual expenditures of limited tax proceeds that are counted against the local government’s spending limit.¹⁴⁰ Local agencies cannot accept the benefits of revenue that is not subject to their appropriations limits, while asserting an entitlement to reimbursement under article XIII B, section 6.¹⁴¹ The Proposition C local return revenue is not the claimant’s proceeds of taxes, nor is it subject to the claimant’s appropriation limit. Therefore, the reduction of costs claimed, based on the Controller’s finding that the Proposition C local return funds should have been identified and deducted as offsetting revenues, is correct as a matter of law.

V. Conclusion

Based on the forgoing, the Commission concludes that the Controller’s reduction of costs is correct as a matter of law. Accordingly, the IRC is denied.

¹³⁸ Exhibit X, Los Angeles Metropolitan Transportation Authority, “An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes,” November 1990, page 6.

¹³⁹ Exhibit X, Los Angeles Metropolitan Transportation Authority, “An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes,” November 1990, page 6.

¹⁴⁰ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

¹⁴¹ *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 14, 2021, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued May 14, 2021**

Municipal Storm Water and Urban Runoff Discharges, 18-0304-I-01

Los Angeles Regional Quality Control Board Order No. 01-182,

Permit CAS004001, Part 4F5c3

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007,
2007-2008, 2008-2009, and 2009-2010

City of Bellflower, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 14, 2021 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/12/21

Claim Number: 18-0304-I-01

Matter: Municipal Storm Water and Urban Runoff Discharges

Claimant: City of Bellflower

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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BETTY T. YEE
California State Controller

RECEIVED
June 03, 2021
**Commission on
State Mandates**

June 3, 2021

Heather Halsey, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: **Draft Proposed Decision**
Municipal Storm Water and Urban Runoff Discharges, 18-0304-I-01
Los Angeles Regional Quality Control Board Order No. 01-182,
Permit CAS004001, Part 4F5c3
Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007,
2007-2008, 2008-2009, and 2009-2010
City of Bellflower, Claimant

Dear Ms. Halsey:

The State Controller's Office has reviewed the Commission on State Mandates' draft proposed decision dated May 14, 2021, for the above incorrect reduction claim filed by the City of Bellflower. We agree with the Commission on State Mandates' conclusion to support our reduction of costs claimed for the engagement period.

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, or belief

If you have any questions, please contact me by telephone at (916) 327-3138 or by email at lkurokawa@sco.ca.gov.

Sincerely,

A handwritten signature in cursive script, reading "Lisa Kurokawa".

LISA KUROKAWA, Bureau Chief
Division of Audits

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 4, 2021, I served the:

- **Controller's Comments on the Draft Proposed Decision filed June 3, 2021**

Municipal Storm Water and Urban Runoff Discharges, 18-0304-I-01

Los Angeles Regional Quality Control Board Order No. 01-182,

Permit CAS004001, Part 4F5c3

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007,
2007-2008, 2008-2009, and 2009-2010

City of Bellflower, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 4, 2021 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/27/21

Claim Number: 18-0304-I-01

Matter: Municipal Storm Water and Urban Runoff Discharges

Claimant: City of Bellflower

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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Chapter 3-10

**An Ordinance Establishing An Additional
Retail Transactions And Use Tax in the County
of Los Angeles For Public Transit Purposes**

(Preliminary Note: The ordinance set forth in Chapter 3-10 was originally enacted as Los Angeles County Transportation Commission Ordinance No. 49 and was adopted by a vote of the electorate as Proposition C in November 1990. It is incorporated here as enacted in 1990, except that, for convenience and consistency, its section headings and numbering have been revised to conform to the style of this Code. While the provisions of this ordinance may be cited by the section headings and numbering used herein, the official ordinance remains that enacted by the electorate in 1990. The inclusion of this ordinance in this Code is not a reenactment or an amendment of the original ordinance, and its inclusion in this Code does not in any way amend its provisions or alter its application.)

A retail Transactions and Use Tax is hereby imposed in the County of Los Angeles as follows:

3-10-010 Imposition of Retail Transactions Tax. There is hereby imposed a tax for the privilege of selling tangible personal property at retail upon every retailer in the County at a rate of one-half of one percent of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the County. This tax is in addition to the tax authorized by Ordinance No. 16, on August 20, 1980 [MTA Administrative Code, Chapter 3-05].

3-02-020 Imposition of Use Tax. There is hereby imposed a complementary tax upon the storage, use or other consumption in the County of tangible personal property purchased from any retailer for storage, use or other consumption in the County. Such tax shall be at a rate of one-half of 1% of the sales price of the property whose storage, use or other consumption is subject to the tax. This tax is in addition to the tax authorized by Ordinance No. 16, on August 20, 1980 [MTA Administrative Code, Chapter 3-05].

3-10-030 Definitions. The following words, whenever used in this Ordinance, shall have the meanings as set forth below:

A. “Commission” means the Los Angeles County Transportation Commission or any successor entity.

B. “County” means the incorporated and unincorporated territory of the County of Los Angeles.

C. “Transaction” or “Transactions” have the same meaning, respectively, as the words “Sale” or “Sales”; and the word “Transactor” has the same meaning as “Seller”, as “Sale” or “Sales” and “Seller” are used in Part 1 (commencing with Section 6001) of Division 2 of the revenue and Taxation Code.

D. “Public Transit Purposes” are expenditures which maintain, improve and expand public transit, reduce congestion, and increase mobility, and include, but are not limited to, the following:

1. Transit and paratransit activities, including rail, bus and advanced technologies.
2. Fare Subsidies
3. Commuter Rail
4. Transit Centers
5. Park-and-Ride Lots
6. Public Information Services Technology and Systems
7. Freeway Bus Stations and Facilities
8. Rail and Bus Safety and Security
9. Maintenance of and Improvements to Streets and Highways used as public transit thoroughfares, including, but not limited to, the following:
 - a. Coordination and synchronization of signalization
 - b. Provisions for prompt service to assist motorists with disabled automobiles or trucks
 - c. Construction of high occupancy vehicle (HOV) lanes
 - d. Other activities which reduce congestion and improve air quality by providing transportation improvements to freeways, and state highways used

as public transit thoroughfares, including construction of transit ways including bus ways, carpool lanes, and operational and interchange improvements.

10. Transportation Systems Management and Transportation Demand Management

3-10-040 Use of Revenues Received from Imposition of the Transactions and Use Tax.

The revenues received by the Commission from the imposition of the transactions and use tax shall be used for public transit purposes, as follows:

A. Purpose of Tax. To improve transit service and operations, reduce traffic congestion, improve air quality, efficiently operate and improve the condition of the streets and freeways utilized by public transit, and reduce foreign fuel dependence. The purposes of this tax include:

1. Meeting operating expenses; purchasing or leasing supplies, equipment or materials; meeting financial reserve requirements; obtaining funds for capital projects necessary to maintain service within existing service areas;
2. Increasing funds for the existing public transit service programs;
3. Instituting or increasing passenger or commuter services on rail or highway rights of way;
4. The continued development of a regional transportation improvement program.

B. Use of Revenues. A Los Angeles County Anti-Gridlock Transit Improvement fund will be created to supplement current transportation funds and help meet the documented shortfall in funds needed to complete the Los Angeles County transportation system.

1. Forty percent of the revenue from the ½ cent sales and use tax will be used to improve and expand rail and bus transit County-wide, to provide fare subsidies, increase graffiti prevention and removal, and increase energy-efficient, low-polluting

public transit service. Funds from this revenue source will not be used for capital improvements for the Metro Rail Project between Union Station and Hollywood.

2. Five percent of the revenue from the ½ cent sales and use tax will be used to improve and expand rail and bus security.

3. Ten percent of the revenue from the ½ cent sales and use tax will be used to increase mobility and reduce congestion by providing additional funds for Commuter Rail and the construction of Transit Centers, Park-and-Ride Lots, and Freeway Bus Stops.

4. Twenty percent of the revenue from the ½ cent sales and use tax will be a Local Return Program to be used by cities and the County for public transit, paratransit, and related services including to improve and expand supplemental paratransit services to meet the requirements of the Federal Americans With Disabilities Act. At the option of each city and of the County funds can be used consistent with the County's Congestion Management Program to increase safety and improve road conditions by repairing and maintaining streets heavily used by public transit. Transportation system and demand management programs are also eligible.

Funds for the Local Return Program will be allocated to the cities and the County on a per capita basis. Local Return funds not expended within three years will be returned to the Commission for reallocation. Local Return funds may not be traded or sold to other jurisdictions.

5. Twenty-five percent of the revenue from the ½ cents sales and use tax will be used to provide essential County-wide transit-related improvements to freeways and state highways. To facilitate transit flow, the operation of major streets and freeways will be improved by providing preference and priority for transit. Traffic signals may be synchronized, and coordinated and "Smart Street" corridors may be created on those corridors served by public transit. Transportation Systems Management techniques

which assist transit service may also be funded. Transportation improvements on freeways and State highways may include transit ways and other improvements to facilitate and expedite flow of transit and rideshare vehicles, and carpools.

6. The non-Local Return funds will be allocated in formula and discretionary programs basis to be developed and approved by the LACTC within six months of voter approval of this Ordinance. In no event shall administrative costs exceed one and one-half (1 ½) percent of the funds generated by the tax.

3-10-050 Application of Sales and Use Tax Provisions of Revenue and Taxation Code.

A. The provisions contained in Part 1 of Division 2 of the Revenue and Taxation Code (Sales and Use Taxes, commencing with Section 6001), insofar as they relate to sales or use taxes and are not inconsistent with Part 1.6 of Division 2 of the revenue and Taxation Code (Transactions and Use Taxes), commencing with Section 7251), and all amendments thereto shall apply and be part of this Ordinance, being incorporated by reference herein, except that:

1. The Commission, as the taxing agency, shall be substituted for that of the State;

2. An additional transactor's permit shall not be required if a seller's permit has been or is issued to the transactor under Section 6067 of the revenue and Taxation Code; and

3. The word "County" shall be substituted for the word "State" in the phrase, "Retailer engaged in business in this State" in Section 6203 of the Revenue and Taxation Code and in the definition of that phrase.

B. A retailer engaged in business in the County shall not be required to collect use tax from the purchase of tangible personal property unless the retailer ships or delivers the property into the County or participates within the County in making the sale of the property; including, but not limited to soliciting or receiving the order, either directly or indirectly, at a

place of the retailer in the County or through any representative, agent, canvasser, solicitor, or subsidiary or person in the County under authority of the retailer.

3-10-060 Adoption of Revenue and Taxation Code Sections 7261 and 7262. Pursuant to the provisions of Revenue and Taxation Code Section 7262.2, the required provisions of Sections 7261 and 7262 of that Code as now in effect or as later amended are adopted by reference in this Ordinance.

3-10-070 Place of Consummation of Retail Transaction. For the purpose of a retail transaction tax imposed by this Ordinance, all retail transactions are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-State destination or to a common carrier for delivery to an out-of-State destination. The gross receipts for such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State, or has more than one place of business, the place or places at which the retail sales are consummated for the purpose of the transactions tax imposed by this Ordinance shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

3-10-080 Appropriations Limit. A Commission appropriations limit is hereby established equal to the revenues collected and allocated during the 1990/91 fiscal year plus an amount equal to one and a half times the taxes that would be levied or allocated on a one-half of one percent transaction and use tax in the first full fiscal year following enactment and implementation of this Ordinance.

3-10-090 Division of Taxes. This Ordinance imposes a one half of one percent transactions and use tax. Another measure imposing a one half percent transactions and use tax entitled the Local Communities Safety Act – Los Angeles County Regional Justice Facilities Financing Agency is scheduled to be submitted to the electorate in the same election as this Ordinance. If both measures are approved by the electorate, the limits of Revenue and Taxation Code Section

7251.1 would be exceeded. In the event that both measures are approved by a majority of the electors voting on the measures and both measures are otherwise valid, the transactions and use tax is to be divided equally with one fourth percent going to the Los Angeles County Transportation Commission for the purposes set forth in this Ordinance and one fourth percent going to the Los Angeles County Regional Justice Facilities Financing Agency for the purposes set forth in its Ordinance provided that legislation is enacted to authorize such a division. However, if at some future time the statutory limit on sales tax is increased, then the full one half of one percent transactions and use tax shall be restored to each agency.

3-10-100 Adoption and Enactment of Ordinance. This Ordinance is hereby adopted by the Commission and shall be enacted upon authorization of the electors voting in favor thereof at the special election called for November 6, 1990, to vote on the measure.

3-10-110 Effective and Operative Dates. This ordinance shall take effect on the day it is adopted by the Los Angeles County Transportation Commission and pursuant to Public Utilities Code Section 130352 shall be operative on the first day of the first calendar quarter commencing not less than 180 days after adoption of the ordinance.

Chapter 3-15

The Metropolitan Transportation Authority (MTA) Reform and Accountability Act of 1998

(Preliminary Note: The ordinance set forth Chapter 3-15 was originally enacted as the Metropolitan Transportation Authority (MTA) Reform and Accountability Act of 1998 and was adopted by a vote of the electorate as Proposition A in November 1998. It is incorporated here as enacted in 1998, except that, for convenience and consistency, its section headings and numbering have been revised to conform to the style of this Code. While the provisions of this ordinance may be cited by the section headings and numbering used herein, the official ordinance remains that enacted by the electorate in 1998. The inclusion of this ordinance in this Code is not a reenactment or an amendment of the original ordinance, and its inclusion in this Code does not in any way amend its provisions or alter its application.)

3-15-010 Title. This Ordinance shall be known and may be cited as the Metropolitan Transportation Authority (MTA) Reform and Accountability Act of 1998 (“Act”).

GUIDELINES

Proposition A and Proposition C LOCAL RETURN



Metro

Metro Board Approved
FY 2006-07

PROPOSITION A AND PROPOSITION C DISTRIBUTION

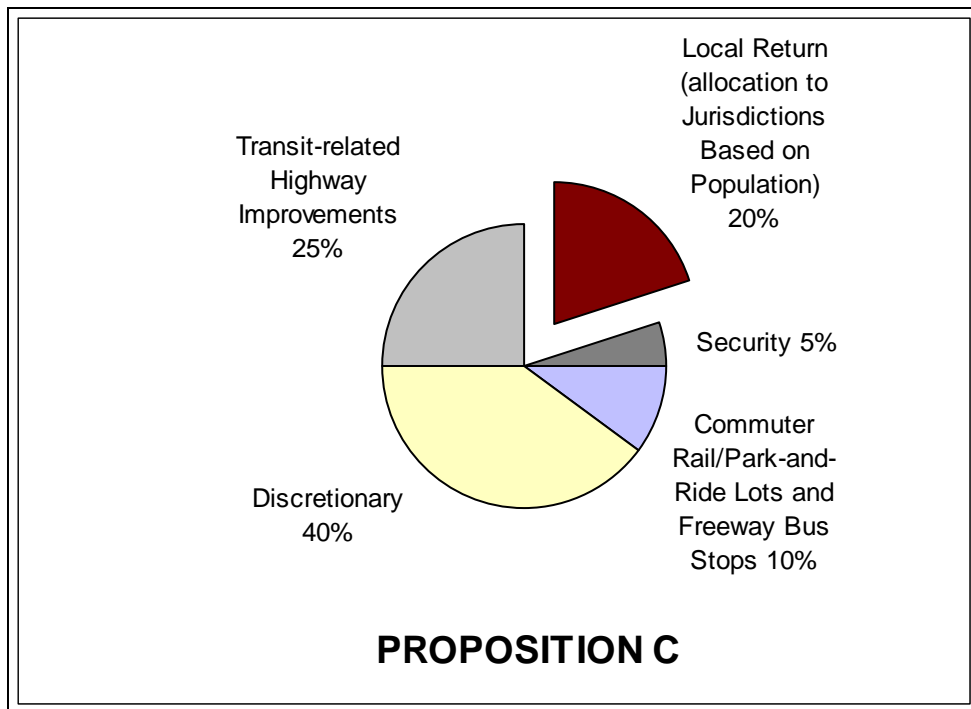
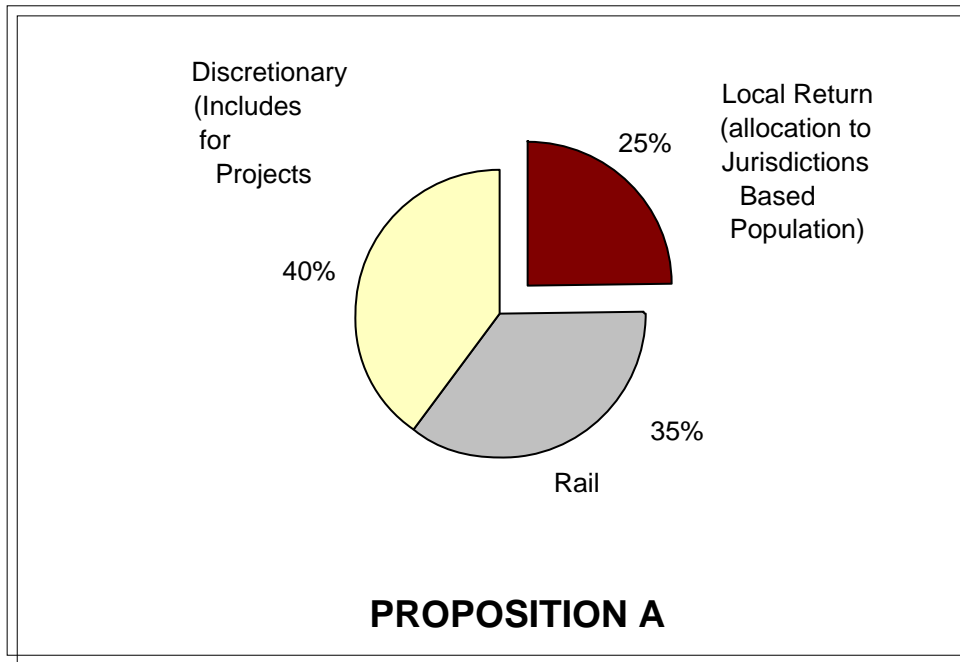


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I. PROGRAM SUMMARY

A. INTRODUCTION

The Proposition A and Proposition C Programs are funded by two 1/2 cent sales tax measures approved by Los Angeles County voters to finance a Transit Development Program. The Proposition A tax measure was approved in 1980 and the Proposition C tax measure was approved in 1990. Collection of the taxes began on July 1, 1982, and April 1, 1991, respectively.

Twenty-five percent of the Proposition A tax and twenty percent of the Proposition C tax is designated for the Local Return (LR) Program funds to be used by cities and the County (Jurisdictions) in developing and/or improving public transit, paratransit, and the related transportation infrastructure.

