BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Education Code Section 51225.3 Statutes 1983, Chapter 498 Fiscal Years 2008-2009 and 2009-2010 Filed on June 8, 2017 Grossmont Union High School District, Claimant	Case No.: 16-4435-I-56 *Graduation Requirements* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted January 24, 2020*) (*Served January 24, 2020*)

INCORRECT REDUCTION CLAIM

The Commission on State Mandates adopted the attached Decision on January 24, 2020.

Heather Halsey, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Education Code Section 51225.3 Statutes 1983, Chapter 498 Fiscal Years 2008-2009 and 2009-2010 Filed on June 8, 2017 Grossmont Union High School District, Claimant	Case No.: 16-4435-I-56 *Graduation Requirements* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted January 24, 2020*) (*Served January 24, 2020*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on January 24, 2020. The claimant, Grossmont Union High School District, did not attend the hearing. Chris Ryan appeared on behalf of the State Controller's Office.

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

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

Member	**Vote**
Lee Adams, County Supervisor	Yes
Mark Hariri, Representative of the State Treasurer	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Absent
Carmen Ramirez, City Council Member	Yes
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	Yes

Summary of the Findings

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction of amended reimbursement claims filed by the Grossmont Union High School District (claimant) for the *Graduation Requirements* program for fiscal years 2008-2009 and 2009-2010 (audit period). The *Graduation Requirements* program increased the number of science courses required for high school graduation from one course to two courses in biological and physical sciences, beginning in the 1986-1987 school year. Only the *second* science course is mandated by the state; prior law required one science course for high school graduation and preserved the right of a school district to specify and offer courses it required for high school graduation.[1]

The Controller found that of the $21,221,594 of costs incurred during the audit period, only $5,635,762 is allowable (minus a $10,000 late-filing penalty).[2] The claimant challenges the reduction of costs claimed for acquisition of additional space for new science classrooms and laboratories (Finding 1), and for materials and supplies relating to the additional science course (Finding 2). The claimant also disputes the Controller's finding that local school-construction bond funds should have been identified and deducted from the claims as offsetting revenues (Finding 4).

The Commission finds that the IRC was timely filed pursuant to the Commission's regulations, and that the Controller timely initiated the audit for the fiscal year 2009-2010 *amended* claim and timely completed the audit for all fiscal years pursuant to Government Code section 17558.5.

The Commission also finds that the Controller's reduction of all costs for construction and renovation of science classrooms and laboratories in Finding 1 (totaling $29,633,952 plus related indirect costs) is correct as a matter of law because the claimant did not comply with the documentation requirements in the Parameters and Guidelines. Section V. of the Parameters and Guidelines states that a reimbursable "[i]ncreased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate."[3] Section V.A. of the Parameters and Guidelines authorizes reimbursement for acquisition of additional space *only to the extent* that the claimant can show that the space would not have otherwise been acquired due to increases in the number of students enrolling in high school and that it was not feasible, or would be more expensive to acquire space by remodeling existing facilities.[4] Section VIII. of the Parameters and Guidelines further requires the claimant to support the costs claimed with documentation showing the increased units of science course enrollments due to the mandate. The documentation must include a certification of the Board finding that "no facilities existed to

---

[1] Exhibit A, IRC, page 86 (Parameters and Guidelines).

[2] Exhibit A, IRC, pages 41, 44, 46 (Final Audit Report). Although only $14,816,975 was claimed in the reimbursement claims, the Controller, to clarify the presentation of the findings, and to report total costs and offsetting revenues consistent with the Parameters and Guidelines and claiming instructions, first identified total costs for science and laboratory construction costs. The Controller found that gross costs incurred were $36,469,059, less $15,247,465 in offsetting revenue, for a net of $21,221,594 costs incurred. See Exhibit A, page 48.

[3] Exhibit A, IRC, page 87 (Parameters and Guidelines).

[4] Exhibit A, IRC, page 88 (Parameters and Guidelines). Emphasis added.

reasonably accommodate the increased enrollment for the additional science course required" by the test claim statute, and documents to show that "additional space for conducting new science classes is required only when the space would not have otherwise been acquired due to an increase in high school enrollment."[5] The Parameters and Guidelines do *not* authorize reimbursement for construction costs simply because the mandate exists and science classrooms are now old, as asserted by the claimant. Nor do the Parameters and Guidelines allow reimbursement based on an assumption that the number of science courses doubled as a result of the mandate.[6] The Parameters and Guidelines are binding and regulatory in nature, and claimants are required by law to file reimbursement claims in accordance with them.[7]

Although the record in this case shows that the claimant lacked appropriately configured and equipped space for the science courses offered by the claimant because the science facilities were old and deteriorated, the claimant did not provide documentation required by the Parameters and Guidelines showing that the costs claimed for construction was limited to the mandated *second* science course; that the units of *science course enrollment increased* because of the test claim statute; or that space for new science classrooms and laboratories would not have otherwise been acquired due to an increase in high school enrollment. Therefore, the Controller's reduction is correct as a matter of law.

With respect to Finding 2, the Controller found that all construction-related costs for materials and supplies totaling $860,978, plus related indirect costs, is unallowable. The Commission finds that this reduction is correct as a matter of law. The claimant did not provide supporting documentation to show the increased units of science course enrollments due to the test claim statute, as required by the Parameters and Guidelines for these purchases.

The Controller also reduced $56,208 of costs incurred for materials and supplies for the audit period because the claimant overstated costs by using an incremental increase in enrollment of 50 percent, without providing any documentation to support the 50 percent figure as required by the Parameters and Guidelines. The Parameters and Guidelines do not authorize the use of a 50 percent increase in costs as a result of the mandate without evidence to support that number. Since the claimant provides no documentation to support the 50 percent figure, or that its costs resulted from increased science course enrollments as a result of the mandate, the Controller's reduction is correct as a matter of law.

The Commission further finds that the Controller's recalculation of costs for materials and supplies is not arbitrary, capricious, or without evidentiary support. Since the claimant provided no documentation to support the 50 percent incremental increase in enrollment, the Controller recalculated the claimant's increased costs using a formula to isolate costs for the mandated additional year of science instruction, which resulted in an incremental increase of 40.14 percent

---

[5] Exhibit A, IRC, page 92 (Parameters and Guidelines).

[6] Exhibit A, IRC, pages 21, 27; Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 10.

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

for 2008-2009 and 47 percent for 2009-2010.[8] The claimant provides no evidence or documentation to show that the Controller's recalculation of increased costs is incorrect or arbitrary, capricious, or entirely lacking in evidentiary support.

Finally, in Finding 4, the Controller found that the claimant failed to report and deduct as offsetting revenues the local school-construction bond revenues received under Proposition H, which funded 50 percent of the total cost of construction and related materials and supplies discussed in Findings 1 and 2. The other 50 percent was funded by state matching funds. The Commission finds that the claimant's local bond funds are offsetting revenue that should have been identified and deducted from the reimbursement claims and thus, the Controller's finding is correct as a matter of law. Article XIII B, section 6 of the California Constitution requires the state to provide reimbursement only when a local government is mandated by the state to expend proceeds of taxes subject to the appropriations limit of article XIII B.[9] Article XIII B, sections 7, 8, and 9, and Government Code section 53715 make it clear that local bond funds are not "proceeds of taxes" as alleged by the claimant, and repayment of those bonds is not an "appropriation subject to limitation." School districts cannot accept the benefits of bond funding that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.[10]

Therefore, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

07/28/2009	Budget Act appropriation of $1,000 for the Graduation Requirements Program[11]
02/02/2010	The claimant signed the reimbursement claim for fiscal year 2008-2009.[12]
01/11/2011	The claimant signed the amended reimbursement claim for fiscal year 2008-2009.[13]
01/19/2011	The claimant signed the reimbursement claim for fiscal year 2009-2010.[14]
11/29/2011	The Controller paid the claimant $10 for its fiscal year 2009-2010 claim.[15]

[8] Exhibit A, IRC, pages 50 and 58 (Final Audit Report).