LR funds are allocated and distributed monthly to Jurisdictions on a "per capita" basis by the Los Angeles County Metropolitan Transportation Authority (Metro).

1. PROPOSITION A LOCAL RETURN FUNDS

The Proposition A Ordinance requires that LR funds be used exclusively to benefit public transit. Expenditures related to fixed route and paratransit services, Transportation Demand Management, Transportation Systems Management and fare subsidy programs that exclusively benefit transit are all eligible uses of Proposition A LR funds. Proposition A LR funds may also be traded to other Jurisdictions in exchange for general or other funds.

2. PROPOSITION C LOCAL RETURN FUNDS

The Proposition C Ordinance directs that the LR funds also be used to benefit public transit, as described above, but provides an expanded list of eligible project expenditures including, Congestion Management Programs, bikeways and bike lanes, street improvements supporting public transit service, and Pavement Management System projects. Proposition C funds cannot be traded.

The tables in Appendix I, page 36, summarize the Proposition A and Proposition C LR Programs and the respective eligible project expenditures.

B. GENERAL PROVISIONS CONCERNING PROPOSITION A AND PROPOSITION C LOCAL RETURN EXPENDITURES

Jurisdictions are required to use LR funds for developing and/or improving public transit service. As a general rule, an expenditure that is eligible for funding under one or more existing state or federal transit funding programs would also be an eligible LR fund expenditure provided that the project does not duplicate an existing regional or municipal transit service, project or program.

Allocation of LR funds to and expenditure by Jurisdictions shall be subject to the following conditions:

1. **TIMELY USE OF FUNDS**

Metro will enforce regulations to insure the timely use of LR funds. Under the Proposition A and Proposition C Ordinances, Jurisdictions have three years to expend LR funds. Funds must be expended within three years of the last day of the fiscal year in which funds were originally allocated. Therefore, by method of calculation, each Jurisdiction has the Fiscal Year of allocation plus three years to expend Proposition A and/or Proposition C funds. For example, a Jurisdiction receiving funds during FY 2005-06 must expend those funds, and any interest or other income earned from Proposition A and/or Proposition C projects, by June 30, 2009.

2. **AUDIT OF PROPOSITION A AND PROPOSITION C FUNDS**

Jurisdictions shall annually account, through a fiscal and compliance audit, to Metro on the use of LR funds. The Audit Section, (Section V, page 33), details Project Expenditure Criteria, Allowable Costs, Audit Deliverables, and Administrative Accounting Procedures.

3. **INELIGIBLE USE OF FUNDS**

If LR funds have been expended prior to Metro approval and/or used for ineligible purposes, Jurisdictions will be required to reimburse their Proposition A or C LR account, including interest and/or earned income, as indicated in the Audit Section (page 33).

Stand alone projects, such as, lighting, landscaping, traffic signals, storm drains, or Transportation Planning projects unrelated to an eligible project, are not eligible.

4. **STANDARD ASSURANCES**

If a new Jurisdiction is formed within Los Angeles County, Metro will require that a Standard Assurances and Understanding agreement be submitted prior to participation in the LR Program. A sample Standard Assurance and Understanding Agreement form is included as Appendix II (see page 37).

C. **PROPOSITION A AND PROPOSITION C FORMS AND SUBMITTAL REQUIREMENTS**

To maintain eligibility and meet LR Program compliance requirements, Jurisdictions shall submit a Project Description (Form A) as required, an Annual Project Update (Form B) and Annual Expenditure Report (Form C). Form submittal information is detailed in the Administrative Process section, page 21. Sample forms along with instructions for their completion are included as Appendix VIII (page 49). An electronic version is available on the website @www.Metro.net (under Projects/Programs; Local Return Program).

Project Description Form (Form A)

Jurisdictions shall submit for approval a Project Description Form prior to the expenditure of funds for: 1) a new project; 2) a new route; 3) a 25 percent change (increase or decrease) in route or revenue vehicle miles for an established LR funded transit service; 4) a 0.75 miles or greater service change that duplicates/overlays an existing transit service; or 5) a 25 percent or greater change in an approved LR project budget or scope on all operating or capital LR projects.

Annual Project Update (Form B)

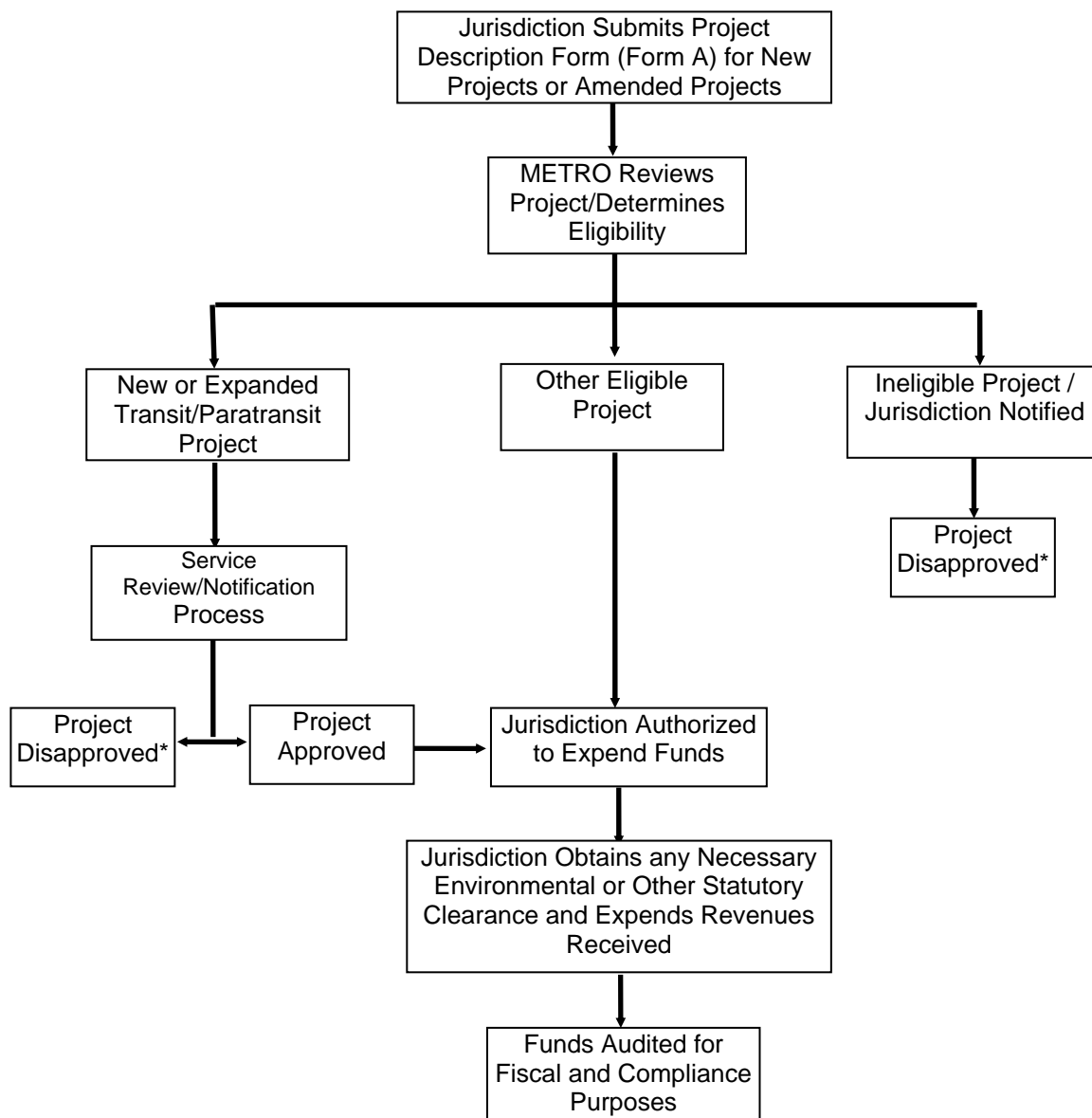
Jurisdictions shall submit on or before August 1 of each fiscal year an Annual Project Update to provide current information on all approved on-going and carryover LR projects. Metro will review and accept or return the report for changes. Cities shall report the anticipated expenditure cash flow amounts for the covered fiscal year.

Annual Expenditure Report (Form C)

On or before October 15th of each fiscal year, the Jurisdictions shall submit an Annual Expenditure Report to provide an update on previous year LR fund receipts and expenditures.

The following provides a summary of form use and due dates:

<u>FORM</u>	<u>DETERMINATION</u>	<u>DUE DATE</u>
Project Description Form - Form A	New and amended projects	Any time during the year
Annual Project Update - Form B	All on-going and/or capital (carryover) projects	August 1 st of each year
Annual Expenditure Report - Form C	Report expenditures	October 15 th of each year



***METRO Appeals Process:**

If a Jurisdiction's proposed project is formally denied by Metro project manager, the Jurisdiction may request a formal appeal. See Section III METRO's Administration Process - Appeal of eligibility.

II. PROJECT ELIGIBILITY

The Proposition A and Proposition C Ordinances specify that LR funds are to be used for “public transit purposes” as defined by the following: “A proposed expenditure of funds shall be deemed to be for public transit purposes to the extent that it can reasonably be expected to sustain or improve the quality and safety of and/or access to public transit services by the general public or those requiring special public transit assistance”.

For simplification and user ease, project categories that share common eligibility requirements and/or project code designations are defined and listed as either Proposition A and Proposition C Eligible, Proposition A Exclusive, or Proposition C Exclusive. Local Return can be used as a match to grant programs such as the Metro Call for Projects, the Safe Routes to School, and the Hazard Elimination and Safety programs, so long as the projects are LR eligible. Note: The following project eligibility criteria provide for general guidance only and are not the sole determinant for project approval. The authority to determine the eligibility of an expenditure rests solely with Metro. Jurisdictions may appeal projects deemed ineligible as described in Section III, Metro’s Administrative Process, page 23.

A. ELIGIBLE USES OF PROPOSITION A AND PROPOSITION C

1. PUBLIC TRANSIT SERVICES - OPERATING (Codes 110,120, 130 & 140)

New or expanded Transit or Paratransit services are subject to review under the Service Coordination Process (SCP) as detailed in Section III, page 24. The process will, in part, determine the proposed service’s compatibility with the existing regional bus transit system provided by Metro and services provided by the municipal transit operators. Metro may request that modification be made to proposed services that duplicate or compete with existing services. Proposed services must also meet the criteria outlined under Non-exclusive School Service and Specialized Transit discussed on the following page. Note that Emergency Medical Transportation is not an eligible use of LR funds.

Examples of Fixed Route, Paratransit, and Recreational Transit Service projects follow:

1.1 FIXED ROUTE SERVICE (Project Code 110)

- New fixed route or Flexible Destination bus service
- Extension or augmentation of an existing bus route(s)
- Contracting with a transit operator or private provider for commuter bus service
- Contracting with a transit in an adjacent county to provide transit within Los Angeles County
- Operating subsidy to existing municipal or regional bus operator
- Service enhancements related to Bus/rail Interface
- ADA improvements to fixed route operations
- Shuttle service between activity centers

1.2 **PARATRANSIT SERVICE** **(Project Codes 120 & 130)**

- Expansion/ coordination of existing paratransit service
- Subsidized, shared-ride taxi service for disadvantaged residents
- Taxi coupon programs used to provide intermittent or temporary capacity to support paratransit systems for senior and disabled patrons
- New paratransit service
- General public paratransit service
- ADA-related improvements to paratransit operations

Non-Exclusive School Service

Fixed-route bus services or Demand-responsive services available to the general public, which also provide school trips, are eligible for LR funding. Exclusive school bus services are not eligible. **Projects must meet the following conditions:**

- The bus Vehicles utilized cannot be marked "School Bus" or feature graphics that in any way indicate they are not available to the general public. Yellow paint schemes should not be for the specific purpose of meeting the vehicle code definition of a school bus
- The bus Head Sign is to display its route designation by street intersection, geographic area, or other landmark/destination description and cannot denote "School Trip" or "Special." In cases where the service includes an alternate rush-hour trip to provide service by a school location, the dashboard sign is to indicate the line termination without indicating the school name
- Timetables for such services will be made available to the general public, shall provide the given schedule and route but must not be labeled "school service"
- Drivers must be instructed that such service is available to the general public and board and alight all passengers as required at designated stops
- The same fare payment options must be made available to all users
- The overall transportation service provided in the Jurisdiction must not be for school service hours only

Specialized Public Transit

Metro will approve special-user group service or social service transit where it can be incorporated into the existing local transit or paratransit program. Jurisdictions must demonstrate that existing services cannot be modified to meet the identified user need. Projects must meet the following conditions:

- The special user group identified does not discriminate on the basis of race, religion, sex, disability or ethnicity
- Service shall be available to all members of the general public having that specialized need and not be restricted to a specific group or program
- Service shall be advertised to the general public
- Metro may require, as a condition of approval, inter-jurisdictional project coordination and consolidation
- LR funds may only be used for the transportation component of the special user group program, i.e., direct, clearly identifiable and auditable

transportation costs, excluding salaries for specialized escorts or other program aides

- The designated vehicle(s) used must be made available for coordination with other paratransit programs if space permits

1.3 RECREATIONAL TRANSIT SERVICE (Project Code 140)

Jurisdictions shall submit a listing of Recreational Transit Services no later than October 15 after the fiscal year. Recreational Transit Service projects must meet the following conditions:

- Travel within the area of Los Angeles, Orange and Ventura Counties, and portions of Kern, Riverside and San Bernardino Counties (see map Appendix VII, page 48) are eligible expenditures. Trip segments to areas shown on the proportionately eligible areas of the map must be funded through other sources. Trips to locations not within either the eligible or proportionately eligible area are not eligible.
- Trips may be limited to certain general age groups (e.g., children under 18, senior citizens, persons with disabilities), however, trips must be made available to all individuals within that designated group.
- Special events or destinations (e.g., city parks, concerts, special events) may be served, however, all members of the general public including individuals with disabilities must be allowed to use, the service.
- LR funds may not be used to pay the salaries of recreation leaders or escorts involved in recreational transit projects.
- All recreational transit trips must be advertised to the public, such as through newspapers, flyers, posters, and/or websites.

2. BUS STOP IMPROVEMENTS AND MAINTENANCE (Codes 150, 160 & 170)

Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:

- Concrete landings - in street for buses and at sidewalk for passengers
- Bus turn-outs
- Benches
- Shelters
- Trash receptacles
- Curb cuts
- Concrete or electrical work directly associated with the above items

Amenities shall be integral to the bus stop. Improvements must be located within 25 feet of the bus stop signpost, or have one edge or end within that area. At high volume stops, where more than one bus typically uses the stop at a time, improvements must be placed at the immediate locations where buses normally stop.

Curb cuts may be located on or adjacent to street segments (blocks) with bus stops.

Conditions:

Jurisdictions shall coordinate bus stop improvements (excluding curb cuts) with effected Transit Operators. A letter of coordination must be submitted with the Project Description Form. Jurisdictions that propose replacing privately owned benches or shelters must notify the Operator before requesting City Council project approval. The Operator shall have seven (7) days to respond to the notification before the Jurisdiction takes further action.

3. PUBLIC TRANSIT - CAPITAL (Project Codes 180, 190 & 200)

Public Transit Capital projects will be approved only for the percentage of vehicle or equipment use, as determined by Metro staff, exclusive to public transit service. A list of sample Public Transit Capital projects follows:

- a. Vehicles/parts purchases and repairs
 - Transit vehicles for passenger service
 - Mechanical parts and supplies for buses or vans
 - Non-revenue support vehicles, such as supervisor's cars, service trucks
 - ADA-related improvements to vehicles
 - Retrofits or additions to buses or vans, such as lifts, fare boxes, or radios
 - Security equipment, for example, cameras on buses
- b. Equipment
 - New or modified transit maintenance facilities
 - Maintenance equipment for new or existing transit or paratransit operations
 - Office equipment and furnishings for new and existing transit and paratransit operations

NOTE: Jurisdictions shall reimburse their LR Account, in the amount of the current appraised value or purchase price from resale, for Public Transit Capital projects no longer used for public transit purposes.

4. TRANSPORTATION SYSTEMS MANAGEMENT (TSM) (Project Code 210)

TSM projects are relatively low-cost, non-capacity-enhancing traffic control measures that serve to improve vehicular (bus and car) flow and/or increase safety within an existing right-of-way. Proposals must include an element demonstrating the project's benefit to public transit. **A list of sample TSM projects follows:**

- Reserved bus lanes (no physical separation) on surface arterials
- Contra-flow bus lanes (reversible lanes during peak travel periods)
- Ramp meter by-pass (regulated access with bus/carpool unrestricted entry)
- Traffic signal priority for buses (to allow approaching transit vehicles to extend green phase or change traffic signal from red to green)
- Preferential turning lanes for buses
- Other traffic signal improvements that facilitate bus movement

If a Local Return funded project is or has an Intelligent Transportation System (ITS) component, it must be consistent with the Regional ITS Architecture. ITS projects must comply with the Countywide ITS Policy and Procedures adopted by

the Metro Board including the submittal of a completed, signed self-certification form. Please go to <http://RIITS.net/RegITSDocs.html> and choose “Los Angeles Countywide ITS Policy and Procedures Document” or see Appendix VI (page 45) for information on Countywide ITS Policy and Procedures, and the self-certification form.

5. TRANSIT SECURITY (Project Codes 220 & 230)

Transit Security projects may include Transit Safety, Security Operations and Safety Education Programs, provided that they demonstrate a direct benefit to public transit service and do not supplant general law enforcement programs.

A list of sample Transit Security Programs follows:

- Local police deployment for direct and specific transit security
- Private security (state licensed) deployment for transit security
- Contracted police services for direct and specific transit security
- Capital improvements for transit security
- Innovative and/or advanced technology transit security
- Community-based policing activities in direct support of transit security
- Security awareness, graffiti prevention, Safety education and/or crime prevention programs
- Transit security at commuter rail stations and park and ride facilities

NOTE: Jurisdictions are encouraged to participate in existing local and regional transit security efforts, which should be coordinated through Metro.