[9] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *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).

[10] *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

[11] Statutes 2009, 4th Extraordinary Session, chapter 1, Item 6110-295-0001, schedule (5).

[12] Exhibit A, IRC, page 1404.

[13] Exhibit A, IRC, page 1485.

[14] Exhibit A, IRC, page 2592 (2009-2010 Reimbursement Claim).

[15] Exhibit A, IRC, page 83 (Payment Check).

01/09/2012	The claimant signed the amended reimbursement claim for fiscal year 2009-2010.[16]
01/26/2012	The Controller received the amended reimbursement claim for fiscal year 2009-2010.[17]
01/06/2015	The date of the Controller's Audit Entrance Conference Letter.[18]
06/21/2016	The Controller issued the Final Audit Report.[19]
06/08/2017	The claimant filed the IRC.[20]
09/20/2017	The Controller filed late comments on the IRC.[21]
08/28/2019	Commission staff issued the Draft Proposed Decision.[22]
08/30/2019	The Controller filed comments on the Draft Proposed Decision.[23]
09/09/2019	The claimant requested an extension of time and postponement of hearing, which was granted.
10/18/2019	The claimant filed comments on the Draft Proposed Decision.[24]

II. Background

A. The *Graduation Requirements* Program

On January 22, 1987, the Commission adopted a statement of decision approving the *Graduation Requirements* test claim on Education Code section 51225.3, as added by Statutes 1983, chapter 498. This test claim statute increased the number of science courses required for high school graduation from one course to two courses in biological and physical sciences. The Commission determined that the test claim statute constitutes a reimbursable state-mandated program by

[16] Exhibit A, IRC, page 2600 (2009-2010 Amended Claim).

[17] Exhibit B, Controller's Late Comments on the IRC, page 12.

[18] Exhibit A, IRC, page 77.

[19] Exhibit A, IRC, page 41 (Final Audit Report).

[20] Exhibit A, IRC, page 1.

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

[22] Exhibit C, Draft Proposed Decision.

[23] Exhibit D, Controller's Comments on the Draft Proposed Decision.

[24] Exhibit E, Claimant's Comments on the Draft Proposed Decision.

requiring students, beginning with the 1986-1987 school year, to complete at least one additional course in biological or physical science before receiving a high school diploma.

The Commission adopted the Parameters and Guidelines in March 1988, and has since amended the Parameters and Guidelines several times. The last amendment was adopted in November 2008 and corrected in December 2008 for costs incurred beginning January 1, 2005.[25] The Parameters and Guidelines adopted in 2008 govern the reimbursement claims at issue in this case, and authorize reimbursement for:

> A. Acquisition (planning, design, land, demolition, building construction, fixtures, and facility rental) of additional space necessary for the mandated additional year of science instruction, providing that space is lacking in existing facilities. However, the acquisition of additional space for conducting new science classes are reimbursable only to the extent that districts can document that the space would not have been otherwise acquired due to increases in the number of students enrolling in high school and that it was not feasible, or would be more expensive to acquire space by remodeling existing facilities.[26]

---

[25] Exhibit A, IRC, page 86 (Parameters and Guidelines). In 1991, the Commission amended the Parameters and Guidelines in accordance with Statutes 1990, chapter 459, section 4(a), which required the Commission to amend the Parameters and Guidelines with respect to the acquisition of additional space:

> The Commission on State Mandates shall amend the parameters and guidelines for Chapter 498 of the Statutes of 1983 (graduation requirements) to specify that costs related to the acquisition of additional space for conducting new science classes are reimbursable only to the extent that districts can document that this space would not have been otherwise acquired due to increases in the number of students enrolling in high school, and that it was not feasible, or would be more expensive, to acquire space by remodeling existing facilities.

In 2005, the Commission amended the Parameters and Guidelines in accordance with Statutes 2004, chapter 895, section 17, to include, in the Offsetting Revenue paragraph, the following statutory language: "If the school district or county office submits a valid reimbursement claim for a new science facility, the reimbursement shall be reduced by the amount of state bond funds, if any, received by the school district or county office to construct the new science facility." Exhibit F, Commission on State Mandates, Parameters and Guidelines Amendment, 04-PGA-30, December 9, 2005, page 1.

In 2008, the Commission amended the Parameters and Guidelines to add a reasonable reimbursement methodology for claiming teacher salary costs, and to clarify the offsetting savings and revenues relating to teacher salary costs (which are not at issue in this IRC). Exhibit A, IRC, page 86 (Parameters and Guidelines).

[26] This activity was amended by Statutes 1990, chapter 459, section 4(a).

B. Acquisition (planning, purchasing, and placement) of additional equipment and furniture necessary for the mandated additional year of science instruction.

C. Remodeling (planning, design, demolition, building construction, fixtures, and interim facility rental) existing space required for the mandated additional year of science instruction essential to maintaining a level of instruction sufficient to meet college admission requirements.

D. Increased cost to school district for staffing the new science class mandated. Reimbursement for this activity is based on the reasonable reimbursement methodology identified in Section XII of these parameters and guidelines.

Reimbursement is not required for other (non-classroom teacher) science instruction personnel (e.g. laboratory assistants).

E. Increased costs for supplying the new science class mandated with science instructional materials (textbooks, materials, and supplies).[27]

Component A (acquisition of additional space, including building construction) and component E (materials and supplies) are at issue in this IRC.

Except for the increased costs for staffing the new science class (which is reimbursed under a reasonable reimbursement methodology), Section V. of the Parameters and Guidelines requires claimants to support all actual costs claimed with documentation:

> To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.[28]

Section VIII. of the Parameters and Guidelines lists the record retention requirements and further defines supporting documentation that claimants are expected to retain when claiming actual costs:

> For this program, supporting documentation shall include the following:
>
> 1. Documentation of increased units of science course enrollments due to the enactment of Education Code Section 51225.3 necessitating such an increase.
> 2. Documentation of lack of appropriately configured and equipped space in existing facilities for the new courses.

[27] Exhibit A, IRC, page 88 (Parameters and Guidelines).

[28] Exhibit A, IRC, page 87 (Parameters and Guidelines).

3. Certification by the Board that an analysis of all appropriate science facilities within the district was conducted, and a determination made that no such facilities existed to reasonably accommodate increased enrollment for the additional science courses required by the enactment of Education Code Section 51225.3. To reasonably accommodate includes:

    a. Adjusting attendance boundaries to balance attendance between under-utilized and over-utilized secondary school facilities within the district.

    b. Taking advantage of other available secondary school science facilities that are within a secure walking distance of the school.

4. Documentation that the additional space for conducting new science classes is required only when the space would not have otherwise been acquired due to an increase in high school enrollment.

5. Documentation that remodeling existing facilities was not feasible or would have been more expensive than acquiring additional space.[29]

Commencing in fiscal year 2012-2013, the claimant elected to participate in the block grant program pursuant to Government Code section 17581.6, instead of filing annual reimbursement claims for mandated programs included in the block grant. The *Graduation Requirements* program was included in the block grant program beginning in fiscal year 2013-2014.[30]

B. The *Graduation Requirements* Litigation

In September 2003, the claimant and several other school districts filed a petition for a writ of mandate against the Controller and the Commission over disputed IRCs under the *Graduate Requirements* program. The claimant alleged that the Controller erred in reducing reimbursement claims for fiscal years 1994-1995 and 1995-1996 for costs claimed to construct and remodel science laboratory classrooms at four of its schools. The court upheld the Commission's decision, which found that the Controller's reductions were correct because the claimant's documentation did not comply with the Parameters and Guidelines.[31] The court said:

> As the Commission found, Grossmont's documentation does not satisfy the certification requirement of Section IX.C of the parameters and guidelines. The documents submitted by Grossmont, other than the declaration of Christina Becker [Grossmont's Director of Facilities Planning], do not support a finding that, before approving science laboratory classroom construction and remodeling, the board considered an analysis of Grossmont's science facilities and a determination that the facilities could not reasonably accommodate increased enrollment for the additional science course required by Education Code section

[29] Exhibit A, IRC, page 92 (Parameters and Guidelines). The last two sentences (#4 and #5) were added to comply with Statutes 1990, chapter 459.