6. FARE SUBSIDY (Project Codes 240 & 250)

Fare Subsidy programs provide residents within Jurisdictions a discount fare incentive for using public transit. The method, amount of subsidy and user group(s) shall be determined by Jurisdictions. **A list of sample Fare Subsidy Programs follows:**

- User-side subsidies (buy down of passes, tickets, or coupons) for the general public or segments of the general public (i.e., elderly, individuals with disabilities, or low-income residents)
- Subsidy of bus/rail passes, tickets or tokens for transit riders;

7. TRANSPORTATION PLANNING (Project Code 270)

Planning, coordination, engineering and design costs incurred toward the implementation of eligible LR projects are eligible when the following conditions are met:

- The projects being planned (designed, coordinated, etc.) are LR eligible.
- Coordination includes: local jurisdictions’ start up costs or dues for Councils of Governments (COG’s) and Transportation Management Associations (TMA’s); advocacy; and funding for Joint Powers Authorities (JPA’s) by local jurisdictions or (COG’s).
- If some of a COG’s, TMA’s or JPA’s projects or activities are LR eligible and some are not, partial payment of dues must be made, in proportion to the organization’s budget for LR eligible projects.

- Proposition A must be used to plan for Proposition A eligible projects.
- Proposition C must be used to plan for Proposition C eligible projects.

8. TRANSIT MARKETING (Project Code 280)

Transit Marketing projects may include:

- Transit user guides, maps, brochures
- Transit information Kiosks
- Transit information/pass sales centers
- New rider subsidy programs

9. PARK-AND-RIDE LOTS (Project Code 290)

Park-and-Ride Lot projects must be coordinated with Metro and appropriate affected transit operator(s). Additional justification including, for example, surveys or studies that provide a basis for determining the project's level of public transit use and related funding, may be requested prior to project evaluation.

Park-n-Ride Lot projects shall:

- be located adjacent to (no greater than 0.25 mile away from) a fixed route service bus stop, HOV lanes and/or rail stations.
- be located on unimproved land unless a specific Metro waiver is granted.
- have received environmental clearance by the Jurisdiction prior to Metro approval for construction funds
- require a letter from the affected transit operator(s) to the Jurisdiction and Metro, as reasonable assurance, that park-and-ride lot users will be assured of continued access to services.
- be used primarily by transit/rideshare patrons during commute hours.
- have appropriate exclusive-use signage posted and enforced.
- be open for general parking during non-transit use time, e.g., evenings and weekends, provided that transit user demands are not adversely impacted. All revenues, (for example, parking, advertising or related revenue) generated during the non-transit use time must be returned to the Jurisdictions' LR Account in the same proportion as the original LR investment in the facility. In the event that the facility ceases operation, the Jurisdiction shall be required to repay its LR Account as determined by the audit, see page 33.

10. TRANSIT FACILITIES/TRANSPORTATION ENHANCEMENTS (TE) (Project Codes 300 & 310)

Examples of Transit Facility projects include:

- Bus-only transit malls or stations
- Transit/paratransit accessible Transfer Centers that feature, for example, shelters, telephones, information displays/centers, and other related amenities)
- Eligible as match to TE grants.
- Eligible projects may include building rehabilitation and restoration for transit-related purposes.
- Project itself must be LR eligible.

Conditions:

Jurisdictions shall submit a project budget and scope of work that specifies the proposed facility's public transit and, if applicable, joint development. Additional documentation may be required to determine project eligibility and level of funding.

If the facility ceases to be used for public transit purposes, LR funds used toward land purchase for a facility must be returned at the original purchase price or present appraised value, whichever is greater, to the Jurisdiction's LR Account. Repayment of facility expenditures shall be based on the schedule outlined on page 31.

Prior to land and/or facility purchases, Jurisdictions shall provide the following:

- Documentation of the financial resources for facility implementation, operation and maintenance
- Assurance(s) from the affected transit carrier(s) to provide facility service
- Land appraisal
- Assurance that the Jurisdiction will proceed with the project per the implementation schedule outlined in the application
- Environmental clearance in conformance with, wherever applicable, all local, state and federal requirements. Jurisdictions preparing an Environmental Impact Report (EIR) must coordinate with Metro Regional Transportation Planning and Development Department.

11. METRO RAIL CAPITAL (Project Codes 320)

Metro Rail Capital projects may include, for example, Metro Red, Blue, Green, or Gold Line or Mid-City Exposition Light Rail Transit station or line improvements, local match toward Metro Rail Capital projects, Metro Art or related Metro Rail enhancements.

12. RIGHT-OF-WAY IMPROVEMENTS (Project Code 350)

Right-of-Way Improvements or land purchases must be coordinated through Metro to ensure consistency with adopted regional corridors, priorities or preferred alignments. Right-of-Way Improvement project proposals must also demonstrate direct, quantifiable, environmental and/or economic benefit to given LR-eligible projects.

13. COMMUTER RAIL (Project Codes 360 & 370)

Rail (commuter system and station enhancement) projects must be consistent with Metro's existing and planned program of rail projects. Eligible project may include match to TE grants for building rehabilitation and restoration for transit-related purposes. Project itself must be LR eligible. **Examples of Rail projects include:**

- Signal upgrades at rail crossings
- Signage and marketing materials to promote increased commuter rail ridership
- Landscaping, lighting, fencing and environmental enhancements at or along commuter rail facilities

- System safety
- Safety education programs
- Commuter rail station operating, maintenance, insurance, or other station-related costs
- Commuter rail station capital costs

14. CAPITAL RESERVE (Project Code 380)

A Capital Reserve project provides Jurisdictions the opportunity to accumulate LR funds (over and above the year of allocation and three year expenditure requirement see page 30, Timely Use of Funds) to finance a large project. Projects are limited to construction of bus facilities, bus purchases, transit centers, park-and-ride lots, construction of major street improvements or rail projects along Metro's planned and adopted rail corridors.

A Capital Reserve project constitutes a long-term financial and planning commitment. For specific information on the Capital Reserve approval process, see Section III, Metro's Administration Process, page 26.

15. DIRECT ADMINISTRATION (Project Code 480)

Direct Administration is defined as those fully burdened costs which are directly associated with administering Local Return program or projects, and includes salaries and benefits, office supplies and equipment, and other overhead costs.

Direct Administration project conditions:

- All costs shall be associated with developing, maintaining, monitoring, coordinating, reporting and budgeting specific LR project(s)
- Expenditures must be reasonable and appropriate to the activities undertaken by the locality
- The administrative expenditures for any year shall not exceed 20 percent of the total LR annual expenditures, based on year-end expenditures, and will be subject to an audit finding if the figure exceeds 20%;
- The annual expenditure figure will be reduced by fund trades to other cities and/or funds set aside for reserves; conversely, the annual expenditure figure will be increased by expenditure of reserves or LR funds received in fund exchanges;
- Jurisdictions are required to report all administrative charges to Direct Administration in order to verify compliance of 20% administration cap.

16. OTHER (Project Code 500)

Projects that do not fit under any of the project codes, but are for public transit purposes, may be included in the "other" category. Note that "public transit purposes" are defined as follows: "A proposed expenditure of funds shall be deemed to be for public transit purposes to the extent that it can reasonably be expected to sustain or improve the quality and safety of and/or access to public transit services by the general public or those requiring special public transit assistance".

B. EXCLUSIVE USES OF PROPOSITION A FUNDS

Projects listed below are eligible for Proposition A LR funding only. Jurisdictions must certify that all project conditions will be met and include all supporting documents with submittal of the Form A. Stand alone amenities such as traffic signals, landscaping and storm drains are ineligible. Note: The following project eligibility criteria provide general guidance only and are not the sole determinant for project approval. The authority to determine the eligibility of an expenditure rests solely with Metro. Jurisdictions may appeal projects deemed ineligible as described in Section III, page 23.

1. SIGNAL SYNCHRONIZATION (Project Code 400)

Signal Synchronization projects must meet the following eligibility conditions:

- Bus priority must be included as an element of the project
- The project arterial must be used by a minimum of ten transit buses, counted bi-directionally, per hour, or five buses hourly in each direction
- Projects may be implemented only on major arterials
- Documentation of coordination with affected public transit operators is required for approval (e.g., correspondence between the Jurisdiction and the transit operator with written concurrence between the transit operator and Metro)
- Local return funds shall not be used to alter system/signal timing that was implemented under a traffic forum project/grant unless coordinated with all affected jurisdictions in the corridor.

If a Local Return funded project is or has an Intelligent Transportation System (ITS) component, it must be consistent with the Regional ITS Architecture. ITS projects must comply with the Countywide ITS Policy and Procedures adopted by the Metro Board including the submittal of a completed, signed self-certification form. Please go to <http://RIITS.net/RegITSDocs.html> and choose “Los Angeles Countywide ITS Policy and Procedures Document” or see Appendix VI (page 45) for information on Countywide ITS Policy and Procedures, and the self-certification form.

2. FUND EXCHANGE (Project Code 405)

Proposition A funds may be given, loaned, or exchanged by Jurisdictions provided that the following conditions are met:

- Participants are responsible for insuring that the traded funds will be utilized for public transit purposes
- The exchange of funds should not result in a net loss of revenues available for public transit in Los Angeles County (i.e., trade of Proposition A funds for farebox or other transit revenues)
- Traded Proposition A LR funds retain their original date of allocation and lapse date. Jurisdictions submitting Fund Exchange projects shall note the year of allocation on their Form A so that the fund lapse policy may be monitored.

In addition, Jurisdictions shall provide the following detail in submitting Fund Exchange projects for approval:

- Source of funds to be exchanged
- Fund amounts to be exchanged
- Period of exchange
- Assurance that the end use of Proposition A LR funds will be for eligible transit uses
- Provision for circumstances should source of funds (one or both) become unavailable during the exchange period.
- Certification by participating Jurisdictions (e.g. City Council action)

A sample Fund Exchange Agreement is included in Appendix V page 43.

NOTE: Jurisdictions participating as the “seller” in a Proposition A Fund Exchange projects will, for two years from the date of transaction, be subject to disqualification or reduced project application scores in the Transportation Improvement Program (TIP) Call for Projects.

3. TRANSPORTATION DEMAND MANAGEMENT (Project Code 410)

Transportation Demand Management (TDM) projects are defined as strategies/actions intended to influence the manner in which people commute, resulting in a decrease in the number of vehicle trips made and vehicle miles traveled during peak travel periods.

TDM projects funded by Proposition A require a public transit element and will be evaluated on their projected impact on reduction of single-occupancy vehicle trips, corresponding vehicle miles traveled, and potential to increase transit use.

A list of sample TDM projects follows:

- Formation and operation of vanpool and/or vanpool incentive programs, including ride matching programs (must be made available to all employers and/or residents within the Jurisdiction boundaries)
- Community-based shuttles for employees as long as such services complement existing transit service
- Parking Management incentive programs, such as, parking cash outs or parking pricing strategies
- Employer or citizen ride-matching programs and subsidies
- Formation or ongoing operation of a Transportation Management Association to administer and market local TDM programs (provided that the 20 administrative cost stipulated for Proposition A and Proposition C is not exceeded)
- Transit and TDM-related activities required by the Congestion Management Program (CMP) including: preparation of TDM ordinances; administration and implementation of transit or TDM-related projects pursuant to CMP deficiency plans; and monitoring of transit standards by transit operators
- Funding Transportation Management Organization's (TMO) insurance costs or individual employer's vanpool programs under the umbrella vehicle insurance policy of the Jurisdiction

- Providing matching funds for LR eligible Safe Routes to School projects.

Jurisdictions are encouraged to adopt monitoring and evaluation performance standards for funding TDM projects. Jurisdictions are encouraged to utilize regionally adopted standards, and demonstrate, for example, how AQMD trip reduction targets are addressed through the TDM measure.

In conformity with regional, state and federal air quality objectives, Metro encourages use of alternative-fuel vehicles (e.g. LNG, CNG, Methanol) for any TDM-related shuttle, vanpool or paratransit vehicles.

If a Local Return funded project is or has an Intelligent Transportation System (ITS) component, it must be consistent with the Regional ITS Architecture. ITS projects must comply with the Countywide ITS Policy and Procedures adopted by the Metro Board including the submittal of a completed, signed self-certification form. Please go to <http://RIITS.net/RegITSDocs.html> and choose “Los Angeles Countywide ITS Policy and Procedures Document” or see Appendix VI (page 45) for information on Countywide ITS Policy and Procedures, and the self-certification form.

C. EXCLUSIVE USES OF PROPOSITION C FUNDS

Projects listed below are eligible for Proposition C LR funding only. Jurisdictions must certify that all project conditions will be met and include all supporting documents with submittal of the Form A. Jurisdictions are encouraged to use LR funds for improved public transit services and for multi-jurisdictional cooperation of arterial traffic signal control operations. Agency costs for operating a centralized traffic signal system, including those costs linked to a local agency’s participation in the countywide Information Exchange Network (IEN), are now eligible for reimbursement. Stand alone amenities such as landscaping and storm drains are ineligible. Note: The following project eligibility criteria provide for general guidance only and are not the sole determinant for project approval. The authority to determine the eligibility of an expenditure rests solely with Metro. Jurisdictions may appeal projects deemed ineligible as described in Section III, page 23.

1. SIGNAL SYNCHRONIZATION & TRAFFIC MANAGEMENT (Project Code 400)

Synchronized Signalization projects must meet the following conditions:

- Projects shall be implemented only on major arterials.
- Operation costs associated with centralized traffic signal control systems, including updating traffic signal coordination timing and costs associated with multi-jurisdictional or inter-community systems, (such as the IEN or ATSAC/ATCS) or with transit signal priority systems, are eligible. Costs may include: lease lines for communication; software licenses and maintenance; hardware maintenance, maintenance and repair of hardware, vehicle detection devices and interconnect lines; warranties; and upgrades and enhancements for software or hardware. Cities shall coordinate the signal timing or systems with other affected jurisdictions.

- The major arterial targeted for implementation must have full-sized transit buses operating on regularly scheduled fixed routes.
- Documentation of coordination with affected public transit operators is required for approval (e.g., correspondence between the Jurisdiction and the transit operator with written concurrence from the transit operator to Metro)
- Local return funds shall not be used to alter system/signal timing that was implemented under a traffic forum project/grant unless coordinated with all affected jurisdictions in the corridor.

Installation or modification of traffic signals which are not part of a larger transit project are not eligible, except as detailed in this section. Maintenance and replacement of traffic signals are not eligible.

Traffic signal projects will be reviewed and considered on a case by case basis to evaluate the transit benefit of the project. The following information may be requested and evaluated, depending on the type of traffic signal project:

- Number of transit boardings at the affected transit stop or station
- Transit patrons as a proportion of pedestrian volume
- Transit vehicles as a proportion of vehicle flow
- Letter from affected transit operator requesting and justifying traffic signal installation or modification
- Proximity of proposed signal to transit stop or station
- The affected transit stop(s) must be served by transit with 15 minute or greater frequency to be eligible.
- Proximity to adjacent controlled intersection

Based on the review, all or a proportion of the project costs may be eligible for Local Return funds.

If a Local Return funded project is or has an Intelligent Transportation System (ITS) component, it must be consistent with the Regional ITS Architecture. ITS projects must comply with the Countywide ITS Policy and Procedures adopted by the Metro Board including the submittal of a completed, signed self-certification form. Please go to <http://RIITS.net/RegITSDocs.html> and choose “Los Angeles Countywide ITS Policy and Procedures Document” or see Appendix VI (page 45) for information on Countywide ITS Policy and Procedures, and the self-certification form.

2. TRANSPORTATION DEMAND MANAGEMENT (Project Code 410)

Transportation Demand Management (TDM) projects are defined as strategies/actions intended to influence the manner in which people commute, resulting in a decrease in the number of vehicle trips made and vehicle miles traveled during peak travel periods.

TDM projects funded by Proposition C will be evaluated on their proposed impact on reduction of single-occupancy vehicle trips and corresponding vehicle miles traveled.

A list of sample TDM projects follows:

- Formation and operation of vanpool and/or vanpool incentive programs, including ride matching programs (must be made available to all employers and/or residents within the Jurisdiction boundaries)
- Community-based shuttles for employees as long as such services complement existing transit service
- Parking Management incentive programs, such as, parking cash outs or parking pricing strategies
- Employer or citizen ride-matching programs and subsidies
- Formation or ongoing operation of a Transportation Management Association to administer and market local TDM programs (provided that the 20% administrative cost stipulated for Proposition A and Proposition C is not exceeded)
- Transit and TDM-related activities required by the Congestion Management Program (CMP) including: preparation of TDM ordinances; administration and implementation of transit or TDM-related projects pursuant to CMP deficiency plans; and monitoring of transit standards by transit operators
- Funding Transportation Management Organization's (TMO) insurance costs or individual employer's vanpool programs under the umbrella vehicle insurance policy of the Jurisdiction
- Providing matching funds for LR eligible Safe Routes to School projects.

Jurisdictions are encouraged to adopt monitoring and evaluation performance standards for funding TDM projects. Jurisdictions are encouraged to utilize regionally adopted standards, and demonstrate, for example, how AQMD trip reduction targets are addressed through the TDM measure.

In conformity with regional, state and federal air quality objectives, Metro encourages use of alternative-fuel vehicles (e.g. LNG, CNG, Methanol) for any TDM-related shuttle, vanpool or paratransit vehicles.

If a Local Return funded project is or has an Intelligent Transportation System (ITS) component, it must be consistent with the Regional ITS Architecture. ITS projects must comply with the Countywide ITS Policy and Procedures adopted by the Metro Board including the submittal of a completed, signed self-certification form. Please go to <http://RIITS.net/RegITSDocs.html> and choose "Los Angeles Countywide ITS Policy and Procedures Document" or see Appendix VI (page 45) for information on Countywide ITS Policy and Procedures, and the self-certification form.

3. CONGESTION MANAGEMENT PROGRAM (CMP) (Project Code 420)

The following provides a list of sample CMP projects:

- Land use analysis as required by CMP
- Computer modeling as required to support CMP land use analysis
- Administration, monitoring and implementation of transit- or TDM-related projects as part of deficiency plans
- Monitoring of transit standards by transit operators

4. BIKEWAYS AND BIKE LANES (Project Code 430)

Bikeway projects include bikeway construction and maintenance, signage, information/safety programs, and bicycle parking, and must meet the following conditions:

- Shall be linked to employment or educational sites
- Shall be used for commuting or utilitarian trips
- Jurisdictions must have submitted a PMS Self Certification (see page 20, and Appendix III on page 39).

5. STREET IMPROVEMENT AND MAINTENANCE (Codes 440, 450 & 460)

Proposition C Local Return funds are to be used for the maintenance and improvements to street and highways used as public transit thoroughfares. Street Improvement and Maintenance Projects Capacity enhancements include repair and maintenance projects with a direct benefit to transit. **Projects must meet the following conditions and reporting requirements:**

A. CONDITIONS:

Public Transit Benefit

Projects must demonstrate a public transit benefit or be performed on streets “heavily used by public transit,” where such streets carry regularly-scheduled, fixed-route public transit service, and where service has operated for a minimum of one (1) year and there are no foreseeable plans to discontinue such service.

If there are no fixed-route systems within a Jurisdiction, or if all the streets supporting fixed-route systems are already in a satisfactory condition as documented by the required Pavement Management System (PMS), a Jurisdiction may use LR funds for street improvements and maintenance and repair on streets within their community on which they can demonstrate that public paratransit trips, that have been in service for a minimum of one year, concentrate.

The method of demonstrating heavy-use by paratransit vehicles is to document trip pick-up and drop-off locations, including street-routing, for a consecutive three month time period. The data will be used in making a determination on which street segments have heavy-use by this form of transit.

Pavement Management System (PMS)

If Proposition C LR funds are to be used for street improvement or maintenance, a jurisdiction must have a PMS in place, and use it. (See PMS code 470 for self certification requirements, page 20).

Maintenance of Effort (MOE) Requirement

The goal of the Proposition C LR Program is to improve transportation conditions, including the roadways upon which public transit operates. When used to improve roadways, the additional funds provided to local jurisdictions through the Proposition C LR Program are intended to supplement existing local revenues being used for road improvement purposes. Cities and counties shall maintain their existing commitment of local, discretionary funds for street and

highway maintenance, rehabilitation, reconstruction, and storm damage repair in order to remain eligible for Proposition C LR funds to be expended for streets and roads.

Metro will accept the State Controller's finding of a Jurisdiction's compliance with the California Streets and Highways Code as sufficient to demonstrate the required Maintenance of Effort during any fiscal year in which Proposition C LR funds are expended for streets and roads.

B. REPORTING REQUIREMENTS

Street maintenance, rehabilitation or reconstruction projects should be submitted individually. Jurisdictions shall submit a Project Description Form listing all new project street segments prior to undertaking each street maintenance or improvement project. Jurisdictions will be advised as to any eligible and ineligible street segments within 30 days of project submittal.

The projects must be reflected on subsequent Annual Project Update (Form B) submittals and Annual Expenditure Reports (Form C) until the project is completed or deleted from the work program. Once deleted, a segment must be re-submitted for approval if a new street maintenance project on the segment is subsequently planned.

Eligible Street Improvement and Maintenance Projects

1. Exclusive Bus Lane Street Widening

Such projects are for exclusive bus lanes (physically separated) on surface arterials.

2. Capacity Enhancement

Capacity Enhancement projects are level-of-service and/or capacity improvements capital projects. These projects must include a public transit element that is comprised of transit vehicles on streets that are "heavily used by transit." Examples of these projects include street widening or restriping to add additional lanes.

3. Street Repair and Maintenance

Eligible Street Repair and Maintenance projects are limited to pavement maintenance, slurry seals, and chip seals, pavement rehabilitation and roadway reconstruction. Required curb, gutter, and catch basin repair (storm drains) on streets "heavily used by transit" that are part of a rehabilitation or reconstruction project are eligible. Betterments are not eligible for LR funding.

4. Safety

Street improvement projects to increase safety are eligible, but must have a direct and clearly demonstrable benefit to both safety and transit. At Metro's discretion, a project may be approved on a down-scoped demonstration basis. The local jurisdiction would be required to conduct a before and after evaluation prior to Metro approval of the full project scope.

5. Americans with Disabilities Act Related Street Improvements

In compliance with the Americans with Disabilities Act (ADA), the provision of curb cuts or passenger boarding/alighting concrete pads at or adjacent to bus stops and other accessible improvements on roadways “heavily used by transit” is an eligible use of Proposition C LR funds. Such modifications must meet ADA and California Title 24 specifications.

7. PAVEMENT MANAGEMENT SYSTEM (PMS) (Project Code 470)

Sample Pavement Management System projects include:

- Cost to purchase, upgrade or replace a Pavement Management System.
- The ongoing cost of maintaining a PMS equal to the proportion of a Jurisdiction’s eligible street mileage to total street mileage; or 50% of the PMS maintenance cost, whichever is greater.

Note: Jurisdictions are required to certify that they have conducted and maintain Pavement Management Systems when proposing "Street Repair and Maintenance" or “Bikeway” projects (see Appendix III, page 39). The requirement for a PMS is consistent with Streets & Highways Code Section 2108.1.

PMS must include the following:

- Inventory of existing pavements including, as a minimum, arterial and collector routes, reviewed and updated triennially;
- Inventory of existing Class I bikeways, reviewed and updated triennially;
- Assessment of pavement condition including, as a minimum, arterial and collector routes, reviewed and updated triennially;
- Identification of all pavement sections needing rehabilitation/replacement; and
- Determination of budget needs for rehabilitation or replacement of deficient sections of pavement for current and following triennial period(s)

Self-certifications (included in Appendix III) executed by the Jurisdiction’s Engineer or designated, registered civil engineer, must be submitted with a Form A for new street maintenance or bikeway projects, or Form B (biannually) for ongoing projects, to satisfy “Street Repair and Maintenance” and “Bikeway” project eligibility criteria.

III. METRO'S ADMINISTRATIVE PROCESS

A. REPORTING REQUIREMENTS FOR JURISDICTIONS

STANDARD ASSURANCES

In the event that a new Jurisdiction is formed within Los Angeles County, Metro will require that a Standard Assurances and Understanding agreement be submitted prior to participation in the LR Program. A sample Standard Assurance and Understanding agreement form is included as Appendix II, see page 37.

PROPOSITION A AND PROPOSITION C FORMS

To maintain legal eligibility and meet LR Program compliance requirements, Jurisdictions shall submit to Metro a Project Description Form as required, an Annual Project Update and Annual Expenditure Report. A Project Description Form, Annual Project Update and Annual Expenditure Report (Forms A, B and C along with instructions) are included in Appendix VIII, starting on page 49.

PROJECT DESCRIPTION FORM (FORM A)

A new project that meets the eligibility criteria listed in Section II, Project Eligibility, must be submitted to Metro on Project Description Form (Form A) prior to the expenditure of funds. Metro will review the project to determine if it meets the statutory eligibility requirement and notify Jurisdictions of the project's LR funding eligibility. If a Jurisdiction expends Proposition A or Proposition C LR funds for a project prior to Metro approval, the Jurisdiction will be required to reimburse its LR Account. Additionally, approvals cannot be retroactive.

A Project Description Form (Form A) may be submitted any time during the fiscal year. Metro will review and accept or return the report for changes. All projects must be identified with their own unique sequence and project code, e.g. 01-200, and the form must be filled out completely. Once a Jurisdiction decides to proceed on a new or revised project, the Jurisdiction should comply with the following process before expending any funds:

STEP 1 - Form Submittal

A Project Description Form (Form A) shall be submitted whenever a Jurisdiction proposes a 1) a new project; 2) a new route; 3) a 25 percent or more (increase or decrease) in route or revenue vehicle miles for an established LR funded transit service); 4) a 25 percent or greater change in an approved LR project budget or scope, or 5) a service change that duplicates/overlays an existing transit service equal to or greater than .75 miles.

A change is defined as any modification to route, budget, service area, stops, frequency, fare or clientele for the project as originally approved or subsequently approved by Metro.

NOTE: a.) All new transit or paratransit service projects, existing services with a change of 25% or more (increase or decrease), or cancellation of services, are subject to review under the Service Coordination Process (as described on page 24).

- b.) If transit service is canceled, Jurisdictions should notify Metro in writing, secure review by the Service Review Process, and inform the public.

STEP 2

Metro staff will review Form A to determine if the project is eligible for LR expenditure.

STEP 3

After it is determined that the project is eligible, Metro staff will notify Jurisdictions in writing authorizing the expenditure of the LR funds. This will be done within thirty days of receipt of Form A. However, if additional information/justification for the project is required, it may take longer for the approval.

STEP 4

Form A will be used as the basis for a Jurisdiction's annual compliance audit required under the LR Program. Records should be maintained as stated in Audit Section V, page 33.

ANNUAL PROJECT UPDATE (FORM B)

Jurisdictions shall submit on or before August 1 of each fiscal year an Annual Project Update (Form B) to provide Metro with an update of *all* approved, on-going and carryover LR projects. Jurisdictions will be informed in writing of approval for project continuance. Metro will review the report and accept or return the report for changes. Staff review will consist of verification that the status of the projects listed corresponds to the originally approved projects. All projects should have their own identifying code, e.g. 01-200.

Projects for service operations whose anticipated start-up date is in the middle of the fiscal year, should be budgeted for services through the end of the fiscal year only. After the first year of service operations, project updates should be submitted annually, by August 1 of the new fiscal year.

ANNUAL EXPENDITURE REPORT (FORM C)

On or before October 15 of each fiscal year, Jurisdictions shall submit an Annual Expenditure Report (Form C) to notify Metro of previous year LR fund receipts and expenditures. Metro will review the report and approve or return for changes.

For Jurisdictions with Recreational Transit projects, Jurisdictions are required to annually submit an accounting of Recreational Transit trips, destinations and costs. This information should be submitted along with the Form C, no later than October 15 after the fiscal year.

Jurisdictions are required to call out administration charges to Direct Administration (Project Code 480) in order to verify compliance of 20% cap on administration costs.

The following provides a summary of form use and due dates:

<u>FORM</u>	<u>DETERMINATION</u>	<u>DUE DATE</u>
Project Description Form - Form A	New and amended projects	Any time during the year
Annual Project Update - Form B	All on-going and/or capital (carryover) projects	August 1 st of each year
Annual Expenditure Report - Form C	Report expenditures	October 15 th of each year

B. APPEAL OF ELIGIBILITY

Jurisdictions submitting a project, which has been classified by Metro staff as ineligible, may appeal the determination. An appeal should be submitted in writing to the Chief Planning Officer of Countywide Planning & Development. The project will then be reviewed for eligibility.

Should the project be denied eligibility status by the Chief Planning Officer, a final appeal may be submitted in writing to the Chief Executive Officer. The project will then come before the Metro Board for final determination of eligibility.

The appeal process is administered as a Board Public Hearing by the Board Secretary's office at the regularly scheduled Planning and Programming meetings. The Board has the authority to act on the transcript of the Hearing or to conduct its own hearing. The Metro Board decision is final.

Once the determination is final (either by an administrative determination that is not appealed within the 10-day statute of limitations, or as a result of the appeal process), Metro staff will send a notice of final determination of project eligibility to the Jurisdiction with conditions described or attached.

C. GOVERNING BODY AUTHORIZATION

While Metro does not require Jurisdictions to file a governing body authorization when submitting LR Forms (e.g., a city resolution or minute order), it is the responsibility of the Jurisdiction to keep these documents on file for audit purposes.

D. ENVIRONMENTAL REVIEW RESPONSIBILITY

Jurisdictions are the lead agencies for the projects with which they propose to implement using LR funds. Therefore, those agencies are responsible for preparing the necessary state and/or federal environmental documentation, and must comply with all applicable provisions of the California Environmental Quality Act, or if federal funds are involved, the National Environmental Policy Act.

E. PROJECT DESCRIPTION FORMS AND THE PROPOSITION A AND PROPOSITION C 40% DISCRETIONARY PROGRAM

If a Jurisdiction submits a project description for operating assistance for an included transit operator, the amount of operating assistance applied for will be considered as an operating subsidy in the fiscal year specified in Forms A or B. The full LR operating assistance amount shown in Form A or B will be considered when determining the eligible Proposition A or C Discretionary grant amount in accordance with the Proposition A and Proposition C 40% Discretionary Program Guidelines. Any changes must be approved prior to the close of the specific fiscal year. No changes will be approved after November 1 of the following fiscal year (e.g., changes in FY 2006-2007 projects must be received by Metro prior to November 1, 2007 to allow adequate time for staff review).

In addition, depreciation is not an eligible operating expense for which LR funds can be allocated, committed, encumbered, or claimed.

F. ANNUAL PROJECT UPDATE SUBMITTALS BY RECIPIENTS OF METRO FORMULA FUNDS

Jurisdictions with municipal bus operations receiving Metro formula funds (e.g. TDA Article 4, FTA Section 5307 and State Transit Assistance funds) should submit projects with the regular Transportation Improvement Program (TIP) and TIP-amendment cycle to facilitate processing and coordination. Other Jurisdictions may submit Project Description Forms at any time. LR projects and revenue may be shown in the Los Angeles County TIP for information purposes.

G. OTHER RESPONSIBILITIES OF JURISDICTIONS

It is the responsibility of Jurisdictions to ensure that all applicable federal, state and local requirements are met with regard to public health and safety, affirmative action, fair labor practices, transit accessibility to disabled persons, etc. Metro has no responsibilities in these areas with regard to local transit projects carried out by Jurisdictions receiving Proposition A or C revenues.

H. AMERICANS WITH DISABILITIES ACT MAINTENANCE OF EFFORT (MOE)

Metro will continue to monitor the operations of LR funded paratransit services to ensure that ADA paratransit-eligible riders continue to receive non-discriminatory transportation service on local paratransit systems pursuant to ADA and TDA. If Metro determines that ADA paratransit-eligible individuals are disproportionately being denied service, Metro will work with the LR funded agency to resolve the issue, up to and including a Maintenance of Effort.

Jurisdictions that currently provide paratransit service are required to continue to provide either ADA-eligible individual transportation service, or fund transportation trips that are completely within their jurisdictional boundaries, when requested. This obligation may not exceed 20 percent of the total LR allocation to the jurisdiction. If no requests for service within the jurisdiction are received, there will be no obligation to provide service or funding.

To better determine the accessibility of pathways to and from bus stops in Los Angeles County, all jurisdictions and the County of Los Angeles are requested to submit their projects on the Project Description Form (Form A) indicating what accessible features are being updated. Examples include curb cuts, installation or repair of pedestrian walkways, bus pads, and/or removal of sidewalk barriers (telephone poles, light poles, and other barriers). This form shall be submitted as required under these Guidelines.

I. SERVICE COORDINATION PROCESS

If a Jurisdiction is proposing to use LR funds for a new or expanded paratransit or transit service project, it is required to comply with the following Service Coordination Process:

The Service Coordination Process has four principal steps: Early Consultation by the proposing Jurisdiction with Metro Operations, and Contract Departments as the service is being developed at a local level; Proposition A or Proposition C LR eligibility review; service coordination administrative review; Metro Board Appeal Process to review the administrative determination, if requested. The following instructions should assist Jurisdictions in completing the service coordination review process:

Under the Proposition A and Proposition C Ordinances, transit services provided by Jurisdictions with LR funds should not duplicate existing transit or paratransit services.

The Proposition A and Proposition C LR Guidelines require Jurisdictions to follow the service coordination process under the following conditions: when a new service is proposed or when current service is modified by expanding service by 25 percent (increase or decrease) in route miles, revenue vehicle miles, service areas, stops, frequency or fare; when a proposed new route or change duplicates an existing route for 0.75 miles or more; or if a service is canceled.

1. **Implementing A Proposed New or Modified Transit or Paratransit Service**

When implementing a new or modified transit service or paratransit service project Jurisdictions should comply with the following process:

- a. Prior to Submittal of the Project Description Form -- Metro encourages Jurisdictions to work closely with Programming and Policy Analysis staff and Metro's Operations Unit (Sector General Managers and Deputy Executive Officer of Service Development) when a service project is being developed, in order to avoid or reduce service duplication impacts.
- b. Submitting a Project Description Form -- Similar to other LR projects, Jurisdictions are required to submit a Form A describing the new or modified service.
- c. Letter of Conditional Approval Will Be Sent to Jurisdictions -- After Metro Operations staffs have reviewed Form A, a letter of conditional approval is sent to Jurisdictions, subject to Metro Service Development Team review. This letter is then forwarded with a recommendation to the **Service Development Team**, to potentially affected Jurisdictions and transit operators, with the Form A and any route maps, service schedules and fare information provided by the proposing Jurisdiction.
- d. Role of Service Development Team -- Metro Service Development Team is an executive level committee that is chaired by Metro Chief Executive Officer (CEO). This committee reviews key issues concerning agency transportation and planning projects. The Service Development Team will use the following criteria for evaluating the impacts of new or expanded services funded:
 - Potential for passenger and revenue diversion from the existing transit services, resulting from service duplication, to the proposed new or expanded service
 - Operational considerations such as available street capacity, bus zone curb space, street configuration and traffic congestion
 - Type of service and/or markets served by the new service, compared to existing services in the area
 - Early coordination and project development with existing service providers and Jurisdictions (efforts beyond the minimum 60 days)

Metro will encourage fare coordination and connectivity with other interfacing transit operators.

- e. Letter of Final Approval or Disapproval -- Based on the evaluation criteria, the Service Development Team will either grant approval or deny a Jurisdiction's request. The Committee will notify the Jurisdiction of the outcome.
- f. Board Appeal Process -- If the project is disapproved, the Jurisdiction may file an appeal. See Appeal of Eligibility, page 23.

2. **Seasonal or Emergency Temporary Service**

Seasonal service lasting less than 60 days will be administratively reviewed and considered for approval without Metro Board review, unless an Metro Board action is specifically requested. In the event of an emergency, staff reserves the right to temporarily waive the service coordination requirements. Any projects begun under emergency waiver conditions must undergo the New Service Coordination review process within 60 days after the emergency has ended, in order to continue to be eligible for expenditure of LR funds. Seasonal or emergency services are not considered ongoing projects. Equipment purchased during the emergency waiver period will not be subject to prior approval. Emergency service may continue during the subsequent New Service Review process.

3. **Contracting With Other Service Providers**

Jurisdictions may use their LR funds to contract with other public or private service providers for new or improved transit services, subject to non-duplication/competition requirements.