[30] Exhibit A, IRC, pages 52, 65 (Final Audit Report). The *Graduation Requirements* mandate was added to the block grant by Statutes 2013, chapter 48.

[31] Exhibit F, *San Diego Unified School District, et al. v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 03CS01401, Ruling on Submitted Matter).

51225.3. The declaration of Ms. Becker attempts to conduct the required analysis and make the required determination four to five years after the science laboratory classroom construction and remodeling was completed. In addition, if the Grossmont board could properly delegate its certification obligation to Ms. Becker (a matter seriously in doubt), Grossmont has provided no evidence that its board made such a delegation.[32]

C. The Controller's Audit and Summary of the Issues

The Controller states that it commenced the audit of fiscal years 2008-2009 and 2009-2010 (the audit period) on January 6, 2015, the date of the audit notification letter.[33] The audit concludes that of the $21,221,594 of costs incurred for the audit period, $5,645,762 is allowable (minus a $10,000 late-filing penalty).[34]

The Final Audit Report consists of four main findings, three of which are contested by the claimant. The dispute involves the Controller's finding that the claimant claimed unallowable costs for construction of science classrooms and laboratories (Finding 1), did not provide documentation compliant with the Parameters and Guidelines for the costs claimed for textbooks, materials, and supplies (Finding 2), and did not report offsetting revenues from local school-construction bond proceeds (Finding 4).[35]

1. Finding 1, unallowable costs for acquiring additional space for science classrooms

The District claimed costs to acquire additional space by constructing science classrooms and laboratories under Section V.A. of the Parameters and Guidelines. According to the audit, the acquisition of science classroom and laboratory space was funded by a local school construction bond and state matching funds, totaling $29,633,952, plus related indirect costs.[36] The claimant did not claim all of these costs.[37] Rather, the claimant first separated for each school site the science-related acquisition costs from the total project costs (that included non-science facilities

---

[32] Exhibit F, *San Diego Unified School District, et al. v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 03CS01401, Ruling on Submitted Matter, pages 24-25).

[33] Exhibit B, Controller's Late Comments on the IRC, page 12; Exhibit A, IRC, page 11.

[34] Exhibit A, IRC, pages 41, 44, 46 (Final Audit Report). The gross costs incurred were $36,469,059, less $15,247,465 in offsetting revenue, or $21,221,594 in net costs incurred. See Exhibit A, page 48.

[35] The claimant does not dispute the following findings of the Controller: understated teacher salary costs (Finding 3); ineligible construction costs for non-science classrooms (part of Finding 1); and a reduction of $1,101 for textbooks, materials and supplies (part of Finding 2). (Exhibit A, IRC, pages 29-30, 32). These findings are not analyzed in this Decision.

[36] Exhibit A, IRC, pages 49 (Final Audit Report).

[37] Exhibit A, IRC, pages 18-19. The claimant states it claimed $14,816,975 for the audit period and "the audit report doubles the claimed amounts for purposes of applying an 'incremental increased costs' calculation . . . ."

financed by the same funds). The science classroom and laboratory construction costs were then reduced by 50 percent to account for the state matching funds. According to the claimant, "since the mandate doubled the number of science courses, the district . . . reduced the unmatched amount by another 50% to account for the preexisting requirement for science courses."[38] The claimant states that it requested reimbursement for about 25 percent of the total construction costs, which allegedly represents the incremental increase in science course enrollment resulting from the additional year of science mandated by the test claim statute.[39]

The Controller determined that the claimant did not correctly separately identify the total science and laboratory construction costs and the local school construction bond funds (which the Controller found to be offsetting revenue in Finding 4) in its reimbursement claims.[40] Thus, to clarify the presentation of the findings, and to report total costs and offsetting revenues consistent with the Parameters and Guidelines and claiming instructions, the Controller first identified total costs for science and laboratory construction costs.[41] The Controller reduced the total costs of $29,633,952, plus related indirect costs, for science classroom and laboratory construction on several grounds.[42]