J. **CAPITAL RESERVE PROCESS - APPROVAL PROCEDURE**

Jurisdictions who wish to establish a Capital Reserve fund with LR revenues should note that establishing a Capital Reserve fund constitutes a long term financial and planning commitment. The approval procedure is as follows:

- a. The Project Description **Form (Form A)**, submitted by the Jurisdiction, must be reviewed by Metro staff and approved by Metro Board;
- b. If the project is approved, the Jurisdiction is required to:
 - Enter into a Capital Reserve Agreement (see sample in Appendix IV, page 40) with Metro to reserve funds
 - Establish a separate account, or a sub-account, for Capital Reserve funds. Any interest accrued on the Capital Reserve Account would remain in said account
 - Include the Capital Reserve amount and the current project status in their Project Annual Update (Form B) and on the Annual Expenditures Report (Form C, including any expenditures or interest accrued.
- c. Conditions of the Capital Reserve Agreement:
 - The annual audit will include a detailed audit of the jurisdiction's capital reserve account.
 - Every three (3) years, Metro must evaluate the Capital Reserve Account as it pertains to the status of the project; and the projected amount of funds available.
 - If the funds are expended for projects other than the originally-approved capital project, the jurisdiction must pay the funds back to Metro.
 - If the capital project is not completed within the time specified under the terms of the Capital Reserve Agreement, its funds will be subject to lapse. However, if the project is delayed, Jurisdictions should request in writing to Metro approval to extend the life of the reserve. Such projects will be reviewed on a case-by-case basis.
 - For rail projects, if it is decided by Metro that the Rail corridor is no longer a high priority, the agreement will be terminated and the Jurisdiction must:
 1. Dissolve the Capital Reserve fund and return the accumulated funds, including any interest earned, to the Jurisdiction's LR fund; and

2. Reprogram the funds, within the next three (3) years from the Agreement termination date (see Appendix IV for Sample Agreement, page 40). While the Jurisdiction is not required to expend all of the funds within these three years, Metro reserves the right to impose a reasonable limit on the period of expenditure for reprogrammed funds.
 - If there is action by Metro to suspend a rail project, the Jurisdiction may continue to hold onto the reserve until such time the project is reinstated as active or terminated.
 - If, at any time a Jurisdiction, independent of any Metro action, desires to reprogram all or part of the funds in the Capital Reserve Account, the Jurisdiction must indicate the proposed use of the accumulated funds to be reprogrammed, and receive Metro approval.
 - If, at any time either party decides to terminate the Capital Reserve Project, a letter shall be submitted giving 30 days notice of the termination.
 - If the Capital Reserve Project is terminated, the Timely Use of Funds period on the lapsing date of the reserved funds will be reviewed and determined by the audit.
- d. Metro approval for reprogramming funds will be based on the following:
 - If after exhausting all LR funds, additional funds are necessary to meet critical immediate or pending transit needs
 - If the reprogramming request is approved, the agreement between Metro and the Jurisdiction will be either terminated or amended accordingly
 - If the reprogramming request is disapproved, the Jurisdiction would be required to continue the capital reserve account as stipulated or apply to draw the fund down for another Metro approved capital-related project.

K. FUND EXCHANGE

Only Proposition A funds may be exchanged or traded. Refer to page 13 for conditions.

L. LOANING LR FUNDS BETWEEN JURISDICTIONS (FOR PROPOSITION A ONLY)

In order to meet short-term project needs while preserving longer-term reserves or to avoid loss of funds due to the timely-use provisions, the Jurisdictions may arrange a mutually acceptable temporary transfer or loan from one Jurisdiction to another. These loans are to be made on terms to be negotiated between the involved parties. The participating Jurisdictions are held mutually responsible for ensuring that the end use of Proposition A is for statutorily-allowed purposes. The timely use provision as indicated on page 30 will apply to loaning of such funds. Metro must be notified of the amount, terms and period of such arrangements within thirty days of such arrangements.

Note: Metro reserves the right to temporarily reallocate funds. Any temporary reallocation would be subject to full review by the Planning and Programming Committee and approved by Metro Board.

M. GIVING PROPOSITION C LR FUNDS TO ANOTHER JURISDICTION

Since the Proposition C Ordinance does not allow trades or exchanges of these funds, a Jurisdiction can give its Proposition C funds to another Jurisdiction for the implementation of a mutual project. However, the Jurisdiction giving the funds away cannot accept an exchange or gift of any kind in return. Jurisdictions involved in giving funds should obtain Metro approval and keep official agreements on file.

N. REIMBURSEMENT

LR funds may be advanced for other grant funds as long as the project itself is eligible under LR Guidelines. The grant funds must be reimbursed to the LR fund.

IV. FINANCE SECTION

A. METRO'S METHOD OF APPORTIONMENT

The Proposition A Ordinance specifies that twenty-five percent (25%) of all Proposition A revenues, while the Proposition C Ordinance specifies that twenty percent (20%) of all Proposition C revenues, are to be allocated to Jurisdictions for local transit on a "per capita" basis. The annual estimate of Proposition A and Proposition C revenues will be derived by Metro staff based on projections by the State Board of Equalization.

After administrative costs of the Proposition A and Proposition C Programs are deducted, apportionments are made to all Jurisdiction within Los Angeles County, currently 88 cities and the County of Los Angeles (for unincorporated areas), on the basis of population. These population shares are based on the projected populations derived from annual estimates made by the California State Department of Finance.

B. METRO'S FUND DISBURSEMENT

The Proposition A and Proposition C funds are disbursed by Metro on a monthly basis. The disbursements to an individual Jurisdiction will equal that Jurisdiction's population-based share of actual net receipts for the month.

C. ACCOUNTING FOR PROPOSITION A AND PROPOSITION C REVENUES AND EXPENDITURES BY JURISDICTIONS

1. ESTABLISHING A SEPARATE ACCOUNT

Jurisdictions which do not use the State Controller's Uniform System of Accounts and Records must establish a separate Proposition A and Proposition C Local Transit Assistance Account and deposit all Proposition A and Proposition C LR revenues, interest earnings received, and other income earned from Proposition A and Proposition C LR in that account.

In accordance with the State Controller's instructions, Jurisdictions which use the Controller's Uniform System do not need to establish a separate Proposition A and Proposition C Local Transit Assistance Account but will list all Proposition A and Proposition C revenues (including interest) and expenditures as special line items in the Uniform System. In any case, all Jurisdictions will be required to account for and identify all Proposition A and Proposition C receipts, interest, and expenditures. This will enable financial and compliance audits to be conducted in an organized and timely fashion. Sufficient unrestricted cash or cash equivalent must be available at all times to meet the needs of general Jurisdiction operations without impairment of the Proposition A and Proposition C Local Transit Assistance Accounts.

2. EXCEPTIONS FOR RECIPIENTS OF TDA ARTICLE 4 FUNDS

A separate account or fund is not mandatory when Proposition A and Proposition C LR funds are accounted for in an enterprise fund and are exclusively used as transit operating subsidies as long as the Jurisdiction/operator is able to maintain accounting records. These records should allow for the preparation of financial statements, which present assets, liabilities, revenues, expenditures (if any) and transfers out. While it is necessary that Proposition A and Proposition C Program recipients be able to demonstrate that they have complied with applicable guidelines in expending Proposition A and Proposition C funds as operating subsidies, it is not necessary that such expenditures be separately identifiable for audit purposes.

3. POOLING OF FUNDS

Metro will allow Jurisdictions to pool Proposition A and Proposition C LR funds in order to obtain maximum return on investments. Such investment earnings must be reported and expended consistent with these guidelines. As in fund exchanges or transfers, Jurisdictions involved in such arrangements should keep adequate records of such transactions in order to allow for subsequent audits.

4. INTEREST AND OTHER EARNED INCOME

Jurisdictions are entitled to retain any and all interest revenues, which they may earn on their Proposition A, and Proposition C revenues. Other income earned from Proposition A and Proposition C projects such as fare revenues, revenue from advertising, etc., may also be retained by Jurisdictions in their LR accounts. Such earnings must be reported and expended consistent with these guidelines. Jurisdictions must maintain accurate records for the amount of interest earned each year. Interest must be allocated to the Local Transit Assistance Account on an annual basis, and reported as part of the annual audit.

5. PROJECT REVENUE

The Jurisdictions need only report project-generated revenues, such as fares, when such revenues are retained and recorded by the Jurisdiction. Revenues should be reported on the accrual basis.

6. INTER-FUND TRANSFERS

On an accrual basis of accounting, Jurisdictions should make note of the following: expenditures for an approved project, which are made from a fund other than the Proposition A or Proposition C LR fund and will be reimbursed by Proposition A and Proposition C LR funds, should be included in the Annual Expenditure Report to Metro in the period such expenditures are made and not in the period in which the disbursing fund is reimbursed for such expenditures.

7. UNEXPENDED PROJECT FUNDS

All unexpended project funds remaining upon completion of an approved project must be re-programmed.

8. ONGOING OPERATING PROJECTS

Continuing administration, transit or paratransit projects, are ongoing projects. Such projects which have unexpended funds at the year end (excluding any outstanding liabilities) may not carry fund balances into the next fiscal year. Ongoing projects must be resubmitted on an annual basis (see Annual Project Update on page 22).

9. CARRYOVER CAPITAL PROJECTS

All other types of projects not cited above which 1) are not completed within the applied fiscal year and 2) have unexpended funds (i.e., fund balance), may be carried into the next fiscal year without resubmitting a project description. However, until completed, such projects must continue to be reported in the Annual Project Update and Annual Expenditure Report (Forms B and C).

10. REIMBURSEMENT

Local Return funds may be used to advance a project which will subsequently be reimbursed by federal, state, or local grant funding, or private funds, if the project itself is eligible under LR Guidelines. **The reimbursement must be returned to the appropriate Proposition A or Proposition C LR fund.**

D. NON-SUBSTITUTION OF FUNDS

1. Proposition A and Proposition C revenues should only be used to maintain and/or improve public transit services. They may not be used to substitute for property tax revenues, which are currently funding existing programs. If the Jurisdiction is unable to segregate property tax from other general fund revenues which cannot be so distinguished, substitution of Proposition A and Proposition C funds for general funds is also prohibited.
2. Jurisdictions which currently receive federal and/or state transit-assistance funds may use Proposition A and Proposition C revenues to replace or supplement any other state, federal, or local transit funds, as long as there is no relation to the property tax (as noted above).
3. Metro Staff reserves the right to bring project proposals involving the substitution of funds before Metro Board.

E. TIMELY USE OF FUNDS

1. PROPOSITION A AND PROPOSITION C FUNDS

Under the Proposition A and Proposition C Ordinances, Jurisdictions have three years to expend LR funds. Funds must be expended within three years of the last day of the fiscal year in which funds were originally allocated. Therefore, by method of calculation, each Jurisdiction has the Fiscal Year of allocation plus three years to expend Proposition A and/or Proposition C funds. For example, a Jurisdiction receiving funds during FY 2004-05 must expend those funds, and any interest or other income earned from Proposition A and Proposition C projects, by June 30, 2008.

Proposition A and Proposition C disbursements, interest income and other income earned from LR projects, such as fare revenues or revenues from advertising which are not expended within the allocated time will be returned to Metro for reallocation to Jurisdictions for discretionary programs of county-wide significance.

2. DETERMINING COMPLIANCE WITH TIMELY USE PROVISION

In applying the timely use provision, Metro will use a "First-In-First-Out" (FIFO) accounting principle, to afford Jurisdictions maximum time to expend funds. For example, City A had a fund balance of \$1,000,000 as of June 30, 2004. In order to avoid lapsing LR funds, City A must expend a total of \$1,000,000 or more from its LR funds during Fiscal Years 2004-05, 2005-06 and 2006-07. This calculation will be done individually for Proposition A and Proposition C funds.

3. EXTENSION OF TIMELY USE PROVISION

Metro will allow Jurisdictions to reserve funds for multi-year capital projects. A specific project must be identified under the Capital Reserve Process. See Capital Reserve Process, page 26.

F. RELATIONSHIP TO TDA ENTRY AND FORMULA DISTRIBUTION

Provision of transit services with LR funds will not qualify Jurisdictions for Transit Development Act (TDA) funding programs. In addition, mileage will not be counted in Metro's subsidy allocation formula for TDA operators.

G. NATIONAL TRANSIT DATABASE (NTD)

Locally funded transit systems are encouraged to report NTD data, either directly to the Federal Transit Administration (FTA), or through Metro's consolidated NTD report. Examples of locally funded transit systems include community based fixed route circulators, community shuttles, Metrolink feeder services and other rail station and neighborhood shuttles (Code 110). Also included are locally funded paratransit, dial-a-ride and demand response services, including taxi voucher and specialized transportation programs (Codes 120, 130).

Benefits of increased NTD reporting include additional Federal Section 5307 capital funds for the LA County region, and improved data collection for regional transportation planning purposes. At this time, NTD reporting is voluntary for locally funded operators. The Proposition A Incentive Guidelines, as adopted by Metro Board, provide a mechanism to reimburse voluntary reporters dollar-for-dollar for additional funds generated to the LA County region, subject to funds availability.

H. REPAYMENT OF FUNDS FOR FIXED ASSETS PURCHASES

If a facility ceases to be used for public transit use as originally stated in the project description, all Proposition A and Proposition C funds expended for the project must be returned to the Proposition A and Proposition C LR accounts.

General guidelines for repayment are as follows:

Land: Repayment of purchase price or appraised value, whichever is greater.

Facilities: 100% repayment of Proposition A and Proposition C LR funds if discontinuation of public transit use occurs between 0-5 years.

75% if discontinuation occurs in more than 5 years but less than 10 years.

50% if discontinuation occurs in more than 10 years but less than 15 years.

25% if discontinuation occurs in more than 15 years.

Repayment must be made no later than five years after the decision is made to cease utilizing the project as a public transit facility. Payback may be made in one lump sum or on an annual equal payment schedule over a five-year period.

Vehicles: Jurisdictions that cease to utilize vehicles for "public transit" purposes before their useful life, will be required to repay the funds into their Proposition A and Proposition C LR accounts in proportion to the useful life remaining. Federal standards for useful life will apply.

Repayment will be made in the same fiscal year as the vehicles ceased to be used for "public transit" purposes.

V. AUDIT SECTION

A financial and compliance audit will be conducted annually as part of Metro's Consolidated Audit Program to verify adherence to the Proposition A and Proposition C guidelines. Audits will be performed in accordance with auditing standards generally accepted in the United States of America and the Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that the audit is planned and performed to obtain reasonable assurance about whether the basic financial statements are free of material misstatement. The audit shall include examining, on a test basis, evidence supporting the amounts and disclosures in the basic financial statements. The audit shall also include review of internal control procedures, assessing the accounting principles used, as well as evaluation of the overall basic financial presentation.

It is the jurisdictions' responsibility to maintain proper accounting records and documentation to facilitate the performance of the audit prescribed in these guidelines. Jurisdictions are required to retain Local Return records for at least three years following the year of allocation and be able to provide trial balances, financial statements, worksheets and other documentation required by the auditor. Jurisdictions are advised that they can be held accountable for excess audit costs arising from poor cooperation and inaccurate accounting records that would cause delays in the completion of the required audits.

A. FINANCIAL AND COMPLIANCE PROVISIONS

The Proposition A and Proposition C Local Return Audits shall include, but not limited to, verification of adherence to the following financial and compliance provisions of this guidelines:

Audit Area	Penalty for Non-Compliance
Verification that jurisdictions which do not use the State Controller's Uniform System of Accounts and Records has established a Separate Proposition A and Proposition C Local Transit Assistance Account for local return purposes.	Suspension of disbursements.
Verification of revenues received including allocations, project generated revenues, interest income.	Audit exception.
Verification that funds were expended with Metro's approval and have not been substituted for property tax.	Jurisdiction will be required to reimburse its Local Return account for the amount expended prior to or without approval.
Verification that the funds are expended within three years from the last day of the fiscal year in which funds were originally allocated or received. (see "E" page 30).	Lapsed funds will be returned to Metro for reallocation to jurisdictions for discretionary programs of countywide significance.

<p>Verification that <u>administrative expenditures</u> (project code 480) did not exceed over 20% of the total annual LR expenditures.</p>	<p>Jurisdictions will be required to reimburse their Local Return account for the amount over the 20% cap.</p>
<p>Verification that projects with greater than 25% change from the approved project budget has been amended by submitting amended Project Description Form (Form A).</p>	<p>Audit exception.</p>
<p>Verification that the Annual Project Update (Form B) was submitted on or before August 1st following the end of fiscal year.</p>	<p>Audit exception.</p>
<p>Verification that the Annual Expenditure Report (Form C) was submitted on or before October 15th following the end of fiscal year.</p>	<p>Audit Exception.</p>
<p>Where expenditures include Street Maintenance or Improvement projects (project codes 430, 440 or 450), verification that Pavement Management System (PMS) is in place and being used.</p>	<p>Any Local Returned funds spent must be returned to the Local Return Funds.</p>
<p>Where funds expended are reimbursable by other grants or fund sources, verification that the reimbursement is credited to the Local Return account upon receipt of reimbursement.</p>	<p>Audit exception and reimbursement received must be returned to the Local Return Funds.</p>
<p>Where Proposition A funds were given, loaned or exchanged by one jurisdiction to another, verification that the receiving jurisdiction has credited its Local Return Accounts with the funds received.</p>	<p>Audit exception and reimbursement of affected funds to the Proposition A LR account.</p>
<p>Where funds expended were for Intelligent Transportation Systems (ITS) projects or projects with ITS elements, verification that a Self Certification has been completed and submitted to Metro.</p>	<p>Audit exception.</p>
<p>Verification that jurisdictions have a LR Assurances and Understandings form on file.</p>	<p>Audit exception.</p>

Where a capital reserve has been established, verification that a Capital Reserve Agreement is in effect, a separate account for the capital reserve is established, and current status is reported in the Annual Project Update (Form B).	Audit exception.
--	------------------

B. AUDIT DELIVERABLES

The auditor shall submit to the Jurisdictions and to Metro a Comprehensive Annual Report of Proposition A and Proposition C Local Return Funds no later than March 31st following the end of fiscal year. The report must contain at the minimum, the following:

- Audited Financial Statements – Balance Sheet, Statement of Revenues and Expenditures and Changes in Fund Balances.
- Compliance Report, Summary of Exceptions, if any, and ensuing recommendations.
- Supplemental Schedules – Capital Reserves, if any; Schedule of Detailed Project Expenditures; and Capital Assets.

C. SUSPENSION OR REVOCATION

Jurisdictions are expected to take corrective action in response to the Local Return financial and compliance audit. Notwithstanding the provisions of these guidelines, Metro reserves the right to suspend or revoke allocation to jurisdictions that may be found to be in gross violation of these guidelines, or repeatedly committing violations, or refusing to take corrective measures.

**PROPOSITION A AND PROPOSITION C LOCAL RETURN PROGRAM
SUMMARY OF PROPOSITION A AND PROPOSITION C USES**

PROJECT TYPE	PROPOSITION A	PROPOSITION C
Streets and Roads Expenditures	<ul style="list-style-type: none"> Allowed exclusively for Bus Lanes and Curb Cuts at corners located or adjacent to Bus Stops 	<ul style="list-style-type: none"> Allowed only on streets that carry regularly scheduled, Fixed-Route Public Transit Services and on streets that carry public Paratransit trips (see conditions outlined in eligibility section of the Guidelines)
Signal Synchronization	<ul style="list-style-type: none"> Allowed if performed to predominantly benefit Transit. Bus Priority must be included as part of the project. The street must have a minimum of five (5) full-sized transit buses in each direction per hour 	<ul style="list-style-type: none"> Allowed on streets that are heavily-used by Public Transit The street must have full-sized transit buses operating on a regularly scheduled fixed-route (no minimum number of buses) Operating costs such as software and hardware maintenance are allowed
Bikeways and Bike Lanes	<ul style="list-style-type: none"> Not allowed 	<ul style="list-style-type: none"> Commuter bikeways Shall be linked to employment sites.
Congestion Management Activities	<ul style="list-style-type: none"> Not allowed 	<p>Most elements allowed, such as:</p> <ul style="list-style-type: none"> Preparation of TDM Ordinances and Deficiency Plans. Land Use Analysis required by CMP Monitoring of Transit Standards by transit operators
Pavement Management System	<ul style="list-style-type: none"> Not allowed 	<p>Some elements allowed, such as:</p> <ul style="list-style-type: none"> One-time development costs of a Pavement Management System. The ongoing costs of maintaining the Pavement Management System (see Guidelines for conditions)
Trading or Exchanging of Funds	<ul style="list-style-type: none"> Allowed if the traded funds are used for Public Transit purposes 	<ul style="list-style-type: none"> Not allowed

ASSURANCES AND UNDERSTANDINGS REGARDING
RECEIPT AND USE OF PROPOSITION A and PROPOSITION C FUNDS

The undersigned, in conjunction with the receipt of funds derived from the one-half cent sales tax imposed by Ordinance No. 16 (Proposition A) and the one-half cent sales tax imposed by the Proposition C Ordinance of the Los Angeles County Metropolitan Transportation Authority (Metro), and as required by Metro's Local Return Program Guidelines, hereby provides the following assurances and understandings.

A. The undersigned hereby assures Metro:

1. That the Proposition A and Proposition C funds will not be substituted for property tax funds which are currently funding existing public transportation programs;
2. That Proposition A and Proposition C funds will be used for public transit purposes as defined in Metro's Local Return Program Guidelines;
3. That the undersigned will submit to Metro a description of the use of funds:
 - a. For service expansion or new service: at least 60 days before encumbrance of funds;
 - b. For other projects: at least 30 days before encumbrance of funds;
 - c. Annually, by August 1st of each year, an update of previously approved projects;
 - d. Annually, by October 15th of each year, an update of the prior year's expenditures;
4. Any proposed use of funds will not duplicate or compete with any existing publicly-funded transit or paratransit service;
5. That Proposition A and Proposition C funds will be expended by the date that is three years from the last day of the fiscal year in which funds were originally allocated;
6. Unless otherwise required by Metro, an audit certified by a Certified Public Accountant, will be conducted by Metro within 180 days of the close of the fiscal year;
7. That the description of the intended use of the funds, as submitted to Metro, is an accurate depiction of the project to be implemented;
8. That a 25 percent change in project scope or financing for those projects defined in the Guidelines will be submitted to Metro at least 60 days before that change in scope is implemented;
9. That all projects proposed for Proposition A and Proposition C funding will meet the legal requirements of the Proposition A and Proposition C Ordinances and Metro's Local Return Program Guidelines criteria.

B. The undersigned further understands and agrees:

1. That Metro will require the undersigned to return any Proposition A and Proposition C funds and may impose interest penalties on any expenditure found to be illegal or improper under the terms of the Proposition A and Proposition C Ordinance or the Metro's Local Return Program Guidelines;
2. That the undersigned will, for projects to be funded in part or in whole with Proposition A and/or Proposition C funds, comply with all applicable federal, state, and local laws and regulations, including without limitation: American With Disabilities Act (ADA), CEQA and NEPA, affirmative action, transit accessibility and public health and safety requirements and fair labor practices;
3. That the undersigned will either utilize the State Controller's Uniform System of Accounts and Records to accommodate uses and disbursements of Proposition A and Proposition C funds or will establish a separate Proposition A and Proposition C Local Transit Assistance accounting system which will allow financial and compliance audits of Proposition A and Proposition C funds transactions and expenditures to be conducted;
4. That any Proposition A and Proposition C funds not expended within the year of receipt of funds plus three years thereafter will be returned to Metro upon request therefrom.

IN WITNESS WHEREOF the undersigned has executed this "Assurances and Understandings Regarding Receipt and Use of Proposition A and Proposition C Funds" this ____ day of _____, 20__ by its duly authorized officer:

CITY OF _____

BY _____

(Title)

DATE _____

**LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY (METRO)
PAVEMENT MANAGEMENT SYSTEM CERTIFICATION
PROPOSITION C**

The City of _____ certifies that it has a Pavement Management System (PMS) in conformance with the criteria stipulated by the Proposition C Local Return Guidelines (identical to the criteria adopted by the Joint City/County/State Cooperation Committee, pursuant to Section 2108.1 of the Streets and Highways Code).

The system was developed by _____ and contains, as a minimum, the following elements:

- * Inventory of arterial and collector routes (including all routes eligible for Proposition C funds), reviewed and updated triennially. The last inventory update was completed _____, 20__.
- * Inventory of existing Class I bikeways, reviewed and updated triennially.
- * Assessment (evaluation) of pavement condition for all routes in the system, updated triennially. The last review of pavement conditions was completed _____, 20__.
- * Identification of all sections of pavement needing rehabilitation or replacement.
- * Determination of budget needs for rehabilitation or replacement of deficient sections of pavement for current triennial period, and for following triennial period.

If PMS was developed in-house, briefly describe it on an attached sheet.

FROM:

AGENCY _____ DATE _____

(Please Print Name)

(Please Print Name)

(Title)

CAPITAL RESERVE AGREEMENT

This Capital Reserve Agreement (this “Agreement”) is entered into as of _____, by and between the Los Angeles County Metropolitan Transportation Authority (“Metro”) and the City of _____ (the “City”).

RECITALS:

A. The City receives Proposition [A] [C] local return funds (the “Local Return Funds”) from Metro.

B. Pursuant to the Proposition A and Proposition C Local Return Guidelines, which are incorporated herein by reference, the City has three years, beginning the last day of the Fiscal Year in which funds were originally allocated, to expend the Local Return Funds. By method of calculation, each jurisdiction has three years plus the Fiscal Year of allocation to expend the Local Return funds. This is period is identified in the Guidelines as Timely Use of Funds.

C. As of Fiscal Year _____, the City desires to commit and accumulate its Local Return Funds beyond the Timely Use of Funds period in order to construct and/or purchase _____ as more particularly described in City’s project description attached hereto as Exhibit A (the “Project”).

D. The Metro Board at its _____ board meeting approved the City’s establishment of a capital reserve fund for the Project.

NOW, THEREFORE, the parties hereby desire to agree to the following terms and conditions:

AGREEMENT

1. The City acknowledges that establishing a capital reserve fund for the Project constitutes a long term financial and planning commitment.
2. The City shall establish a separate interest bearing account or sub-account to be designated as the Capital Reserve Account. Commencing with Fiscal Year _____, the City shall deposit \$_____ of its Local Return Funds into the Capital Reserve Account. For future Fiscal Years, the City shall deposit the amount specified in its Project Annual Update submitted to Metro for that fiscal year, provided, however, if the City fails to submit its Project Annual Update, the City shall deposit its Local Return Funds in an amount equal to the amount deposited into the Capital Reserve Account for the immediately preceding fiscal year.

3. All interest accruing on the Capital Reserve Account shall remain in such account.
4. The City shall complete the Project by _____.
5. The City shall comply with all terms and conditions for the Capital Reserve Account as provided in the Proposition A and Proposition C Local Return Guidelines, including, without limitation, the following:
 - A. Each fiscal year, submitting the following items:
 - (i) an updated Project Description Form (Form A); and
 - (ii) an Annual Project Update (Form B), including the amount to be reserved and the current project status;
 - B. Every three years commencing with the Commencement Date of this Agreement, Metro will evaluate the Capital Reserve Account, the status of the Project and the projected amount of available funds. Based on this evaluation, Metro may require the City to take certain actions including, without limitation, terminating the Capital Reserve Account.
 - C. If the City uses the Local Return Funds in the Capital Reserve Account for a project different from the Project described above, the City shall return an amount equal to the improperly used funds to the Proposition A or Proposition C Central Account held by Metro. If the City fails to return the amount within 30 days from the date Metro notifies City that it must return the funds, the City hereby authorizes Metro to offset future Local Return allocations to the City in an amount equal to the improperly used funds.
 - D. If the City fails to complete the Project as specified by the date in paragraph 4 above, the Local Return Funds in the Capital Reserve Account may be subject to lapse unless otherwise agreed to in writing by the parties.
 - E. If the Project is a rail project, Metro may decide that the rail corridor is no longer a high priority. Metro can then terminate this Agreement and the City shall:
 - (i) close the Capital Reserve Account and return the outstanding balance of the Capital Reserve Account, including accrued interest (the “Returned Funds”), to the City’s local return account; and
 - (ii) reprogram the Returned Funds to be used within three years from the termination date of this Agreement. Any funds remaining after such three-year period shall lapse.
 - F. If the City, independent of Metro action, desires to reprogram all or part of the funds in the Capital Reserve Account, the City must prior to such reprogramming, receive Metro’s written approval. The City shall provide Metro with notice of its desire to reprogram the funds in the Capital Reserve Account and indicate the proposed use

of the funds to be reprogrammed and the effect of such reprogramming on the Project. Metro approval may be based on, among other things, whether after exhausting all Local Return funds, additional funds are necessary to meet the City's critical immediate or pending transit needs. If Metro approves reprogramming the funds, this Agreement shall be amended or terminated as appropriate. If Metro does not approve reprogramming the funds, the City must continue the Capital Reserve Account as provided herein or draw the funds down for Metro approved capital related project.

6. This Agreement shall commence on _____. This Agreement shall continue until such time as terminated by either party with a 30 day written notice under the conditions set forth in the Proposition A and Proposition C Local Return Guidelines.

IN WITNESS WHEREOF, the parties have executed this Capital Reserve Agreement by their duly authorized representatives as of the date above.

City of _____

Los Angeles County Metropolitan
Transportation Authority

By:_____

By:_____

Name:_____

Name:_____

Its:_____

Its:_____

Approved as to form:

Approved as to form:

Name:_____

Raymond G. Fortner, Jr.
County Counsel

Its:_____

By:_____
Deputy

SAMPLE FUND EXCHANGE AGREEMENT**(PROPOSITION A LOCAL RETURN ONLY)**

This Fund Exchange Agreement is made and entered into this _____ day of _____, 20__, by and between the City of Surf City, California and the City of Mountain Valley, California with respect to the following facts:

- A. The City of Mountain Valley proposes to provide Dial-A-Ride services to its elderly and individuals with disabilities. Approximately 20% of the City population is unable to use the available fixed route service due to frailty or handicap. No door-to-door public transit services are available in the City of Mountain Valley. Adequate Proposition A Local Return funding for such a service is not available given the limited amount of the City of Mountain Valley's Local Return allocation and the needs of other priority transit projects in the City.
- B. City of Surf City, has uncommitted funding authority for its Fiscal Year 2000-01 allocation of Proposition A Local Return funds which could be made available to the City of Mountain Valley to assist in providing the services discussed in Paragraph A of this Agreement.
- C. City of Mountain Valley is willing to exchange its general funds in the amount indicated in Section 1 below in exchange for City of Surf City's uncommitted Proposition A Local Return funds.
- D. City of Surf City is willing to exchange its uncommitted Proposition A Local Return funding in the amount indicated in Section 1 below to City of Mountain Valley, for the purpose identified in Paragraph A above, for City of Mountain Valley's general funds.

Now, therefore, in consideration of the mutual benefits to be derived by the parties and of the premises herein contained, it is mutually agreed as follows:

- 1. Exchange. City of Surf City shall transfer \$100,000 of its Fiscal Year 20__-20__ Proposition A Local Return Funds to City of Mountain Valley. In return, City of Mountain Valley shall transfer \$50,000 of its General Funds to City of Surf City.
- 2. Consideration. City of Surf City shall transfer the Proposition A Local Return funds to City of Mountain Valley in twelve equal installments due the first day of each month (or in one lump sum payment). City of Mountain Valley shall transfer its general funds to City of Surf City in twelve equal installments due the first of each month (or in one lump sum payment).

The first installment shall be due and payable upon approval by the Los Angeles County Metropolitan Transportation Authority ("Metro") of City of Mountain Valley's project description Form (Form A) covering the services discussed in Paragraph A above.

- 3. Term. This Agreement is effective on the date above written and for such time as is necessary for both parties to complete their mutual obligations under this Agreement.

4. Termination. Termination of this Agreement may be made by either party before the date of approval of the project description covering the funds in question by the Metro so long as written notice of intent to terminate is given to the other party at least five (5) days prior to the termination date.

5. Notices. Notices shall be given pursuant to this agreement by personal service on the party to be notified, or by written notice upon such party deposited in the custody of the United States Postal Service addressed as follows:

- a. City Manager
City of Surf City
101 Main Street
Surf City, CA 90000
- b. City Manager
City of Mountain Valley
401 Valley Boulevard
Mountain Valley, CA 90000

6. Assurances

A. City of Mountain Valley shall use the assigned Proposition A Local Return funds only for the purpose of providing the services discussed in Paragraph A of this Agreement and within the time limits specified in Metro's Proposition A Local Return Program Guidelines.

B. Concurrently with the execution of this Agreement City of Mountain Valley shall provide Metro with the Standard Assurances and Understandings Regarding Receipt and Use of Proposition A Funds specified in the Guidelines regarding the use of the assigned Proposition A Local Return funds.

7. This Agreement constitutes the entire understanding between the parties, with respect to the subject matter herein. This Agreement shall not be amended nor any provisions or breach hereof waived, except in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Fund Exchange Agreement to be executed by their respective officers, duly authorized, on the day and year above written.

CITY OF _____

CITY OF _____

BY _____

BY _____

ATTEST:

City Clerk

Approved as to Form:

City Clerk

Approved as to Form:

**LOS ANGELES COUNTYWIDE
INTELLIGENT TRANSPORTATION SYSTEMS (ITS)**

POLICIES AND PROCEDURES

Policy Summary

Federal regulations (23 CFR Parts 655 and 940 Intelligent Transportation System (ITS) Architecture and Standards; Final Rule) now require ITS projects funded with the Highway Trust Fund to conform to the National ITS Architecture and Standards; be guided by a regional architecture with geographic boundaries defined by stakeholder needs; and use systems engineering analysis on a scale commensurate with the project scope. It is Metro's Policy to abide by the Federal ITS regulations and requirements for those agencies seeking federal funding programmed by Metro for projects subject to this rule. For consistency and to maximize benefits, Los Angeles Countywide ITS Policy and Procedures is also applied to projects with state and local funding sources programmed and administered by the Metro.

Procedures Summary

To ensure compliance with the ITS Policy, all ITS project sponsor agencies including Metro internal departments are required to complete the Los Angeles County Regional ITS Architecture Consistency Certification Form (Attachment B) and to self certify that their project's ITS elements in whole or in part are consistent with the Los Angeles County Regional ITS Architecture.

Attached is the RIITS self-certification form. This form must be completed and submitted to Metro for each Local Return funded ITS project or project which includes an ITS element. To learn more about RIITS, please visit www.riits.net. For a complete copy of the Los Angeles Countywide ITS Policy and Procedures, you may go directly to <http://RIITS.net/RegITSDocs.html> and choose "Los Angeles Countywide ITS Policy and Procedures Document."

LOS ANGELES COUNTY REGIONAL ITS ARCHITECTURE CONSISTENCY

SELF-CERTIFICATION FORM

This form should be completed and executed for all ITS projects or projects with ITS elements except routine maintenance and operations, traffic signal controller replacement, purchase of bus or rolling stock, expansion or enhancement of an existing operating system. The form should be sent to Metro Countywide Planning and Development (CP&D) for any planned ITS projects or proposed funding involving Local, State or Federal funds programmed or administered through the Metro at the time of submittal of project application.

1. Name of Sponsoring
Agency:_____

2. Contact Name:_____

3. Contact Phone:_____

4. Contact Email:_____

5. Project Description:

6. Identify the ITS elements being implemented and the relevant National Architecture
User Services(s), see Attachment A.

7. Outline of the concept of operations for the project:

8. Identify participating agencies roles and responsibilities:

By signing and self-certifying this form, the agency commits itself to follow the ITS requirements listed below during project design and implementation. Please be advised that your project may be subject to further review and documentation by FHWA or FTA during project design and implementation phases:

- Perform a lifecycle analysis for the ITS project elements and incorporate these costs into the Operations and Maintenance plan as part of the system engineering process,
- Maintain and operate the system according to the recommendations of the Operations and Maintenance plan upon project completion,
- Use the systems engineering process and document the system engineering steps, and
- Use the Los Angeles County Regional ITS Architecture interface standards if required and conform to the regional configuration management process.