First, the Controller found that the claimant did not comply with the documentation requirements in the Parameters and Guidelines to demonstrate that additional space was required because of the test claim statute. This resulted in a reduction of *all* direct and related indirect costs incurred for construction ($29,633,952, plus related indirect costs).[43] Specifically, the Controller found that the claimant did not provide documentation "showing that it analyzed all science facilities and determined, based on that analysis, that no facility existed that could reasonably accommodate the increased enrollment for the additional science class."[44] The Controller also found that the claimant did not provide the specific documentation required by the Parameters and Guidelines to support the costs claimed to construct new science classrooms, since there is no showing that the space would not otherwise have been acquired due to the increase in high school enrollment.[45]

In addition, the Controller found that the claimant did not provide any documentation to support its calculation of the incremental increase in science course enrollments *as a result* of the mandate. As stated above, the claimant used 50 percent to account for the incremental increase in science course enrollments.[46] Due to the claimant's lack of documentation, the Controller recalculated the percentage using the "One-Quarter Class Load" formula, in which the increased

[38] Exhibit A, IRC, page 26.

[39] Exhibit A, IRC, pages 18, 26, 49 (Final Audit Report).

[40] Exhibit A, IRC, page 55 (Final Audit Report).

[41] Exhibit A, IRC, page 55 (Final Audit Report).

[42] Exhibit A, IRC, page 49 (Final Audit Report).

[43] Exhibit A, IRC, page 49 (Final Audit Report).

[44] Exhibit A, IRC, page 50 (Final Audit Report).

[45] Exhibit A, IRC, page 50 (Final Audit Report).

[46] Exhibit A, IRC, pages 25-26.

number of science classes identified is divided by the total number of science class offerings for the fiscal year. Thus, the Controller calculated the incremental increase related to the mandate at 40.14 percent (167/416) for 2008-2009 and 47 percent (154.7/329) for 2009-2010. These adjustments resulted in a reduction of $2,959,887 (out of the total costs of $29,633,952 for construction).[47]

Finally, the District incurred almost $4.8 million for science classroom construction at its Helix Charter High School. The Controller found that these costs are not reimbursable because charter schools are not eligible claimants under the Parameters and Guidelines.[48] This finding alone resulted in a reduction of $4,798,802 (out of the total costs of $29,633,952 for construction).[49]

2. Finding 2, overstated costs for textbooks, materials and supplies

For fiscal year 2009-2010, $860,978 of costs were incurred for materials and supplies to furnish and equip the new science classrooms. These costs were incurred as part of the science construction costs described in Finding 1 and were funded in the same manner.[50] The Controller found that all construction-related costs for materials and supplies totaling $860,978, plus related indirect costs, is unallowable.[51] Consistent with Finding 1, the Controller found that the claimant did not comply with the documentation requirements in the Parameters and Guidelines to support these material and supply costs.

In addition, the Controller found that the claimant used an unsupported percentage to represent the incremental increase in enrollment resulting from the mandate (50 percent) to determine the costs for materials and supplies for fiscal years 2008-2009 and 2009-2010. As in Finding 1, the Controller recalculated the incremental increase in enrollment due to the mandate by using the "One-Quarter Class Load" formula, in which the increased number of science classes identified is divided by the total number of science class offerings for the fiscal year. Using this formula, the Controller calculated the incremental increase in enrollment related to the mandate at 40.14 percent (167/416) for 2008-2009 and 47 percent (154.7/329) for 2009-2010, for an additional reduction of $56,208.[52]

3. Finding 4, unreported offsetting revenues

As a separate ground to reduce costs for science classroom construction in Finding 1, and materials and supplies in Finding 2, the Controller found that the claimant failed to report and deduct offsetting revenues from Proposition H, a local school-construction bond approved by the

---

[47] Exhibit A, IRC, pages 49, 50, 58 (Final Audit Report).

[48] Exhibit A, IRC, page 51 (Final Audit Report).