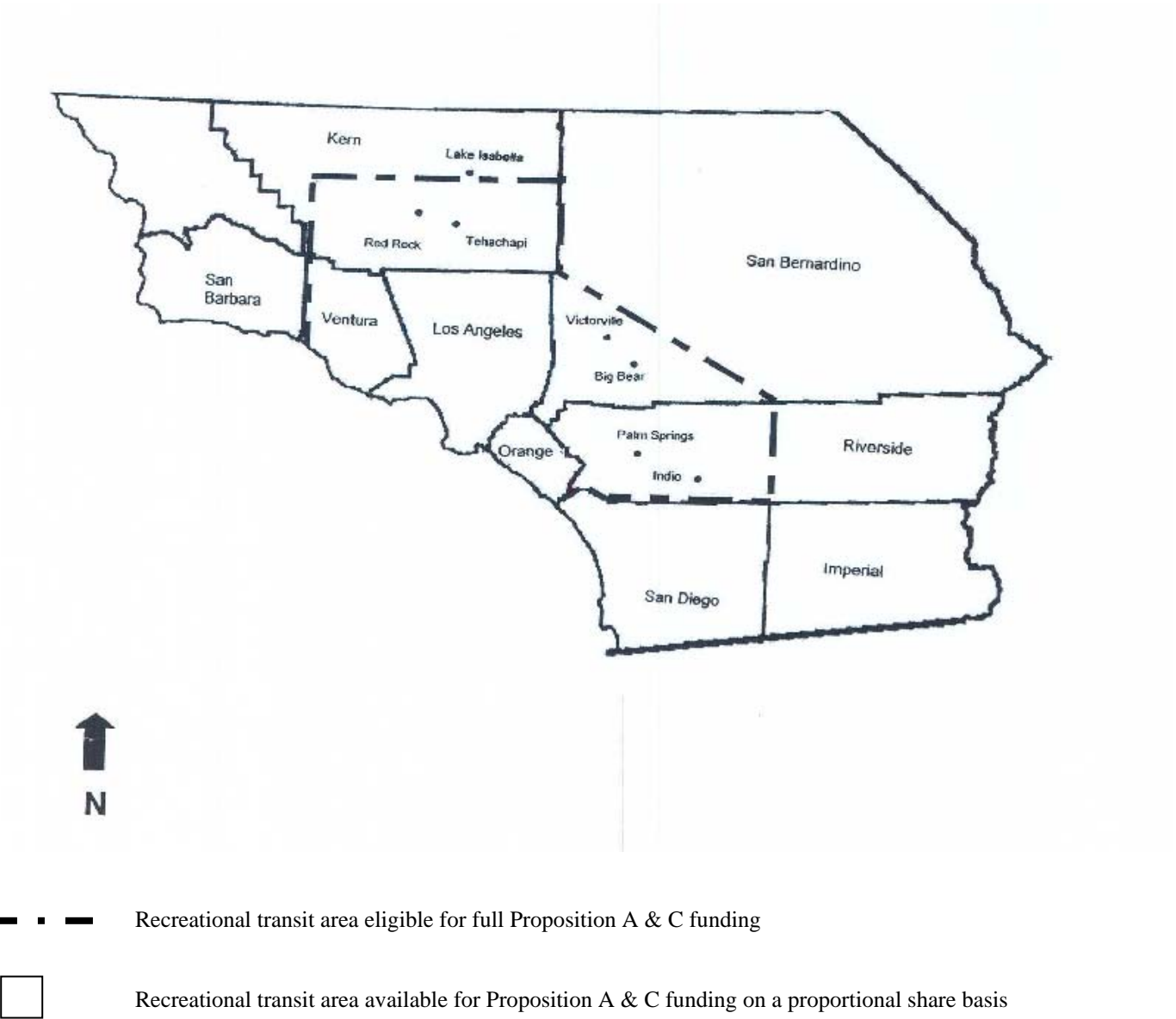
Signature:

Agency Representative

Date_____

Please return the original Project Self Certification Form to Metro Department of CP&D, Attention, Ms. Carol Inge, Deputy Executive Officer, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, MS 99-22-1, Los Angeles, CA 90012-2952

ELIGIBLE RECREATION TRANSIT SERVICE AREA



LOCAL RETURN FORMS

Summary:

Project Code: All projects must have Project Codes (see column on right). This code is critical in Form submittal as it is used in the LR database system.

Sequence Number: Sequence Numbers distinguish between the different projects being implemented. Indicate the sequence number of the project that is the order of submittal for the project (i.e., oldest approved to most recent approval).

Form A should be submitted whenever a Jurisdiction is requesting the approval of a new project or if there is a budget or scope change of more than 25 percent in an ongoing transit or paratransit project (as defined in the Proposition A and Proposition C Guidelines).

Form B requires Jurisdictions to give an update of already approved, ongoing and carryover Prop A and Prop C LR projects. Since new projects require additional information, please include all new projects on Form A only. (Note: Jurisdictions are required to call out all administration charges to Direct Administration in order to verify compliance of 20 percent maximum limit).

Form C requires Jurisdictions to report the annual expenditures for both Prop A and Prop C LR for the previous fiscal year. (Note: Jurisdictions are also required to submit an accounting of recreational transit trips, destinations and costs, if applicable).

PROJECT CODES**PROP A AND PROP C LR JOINT CODES:**

- 110 Fixed Route Service
- 120 Paratransit Service - General Public Dial-a-Ride
- 130 Paratransit Service - Elderly & Disabled (E&D)
- 140 Recreational Transit Service (incl. special event)
- 150 Bus Stop Improvement (BSI) Program
- 160 Bus Stop Improvement - Capital
- 170 Bus Stop Improvement - Maintenance
- 180 Capital - Vehicle & Misc. Equipment (fare box)
- 190 Capital - Vehicle Modification Program
- 200 Capital - Vehicle Purchase Program
- 210 Transportation Systems Management (TSM)
- 220 Transit Security - On-Board & Bus Stop
- 230 Transit Security - Station/Park-and-Ride Lot
- 240 Fare Subsidy (Taxi)
- 250 Fare Subsidy (User-Side Subsidy)
- 270 Transportation Planning
(Prop A eligible and Prop C eligible)
- 280 Transit Marketing
- 290 Park-and-Ride Lot Program
- 300 Transit Facility Transportation Enhancements
- 310 Transit Centers Program
- 320 Metro Rail Capital
- 350 Right-of-Way Improvements
- 360 Commuter Rail (Operations)
- 370 Commuter Rail (Capital)
- 380 Capital Reserve
- 390 Rail Transit Enhancements
- 480 Direct Administration
- 500 Other (Specify)

Exclusive Uses of Prop A LR Funds:

- 400 Signal Synchronization
- 405 Fund Exchange
- 410 Transportation Demand Management

Exclusive Uses of Prop C LR Funds:

- 400 Signal Synchronization & Traffic Management
- 410 Transportation Demand Management
- 420 Congestion Management Program (CMP)
- 430 Bikeways & Bike Lanes
- 440 Street Repair and Maintenance (e.g., slurry seal)
- 450 Street Improvement Projects (e.g., widenings)
- 460 Street TSM Projects (e.g., signalization)
- 470 Pavement Management Systems (PMS)

Form A - Project Description Form

(This form may be submitted any time during the fiscal year)

--Instructions--



Metro

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY
Proposition A and Proposition C Local Return Program

Form A

PROJECT DESCRIPTION FORM

(Required for all new and amended projects)

Local Jurisdiction			Fiscal Year	
Contact Person	Telephone No.	Extension	E-Mail Address	

Project Title				
Project Code:		Category:		
Sequence Number:		Type:	<input type="checkbox"/> Capital <input type="checkbox"/> Operating	<input type="checkbox"/> New <input type="checkbox"/> Revised
		Est Start Date:		
		Est Compl Date:		

Project Description and Justification				

Project Revenues				
Fund Source(s)	Proposition A Amount	Proposition C Amount	Other Amount	Total
Local Return				-
Fare Revenues				-
Other (Specify)				-
Total Project Revenues	-	-	-	-

Accessibility Features (For Bus Stop Improvement Projects only)			
<input type="checkbox"/> Curb Cut	<input type="checkbox"/> Bus Pad	<input type="checkbox"/> Installation Sidewalk	<input type="checkbox"/> Removal of sidewalk Barrier

☐ For Bikeways and Pedestrian Improvements, Street Repair and Maintenance or Street Improvement projects (project codes 430, 440 or 450), please check to indicate a **Pavement Management System (PMS) Self Certification Form** (See Appendix III) has been submitted to Metro.

☐ For Intelligent Transportation Systems (ITS) projects, or projects which include an ITS element, please check box to indicate a **Self Certification Form** (See Appendix VI) has been completed and submitted to Metro.

Authorized Signature	Title	Date

Click [here](#) to access form.

Form A - Project Description Form

(This form may be submitted any time during the fiscal year)

--Instructions--

Summary:

Form A should be submitted whenever a Jurisdiction is requesting the approval of a new project or if there is a budget or scope change of more than 25 percent in an ongoing transit or paratransit project (as defined in the Prop A and Prop C Guidelines).

Key Terms:

- **Local Jurisdiction:** Indicate your City or Agency.
- **Fiscal Year:** Indicate the fiscal year (July 1 - June 30th) for which Prop A or Prop C LR funds will be used.
- **Project Description and Justification:** Provide a brief project description (include any necessary details) to help Metro staff determine project scope and eligibility.
- **Project Revenues:** Under the appropriate fund sources, indicate the revenues expected to fund the project.
- **Accessibility Features:** Check box applicable for Bus Stop Improvement Projects only.
- **Street Maintenance, Improvement or bikeway projects:** Check the box to indicate that a Pavement Management System (PMS) is in place and being used (see Appendix III).
- **Intelligent Transportation Systems projects:** Please check the box if this project is or has an ITS project element to indicate that an ITS self-certification (see Appendix VI) has been submitted to Metro.
- **Authorized Signature:** Form A may be printed, signed and dated by authorized Local Jurisdiction, and sent to Metro by mail or fax, or e-mailed as described in Step 5.

Excel Operations:

Step 1 – Confirm computer is set to run macros

Open Microsoft Excel application

From the menu, select:

- Tools
- Macros
- Security
- Set it at Medium
- Press OK

Close Excel application

Step 2 Open Form A

Visit Metro's Web Site at www.metro.net

- Go to Projects/Programs
- Click on Local Return
- Click on Form A to open

Click yes to open the document containing Macros

Step 3 – Enter Form A Information

Once Form A is opened,

- Select correct agency (click on small arrow to scroll agency names)
- Enter contact name, telephone number, and e-mail address
- Enter project information on Form A

Step 4 – Save document under MY DOCUMENTS

Once information is entered on Form A, save document in My Documents

- Save Document as Form A City of

Step 5 – Forward Form A to Metro

Open Outlook (or other e-mail browser)

On e-mail include:

- Contact information including name, title, telephone number, and jurisdiction
- Brief description of the e-mail (transmittal)
- Attach Form A to the e-mail message


Important Changes

- All forms require that the entire value of project be entered, no longer will values be stated in \$ thousands.
- DO NOT alter forms. If for any reason there is a difference in Project Code, Sequence Number, or Project Title, contact Metro to resolve any discrepancies.
- Enter value for every project. If project is finalized, enter COMPLETE. DO NOT enter a dollar value.

Form B – Annual Project Update Form

(This form must be submitted by August 1st of each year)

--Instructions--

 Metro		LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY Proposition A and Proposition C Local Return Program						
		Form B						
		ANNUAL PROJECT UPDATE FORM						
		<small>(Must be submitted by August 1st of each year)</small>						
<div>Print Preview</div>		Local Jurisdiction		Fiscal Year				
		Contact Person		Telephone No.	E-Mail Address			
Project Code	Sequence Number	Project Title	Project Status*	Funding sources				Total Project Budget
				Proposition A Local Return	Proposition C Local Return	Est. Project Revenue	Funding Sources	
								-
								-
								-
								-
								-
								-
								-
								-
								-
								-
								-
*Project Status: OG =On going operating projects; C0 =Carryover capital projects.			Total	-	-	-	-	-

Click [here](#) to access form.

Form B – Annual Project Update Form

(This form must be submitted by August 1st of each year)

--Instructions--

Summary:

Form B requires Jurisdictions to give an update of already approved, ongoing and carryover Prop A and Prop C LR projects. Since new projects require additional information, please include all new projects on Form A only. (Note: Jurisdictions are required to call out all administration charges to Direct Administration in order to verify compliance of 20 percent maximum limit).

Key Terms:

- **Local Jurisdiction:** Indicate your City or Agency.
- **Fiscal Year:** Indicate the fiscal year (July 1 - June 30th) for which Prop A or Prop C LR funds will be used.
- **Project Code:** Enter Project Codes (see column on right). This code is critical in Form submittal as it is used in the LR database system.
- **Sequence Number:** Sequence Numbers distinguish between the different projects being implemented. Indicate the sequence number of the project which is the order of submittal for the project (i.e., oldest approved to most recent approval).
- **Project Title:** Provide Project Title as indicated on the Form A or previous Form B submittal.
- **Project Status:** Check box applicable – Completed, On-going or Carryover.
- **Project Revenues:** Under the appropriate fund sources, indicate the itemized revenues expected to fund the project.
- **Authorized Signature:** Form B may be printed, signed and dated by authorized Local Jurisdiction, and sent to Metro by mail or fax, or e-mailed as described in Step 5.

Excel Operations:

Step 1 – Confirm computer is set to run macros

Open Microsoft Excel application

From the menu, select:

- Tools
- Macros
- Security
- Set it at Medium
- Press OK

Close Excel application

Step 2 Open Form B

Visit Metro's Web Site at www.metro.net

- Go to Projects/Programs
- Click on Local Return
- Click on Form B to open

Click yes to open the document containing Macros

Step 3 – Enter Form B Information

Once Form B is opened,

- Select correct agency (click on small arrow to scroll agency names)
- Enter contact name, telephone number, and e-mail address
- Enter appropriate values for each project

Step 4 – Save document under MY DOCUMENTS

Once the values of each project have been entered, save document into My Documents

- Save Document as Form B City of

Step 5 – Forward Form B to Metro

Open Outlook (or other e-mail browser)

On e-mail include:

- Contact information including name, title, telephone number, and Jurisdiction
- Brief description of the e-mail (transmittal)
- Attach Form B to the e-mail message


Important Changes

- All forms require that the entire value of project be entered, no longer will values be stated in \$ thousands.
- DO NOT alter forms. If for any reason there is a difference in Project Code, Sequence Number, or Project Title, contact Metro to resolve any discrepancies.
- DO NOT add or remove project on Form B, please contact Metro regarding any changes.
- Enter value for every project. If project is finalized, enter COMPLETE. DO NOT enter a dollar value.

Form C – Annual Expenditure Report Form

(This form must be submitted by October 15th of each year)

--Instructions--

 Metro		LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY Proposition A and Proposition C Local Return Program																																			
		Form C																																			
		ANNUAL EXPENDITURE REPORT																																			
		(Must be submitted by October 15th of each year)																																			
		Local Jurisdiction <input type="text"/>		Fiscal Year <input type="text"/>																																	
		Contact Person <input type="text"/>	Telephone No. <input type="text"/>	E-Mail Address <input type="text"/>																																	
Project Code	Sequence Number	Project Title	1st Yr Approved	Expenditure		Metro Approved Budget																															
				Proposition A Local Return	Proposition C Local Return	Proposition A Local Return	Proposition C Local Return																														
			Total	-	-	-	-																														
<table border="1" style="width: 100%;"> <tr> <th colspan="3">Fiscal Year 2005 Summary</th> </tr> <tr> <th>Description</th> <th>Proposition A Local Return</th> <th>Proposition C Local Return</th> </tr> <tr> <td>Beginning Fund Balance</td> <td></td> <td></td> </tr> <tr> <td>Allocations Received</td> <td></td> <td></td> </tr> <tr> <td>Fare Revenues</td> <td></td> <td></td> </tr> <tr> <td>Interest Income</td> <td></td> <td></td> </tr> <tr> <td>Others (Specify):</td> <td></td> <td></td> </tr> <tr> <td style="text-align: right;">Total Revenues</td> <td>-</td> <td>-</td> </tr> <tr> <td>Expenditures</td> <td>-</td> <td>-</td> </tr> <tr> <td>Fund Balance</td> <td>-</td> <td>-</td> </tr> </table>								Fiscal Year 2005 Summary			Description	Proposition A Local Return	Proposition C Local Return	Beginning Fund Balance			Allocations Received			Fare Revenues			Interest Income			Others (Specify):			Total Revenues	-	-	Expenditures	-	-	Fund Balance	-	-
Fiscal Year 2005 Summary																																					
Description	Proposition A Local Return	Proposition C Local Return																																			
Beginning Fund Balance																																					
Allocations Received																																					
Fare Revenues																																					
Interest Income																																					
Others (Specify):																																					
Total Revenues	-	-																																			
Expenditures	-	-																																			
Fund Balance	-	-																																			

Click [here](#) to access form.

Form C – Annual Expenditure Report Form

(This form must be submitted by October 15th of each year)

--Instructions--

Summary:

Form C requires Jurisdictions to report the annual expenditures for both Prop A and Prop C LR for the previous fiscal year. (Note: Jurisdictions are also required to submit an accounting of recreational transit trips, destinations and costs, if applicable).

Key Terms:

- **Local Jurisdiction:** Indicate your City or Agency.
- **Fiscal Year:** Indicate the fiscal year (July 1 - June 30th) for which Prop A or Prop C LR funds will be used.
- **Project Title:** Provide Project Title as indicated on the Form A or previous Form B submittal.
- **Project Status:** Check box applicable – Completed, On-going or Carryover.
- **Project Revenues:** Under the appropriate fund sources, indicate the itemized revenues expected to fund the project.
- **Authorized Signature:** Form C may be printed, signed and dated by authorized Local Jurisdiction, and sent to Metro by mail or fax, or e-mailed as described in Step 5.

Excel Operations:

Step 1 – Confirm computer is set to run macros

Open Microsoft Excel application

From the menu, select:

- Tools
- Macros
- Security
- Set it at Medium
- Press OK

Close Excel application

Step 2 Open Form C

Visit Metro's Web Site at www.metro.net

- Go to Projects/Programs
- Click on Local Return
- Click on Form C to open

Click yes to open the document containing Macros

Step 3 – Enter Form C Information

Once Form C is opened,

- Select correct agency (click on small arrow to scroll agency names)
- Enter contact name, telephone number, and e-mail address
- Enter appropriate values for each project

Step 4 – Save document under MY DOCUMENTS

Once the values of each project have been entered, save document into My Documents

- Save Document as Form C City of

Step 5 – Forward Form C to Metro

Open Outlook (or other e-mail server)

On e-mail include:

- Contact information such as name, title, telephone number, and Jurisdiction
- Brief description of the e-mail (transmittal)
- Attach Form C on the e-mail message

Important Change Important Changes

- All forms require that the entire value of project be entered, no longer will values be stated in \$ thousands.
- Enter value for every project. If project is finalized, enter COMPLETE. DO NOT enter a dollar value

**GLOSSARY OF TERMS
USED IN LOCAL RETURN GUIDELINES**

Americans with Disabilities Act (ADA), 1990

A civil rights law passed by Congress in 1990 that makes it illegal to discriminate against people with disabilities in employment, services provided by state and local governments, public and private transportation, public accommodations and telecommunications.

Advanced Traveler Information Systems (ATIS)

ATIS technologies provide travelers and transportation professionals with the information they need to make decisions, from daily individual travel decisions to larger scale decisions that affect the entire system, such as those concerning incident management.

Air Quality Management District (AQMD)

Administrative districts organized in California to control air pollution. Generally, AQMDs and their national parallel encompass multiple jurisdictions and closely follow the definition of Consolidated Metropolitan Statistical Areas and Metropolitan Statistical Areas.

Adaptive Traffic Control Systems (ATCS)

ATCS uses sensors to interpret characteristics of traffic approaching a traffic signal, and using mathematical and predictive algorithms, adapts the signal timing accordingly, optimizing its performance.

Advanced Traffic Management Systems (ATMS)

ATMS technologies apply surveillance and control strategies to improve traffic flow on highways and arterials.

Automatic Vehicle Location (AVL)

The installation of devices on a fleet of vehicles (e.g., buses, trucks, or taxis) to enable the fleet manager to determine the level of congestion in the road network. AVL is also used to enable the fleet to function more efficiently by pinpointing the location of vehicles in real time.

Bicyclists Rights

According to CVC21200 Bicyclists have all the rights and responsibilities of vehicle drivers.

Bikeway Definitions

Class I Bikeway - Off road paved bike path

Exclusive bi-directional path designated for bicycles or as multi-use path shared with pedestrians (if pedestrian path is not adjacent).