[49] The Final Audit Report makes it clear that the total adjustments were limited to the total amount of construction costs incurred; $29,633,952 (only half of which was actually claimed in the reimbursement claims) plus related indirect costs. (Exhibit A, IRC, page 49, fn. 1.)

[50] Exhibit A, IRC, pages 30-31, 58 (Final Audit Report).

[51] Exhibit A, IRC, pages 57-58 (Final Audit Report). The total audit reduction for 2009-2010 was $869,918 (plus indirect costs) because unallowable costs were limited to the costs claimed. Exhibit A, IRC, page 57 (Final Audit Report).

[52] Exhibit A, IRC, page 58 (Final Audit Report).

District's voters in 2004 to authorize up to $274 million in general obligation bonds for school construction, including science classrooms.[53] Fifty percent of the incurred costs ($14,816,975 for construction, and $430,489 for materials and supplies, for a total of $15,247,465) were funded by the Proposition H bonds, and 50 percent by state matching funds.[54] The reimbursement claim included the costs already funded by the Proposition H bonds.[55] The Controller concluded that the costs claimed and funded by the Proposition H bonds ($15,247,465) during the audit period should have been fully offset against the total costs incurred ($30,494,930).[56] Thus, "[n]otwithstanding the audit adjustments in Finding 1 and Finding 2, the costs net of State bonds for Component A ($14,816,975) and a portion of Component E ($430,489) are still zero, as the remainder was fully funded with local restricted [Proposition H bond] funds."[57]

III. Positions of the Parties

A. Grossmont Union High School District

The claimant contends that the Controller incorrectly reduced the costs claimed and requests that the Commission direct the Controller to reinstate the costs reduced.

The claimant first asserts that the audit of the reimbursement claim for fiscal year 2009-2010 was not timely because the Controller made a $10 payment to the claimant on November 29, 2011, and the Controller initiated the audit more than three years later, by an audit conference letter dated January 6, 2015.[58] The claimant argues that "no payment was made for the original or amended FY 2009-10 claim in the fiscal year for which the claim was made" so the audit findings for 2009-2010 are void for lack of jurisdiction.[59] And the claimant notes, the application of "initial" payments to both an original and amended claim may be an issue of first impression for the Commission.[60] In comments on the Draft Proposed Decision, the claimant argues that the Controller's reliance on the *California School Boards Assoc. v. State of California*[61] case (*CSBA II*, which held that the Legislature's nominal appropriation of $1,000 was not in compliance with article XIII B, section 6 and, therefore unconstitutional) is "disingenuous" because the decision became final only shortly before the November 29, 2011 payment, so the Controller was not applying *CSBA II* when making the $10 payment. The

---

[53] Exhibit A, IRC, pages 1142 (Governing Board Resolution 2003-148), Exhibit B, Controller's Late Comments on the IRC, pages 15, 31-43 (Proposition H materials), 617 (Governing Board Agenda Item).

[54] Exhibit A, IRC, page 64 (Final Audit Report).

[55] Exhibit A, IRC, pages 34, 64 (Final Audit Report)

[56] Exhibit A, IRC, page 64 (Final Audit Report).

[57] Exhibit A, IRC, page 64 (Final Audit Report).

[58] Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

[59] Exhibit A, IRC, page 11.

[60] Exhibit A, IRC, page 11.

[61] *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 791.

claimant also asserts that the *CSBA II* decision considered only the Legislature's $1,000 budget appropriation and not the Controller's $10 payment.[62]

The claimant also argues that the Controller either used the wrong standard for the audit or has misconstrued the actual nature and scope of the audit because the Controller did not conduct a performance audit, and the findings were not based on the legal standard of reasonableness of the costs claimed. Government Code section 17561(d) authorizes the Controller to reduce claims the Controller deems unreasonable or excessive. Adjustments based on lack of documentation are not adjustments based on excessive or unreasonable costs. The standard in Government Code section 12410 describes the Controller's duties generally and is not specific to audits of mandate reimbursement claims. And the claimant asserts, if Government Code section 12410 is the standard, the Controller has not shown that the audit adjustments were made in accordance with this standard. As to Generally Accepted Government Auditing (or Yellow Book) standards, the Controller does not cite any law, agreement or policy that makes these standards applicable to audits of state-mandated costs, and the audit report makes no findings based on Yellow Book criteria. Rather, the Controller conducted a documentation audit.[63]