Class II Bikeway - On-road striped bike lane

Class III Bikeway - On-road bike route (signage only)

Streets designated as preferred routes through high demand corridors, used to provide continuity to other bicycle facilities (usually II bikeways), or provide routes to transit or other destinations where the streets are too narrow for bike lanes. Usually bike routes have some added preferential bike treatments that offers advantages over alternative routes.

Bus turn-out

A branch from or widening of a road that permits buses to stop, without obstructing traffic, while laying over or while passengers board and alight. It is designed to allow easy reentry of the bus into the traffic stream.

California Streets and Highways Code

This is the legal code regulating the roads and highways of the State of California. The code sets forth the administration and funding of the highway system, the relationship of the state government to the county and local governments in regards to streets and roads, administration of tolls collected by the state, and various acts dealing with streets and highways passed by the state legislature.

Capital Reserve

With Metro Board approval and signed Capital Reserve Agreement, funds may be set aside for Capital projects to provide reserve funds for a period of time over the three year timely use provision.

Carry-over Project

A project that was not completed and which takes two or more year to finish. The construction of a transit center or a citywide bus shelter installation project may be multi-year projects.

Congestion Management Program (CMP)

A state mandated program linked to Proposition 111 (1990) that requires each county to prepare a plan to address traffic congestion on regional streets and freeways. Elements of the CMP include designation of a regional highway system with level of service (LOS) standards, a local trip reduction ordinance, capital improvement program, land use impact analysis, and transit performance standards. If LOS standards are not maintained, deficiency plans must be prepared and implemented.

Changeable Message Signs (CMS)

Electronic road and transit station signs used to display information that can be updated, such as warnings of road incidents, hazardous weather conditions, or estimated arrival times of transit vehicles. Used in ATIS and ATMS. Also called Variable Message Signs (VMS).

Councils of Governments (COG)

Regional planning bodies that exist throughout the United States. A typical council is defined to serve an area of several counties, and they address issues such as regional planning, water use, pollution control, and transportation. The Council membership is drawn from the county, city, and other government bodies within its area.

Commuter Rail

Railroad local and regional passenger train operations between a central city, its suburbs and/or another central city. It may be either locomotive-hauled or self-propelled, and is characterized by multi-trip tickets, specific station-to-station fares, railroad employment practices and usually only one or two stations in the central business district. Also known as "suburban rail."

Curb Cut

A small ramp between the sidewalk and curb that facilitates passage by wheelchairs, strollers, etc. between the sidewalk and street intersection.

Commercial Vehicle Operations (CVO)

ITS program to apply advanced technologies to commercial vehicle operations, including commercial vehicle electronic clearance; automated roadside safety inspection; electronic purchase of credentials;

automated mileage and fuel reporting and auditing; safety status monitoring; communication between drivers, dispatchers, and intermodal transportation providers; and immediate notification of incidents and descriptions of hazardous materials involved.

Demand Responsive

Non-fixed-route service utilizing vans or buses with passengers boarding and alighting at pre-arranged times at any location within the system's service area. Also called "Dial-a-Ride."

Dial-a-Ride

A shared-ride public transportation service for senior citizens age 65 and older, people with disabilities and people who meet American Disabilities Act (ADA) eligibility.

Direct Administration

Those fully burdened salaries and overhead, office supplies and equipment directly associated with administering LR operating and capital projects.

Electronic Payment Systems

Systems that collect payments using an electronic transponder. Payment types include fees for transit fares, taxis, parking, and tolls. Electronic payment systems can also gather real-time transit information on travel demand for better planning and scheduling of services.

Farebox revenue

Money, including fares and transfers, zone and park and ride receipts, paid by transit passengers; also known as "passenger revenue."

Financial and Compliance Audit

The review and examination of the jurisdictions' books and records to verify compliance with existing statutes governing the Local Return Funds. Such review and examination include verification of adherence to the generally accepted accounting principles, review of internal control system and evaluation of compliance with the Local Return Guidelines. The Financial and Compliance Audit shall be conducted by an independent auditor and in accordance with the Government Auditing Standards issued by the Comptroller General of the United States.

Fiscal year

A twelve-month period to which the annual budget applies and at the end of which a governmental unit determines its financial position and the results of its operations. This twelve-month period varies from the calendar year. In the California, State Government system, the fiscal year starts July 1 and ends the following June 30. In the Federal system, the fiscal year starts October 1 and ends the following September 30.

Fixed Route

Service provided on a repetitive, fixed-schedule basis along a specific route with vehicles stopping to pick up and deliver passengers to specific locations; each fixed-route trip serves the same origins and destinations, unlike demand responsive and taxicabs.

Flexible Destination

A type of demand-responsive service which takes on passengers according to a fixed route, and drops passengers off at alternative destinations within a defined service area.

Formula Funds

Funds distributed or apportioned to qualifying recipients using formulas which are based on statistics (such as operating performance or route characteristics) and established by law or by funding agency-adopted policies.

Fund Exchange

Funds traded to another Local Jurisdiction or Agency for an agreed amount. Funds returned may be from General, State, Federal funds or other agreed upon method of exchange between the agencies. Eligible under Proposition A only.

Giving

Local Jurisdictions can give Prop C funds to another Jurisdiction for a transit related project as long as Metro approves, and no exchange or gift of any kind is received in return.

Headsign

A destination sign above the front (and sometimes side) window of a bus or train.

Information Exchange Network (IEN)

The Los Angeles County IEN can exchange real-time TCS data from intersections in each of the county's several traffic forums and enables all forums, the county, and partner cities to access the information.

Intelligent Transportation Systems (ITS)

This program is an initiative of the United States Department of Transportation to add information technology to surface transportation infrastructure and vehicles. It aims to manage vehicles, roads, and routes to improve efficiency, safety and reduce vehicle wear, transportation times and fuel costs. ITS Architecture relates to the overarching framework that allows individual ITS services and technologies to work together, share information, and yield synergistic benefits.

Loaning

Local Jurisdictions may arrange a mutually acceptable temporary transfer or loan from one Jurisdiction to another. Refer to Metro's Administrative Process for additional information.

Local Jurisdiction

City or Agency that is the applicant for the project to be funded with Proposition A or Proposition C Local Return (LR).

Maintenance

Maintenance refers to minor work to prevent further deterioration, such as, slurry seal, or pothole repair

Maintenance of Effort

This requirement provides for the continuation of funding commitments by local jurisdictions on roadways used by public transit while supplementing these improvements with Proposition C Local Return funds. Local Return funds cannot be used to replace any pre-existing roadway funding but only to augment what is currently being utilized by local jurisdictions. In the past, local jurisdictions have had to report to the State Controller those funds spent on streets and roads in order to be in compliance with the California Streets and Highways Code.

Metro

The Metropolitan Transportation Authority. Metro staff manages the administration of the program. Metro refers to the administrative staff.

Metro Art

The Metro department responsible for incorporating art enhancements into Metro projects, including rail stations, bus stops, construction sites, streetscapes and other public oriented improvements..

Metro Board

The Metropolitan Transportation Authority has an established member list of Board of Directors and Executives as appointed by the Board. The Metro Board makes decisions on funding allocations, Guidelines, Capital Reserves and possible appeals.

Metro Rail

Rail service operated by the Los Angeles County Metropolitan Transportation Authority (Metro)

Metro Long Range Transportation Plans

In April 2001, the Metro Board adopted the Long Range Transportation Plan. This plan is a 25-year blueprint for transportation planning in Los Angeles County through the year 2025. The Long Range Transportation Plan assesses future population increases projected for the county and what such increases will mean for future mobility needs. The plan recommends what can be done within anticipated revenues, as well as what could be done if additional revenues become available.

Metro Short Range Transportation Plans

The 2003 Short Range Transportation Plan focuses on the phasing of transportation improvements through 2009 that will help put together the pieces of our mobility puzzle. The Plan relies on performance-based modeling to identify the best solution for each mobility challenge. In total, \$19.3 billion is needed to fund this Plan's transportation priorities through 2009. These include the costs of operating the current system and funding new transportation solutions.

National ITS Architecture

A systems framework to guide the planning and deployment of ITS infrastructure. The national ITS architecture is a blueprint for the coordinated development of ITS technologies in the U.S. The architecture defines the functions that must be performed, the subsystems that provide these functions, and the information that must be exchanged to support the defined **User Services**. The National ITS Architecture was released as a final document in June 1996.

National Transit Database (NTD)

A reporting system administered by the Federal Transit Administration (FTA) that uses uniform categories to record mass transportation financial and operating information through a uniform system of accounts on an annual basis.

Paratransit

Auxiliary public transportation available to elderly or disabled passengers or patrons in areas, which are underserved by conventional transit. Paratransit is generally operated using smaller vehicles, with flexible schedules and routes.

Park-and-Ride

An access mode to transit in which patrons drive private vehicles or ride bicycles to a transit station, bus or rail stop or carpool or vanpool waiting area and park their vehicles in the area provided for the

purpose. They then ride the transit system or take the carpool/vanpool to their destinations. (TRB) 2 involve the use of a motorized personal vehicle in conjunction with transit. Park-and-ride facilities include a parking lot or portion of a lot near transit stops, allowing transit users to park their personal vehicles for a short period of time and make convenient transfers to the transit system.

Pavement Condition Index (PCI)

A value for a pavement segment representing its condition. The Pavement Condition Index (PCI) is a numerical rating of the pavement condition that ranges from 0 to 100, with 0 being the worst possible condition and 100 being the best possible condition.

Pavement Management System (PMS)

A systematic process that provides, analyzes, and summarizes pavement information for use in selecting and implementing cost-effective pavement construction, rehabilitation, and maintenance programs and projects. A PMS involves the identification of optimum strategies at various Pavement Condition Index (PCI) levels and maintains pavements at an adequate PCI Threshold (level of serviceability). These include, but are not limited to, systematic procedures for scheduling maintenance and rehabilitation activities based on optimization of benefits and minimization of costs.

Project Code

Project Codes distinguish the type of projects being implemented.

Reconstruction

Activities that extend the serviceable life by at least 10 years, and involve reworking or removal and replacement of all or part of the engineered layers in the pavement structure. Removal and replacement of all asphalt and concrete layers and often the base and sub-base layers, in combination with remediation of the sub-grade and drainage, and possible geometric changes. Due to its high cost, reconstruction is rarely done solely on the basis of pavement condition. Other circumstances such as obsolete geometrics, capacity improvement needs, and/or alignment changes, are often involved in the decision to reconstruct a pavement.

Recreational Transit

City-sponsored trips to recreational or cultural destinations within defined geographic area. Charter buses are frequently used and trips must be advertised to the general public. Service is generally contracted out to a private sector operator.

Rehabilitation

Activities that extend the serviceable life by at least 10 years, and add structural capacity to the pavement.

Reimbursement

LR funds may be advanced for other grant funds as long as the project itself is eligible under LR Guidelines. The grant funds must be reimbursed to the LR fund.

Resurfacing

Activities that extend the serviceable life by at least 10 years and change the surface characteristics of the pavement. Resurfacing generally consists of placing additional asphalt concrete over a structurally sound highway or bridge that needs treatment to extend its useful life.

Revenue Vehicle Miles

The miles a vehicle travels while in revenue service. Vehicle revenue miles exclude travel to and from storage facilities, training operators prior to revenue service, road tests and deadhead travel, as well as school bus and charter services.

Ride matching programs

Programs that provide nearest major intersection-matching services to commuters who wish to establish a car- or van-pool.

Right of Way

Land; a public or private area that allows for passage of people or goods, including, but not limited to, freeways, streets, bicycle paths, alleys, trails and walkways. A public right-of-way is dedicated or deeded to the public entity for use under the control of a public agency.

Regional Integration of Intelligent Transportation Systems (RIITS)

This system supports information exchange between freeway, traffic, transit and emergency service agencies to improve management of the Los Angeles County transportation system.

Ramp Metering Station (RMS)

Traffic-responsive regulation of vehicle entry to a freeway, typically via sensor controlled freeway ramp stoplights.

Sequence Code

Sequence Codes distinguish between the different projects being implemented.

Shuttle

A public or private vehicle that travels back and forth over a particular route, especially a short route or one that provides connections between transportation systems, employment centers, etc.

State Controller

The Controller is the state's chief financial officer and is elected by a vote of the people every four years. The duties of the State Controller are prescribed by the Constitution with additional powers and functions set by statute. The primary function of the State Controller is to provide sound fiscal control over both receipt and disbursement of public funds, to report periodically on the financial operations of both state and local governments and to make certain that money due the state is collected in a fair, equitable and effective manner. The office also enforces collection of delinquent gas, truck and insurance taxes.

Traffic Control Systems (TCS)

Advanced systems that adjust the amount of "green time" for each street and coordinate operation between each signal to maximize traffic flow and minimize delay. Adjustments are based on real-time changes in demand.

Traffic/Transportation/Transit Management Center (TMC)

Traffic/Transportation/Transit Management Center (interchangeable)

Transfer Center

A fixed location where passengers interchange from one route or transit vehicle to another.

Transit revenues

Revenues generated from public transportation (bus, rail or other conveyance for public).

Transportation Demand Management (TDM)

A program designed to maximize the people-moving capability of the transportation system by increasing the number of people in each vehicle or by influencing the time of, or need to, travel. To accomplish these sorts of changes, TDM programs must rely on incentives or disincentives to make the shifts in behavior attractive. The term TDM encompasses both the alternatives to driving alone and the techniques or supporting strategies that encourage the use of these modes.

Transportation Improvement Program (TIP)

A prioritized program of transportation projects to be implemented in appropriate stages over several years (3 to 5 years). The projects are recommended from those in the transportation systems management element and the long-range element of the planning process. This program is required as a condition for a locality to receive federal transit and highway grants.

Transportation Management Associations (TMAs)

An urbanized area with a population more than 200,000 (as determined by the most recent decennial census) or other area when TMA-designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Federal Highway Administration and the Federal Transit Administration. TMA designation applies to the entire metropolitan planning area(s). (23CFR500).

Transportation Enhancements (TE)

A funding program of the USDOT Federal Highway Administration that offers communities the opportunity to expand transportation choices. Activities such as safe bicycle and pedestrian facilities, scenic routes, beautification, and other investments increase opportunities for recreation, accessibility, and safety for everyone beyond traditional highway programs.

Transportation Systems Management (TSM)

Transportation Systems Management is the cooperative development and implementation of strategies to maximize the safe movement of people and goods by managing an integrated multimodal transportation system. The effective management of the system will enable the traveling public more efficient use of the existing transportation facilities. Elements of TSM include incident management programs, traveler information systems, traffic signal systems upgrades, intermodal freight planning, surveillance control systems, demand management techniques, and commercial vehicle operations.

Traffic Signal Priority (TSP)

It gives preferential treatment to one type of system user over other users and allows signal controllers to service competing needs in the order of relative importance.

User Services

Services available to travelers on an ITS-equipped transportation system, as set forth by ITS America. The 30 services are arranged in 7 categories, as follows: travel and transportation management, travel demand management, public transportation operations, electronic payment, commercial vehicle operations, emergency management, and advanced vehicle control and safety systems.

User-side Subsidies

This refers to funds set aside to offer discounts to public transit users. Such subsidies are approved by local jurisdictions councils or boards and are optional. A city, for example, pays full price for a monthly

bus or rail pass but will sell it to a transit user (city resident) for a lower (subsidized) rate. Each city defines who is eligible for subsidies based on demand and budgetary constraints.

Vehicle Miles Traveled (VMT)

The number of miles traveled within a specific geographic location by vehicles for a period of one year. VMT is calculated either by using two odometer readings or, in the absence of one of the odometer readings, by regression estimate.

REFERENCES

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California Highway Design Manual Chapter 1000

California Streets and Highways Code

Website: <http://ntl.bts.gov/>

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City and County of Honolulu and the Hawaii Department of Transportation

Website: <http://www.oahutrans2k.com/info/glossary>

Department of Energy

Website: <http://www.energy.gov/>

Federal Transportation Authority glossary

Website: http://www.fta.dot.gov/31_ENG_Printable.htm

Federal Highway Administration (ITS glossary)

Website: http://www.fhwa.dot.gov/planning/glossary/glossary_listing.cfm

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Website: www.kitsaptransit.org/home/ktjargon.html

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Website: <http://www.ncdot.org/transit/transitnet/Glossary/>

US Department of Transportation glossary

Website: <http://www.dot.ca.gov/hq/MassTrans/trterms.htm>

Other website sources

<http://en.wikipedia.org/wiki/infrastructure>

<http://sco.ca.gov>

<http://www.belmont.gov/SubContent.asp?CatId=240000622>

<http://www.dieselnet.com/gl-a.html>

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<http://www.tempe.gov/tim/DialARide.htm>

ACKNOWLEDGEMENTS

The Fiscal Year 2007 revision of the Proposition A and Proposition C Local Return Guidelines was made possible through the combined efforts of Metro staff and the constituent representatives comprising the Local Return Guidelines Update Working Group:

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Victor Rollinger, League of California Cities, South Bay Cities Council of Governments
Greg Hermann/Ryan Mills, City of Burbank, Arroyo Verdugo Cities Council of Governments
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Los Angeles Regional Water Quality Control Board

TO: MS4 Permittees covered by NPDES Permit No. CAS004001

FROM: Renee A. Purdy 
Section Chief
REGIONAL PROGRAMS

DATE: December 5, 2012

SUBJECT: TRANSMITTAL OF FINAL ORDER NO. R4-2012-0175 -- WASTE DISCHARGE REQUIREMENTS FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) DISCHARGES WITHIN THE COASTAL WATERSHEDS OF LOS ANGELES COUNTY, EXCEPT THOSE DISCHARGES ORIGINATING FROM THE CITY OF LONG BEACH MS4 (NPDES PERMIT NO. CAS004001)

We are pleased to transmit to you the final National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit and waste discharge requirements for storm water and non-storm water discharges from the MS4 within the coastal watersheds of Los Angeles County, which was adopted by the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) at its meeting on November 8, 2012.

The final Order and all attachments are posted on the Regional Board's website at the following address:

http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/index.shtml

Order No. R4-2012-0175 shall be effective as of December 28, 2012, 50 days from the date of Board adoption, as stated in the Order.

We look forward to working together with all Permittees to implement the permit. Should you have any questions, please do not hesitate to call me at (213) 576-6622 or Ivar Ridgeway at (213) 620-2150.

cc: John Kemmerer, Acting Director, Water Division, USEPA Region IX
David Smith, NPDES Program Manager, USEPA Region IX
Vicky Whitney, Deputy Director, DWQ, State Water Board
Bruce Fujimoto, Manager, Surface Water/Permitting, State Water Board