The claimant also states that the Controller should have specified in the audit report the type of corroborated contemporaneous documentation that would have met the evidentiary standard and may be missing here. The audit report does not identify how the specific documentation the district provided does not comply with the Parameters and Guidelines standards, and does not cite any other legally enforceable standards.[64]

Regarding audit Finding 1, the claimant asserts that the audit report misstates the amounts actually claimed. According to the claimant, its amended claims totaled $4,307,034 for fiscal year 2008-2009 and $10,509,941 for fiscal year 2009-2010, but the audit report incorrectly reports about $15 million never claimed by the District.[65] Second, the claimant disputes the finding that the submitted documentation is insufficient to support the costs claimed for constructing or remodeling science classrooms because the "claimed costs are supported by thousands of pages of documentation included in the attached copy of the annual claims … that meet the requirements for reporting costs of the parameters and guidelines."[66]

Regarding the documentation demonstrating the claimant's outdated facilities, the claimant states that the mandate has been in place since 1984 and it is reasonable to expect the need for upgrades and replacement over time. Even if the costs were perceived to be just for upgrades or replacement, the costs would still be subject to mandate reimbursement because the increased requirement for science courses is a continuing and not a one-time mandate. Further, the documentation relevant to whether the costs are related to the increased science curriculum were submitted in Exhibit E with the IRC, which are corroborated contemporaneous business records required by the Parameters and Guidelines. The claimant also states that whether remodeling

---

[62] Exhibit E, Claimant's Comments on the Draft Proposed Decision,

[63] Exhibit A, IRC, pages 12-16.

[64] Exhibit A, IRC, pages 16-17.

[65] Exhibit A, IRC, pages 18-19.

[66] Exhibit A, IRC, page 20.

existing facilities was feasible or less expensive than constructing additional space is answered in the facility study of each campus. In the absence of government standards regarding its documentation, the claimant must retroactively rely on documents produced in the regular course of business.[67]

The claimant also objects to the Controller's formula to determine the increased incremental cost of the mandate, which the claimant set at 50 percent. The claimant states that there is no legal requirement to use the Controller's formula, nor is it in the Parameters and Guidelines or claiming instructions for this mandate. The claimant argues that if the Controller applies this methodology to this audit, it "would constitute a standard of general application without appropriate state agency rulemaking and is therefore unenforceable."[68] The claimant calls its claiming method a "double reduction to total costs." Construction costs were funded by a local bond that were matched by state funds. The claimant determined reimbursable costs by first separating in each school site the science-related costs from the total project costs. The costs were then reduced by 50 percent to eliminate the costs that would be matched by state funds. Since the mandate doubled the number of science courses, the claimant reduced the unmatched amount by another 50 percent to account for the preexisting requirement for science courses.[69] The claimant further states that the formula the Controller used is not supported by fact and is contrary to the Parameters and Guidelines because the annual claims report construction and acquisition costs in the year incurred, but the facilities and equipment are used for many years.[70]

In comments on the Draft Proposed Decision, the claimant argues that the documentation in the IRC shows a link between the claimed costs and the mandate, in that the claimant studied and found that part of its needs included facilities for additional adequate science instruction. The claimant points to planning documents in the record that considered facilities to meet instructional and curriculum needs. The claimant also alleges that it "submitted enrollment information showing the increase in student class enrollment following the mandated additional science instruction."[71]

According to the claimant, the Parameters and Guidelines "do not exclude the cost of complying with the mandate simply because those costs were incurred as part of larger construction projects which addressed multiple needs."[72] The claimant cites a lack of evidence that it would have incurred the same costs in the absence of the mandated science courses. Rather, the evidence in the record indicates that the additional instructional requirements were incorporated in the claimant's overall needs assessment. The claimant also cites a lack of authority that would prohibit claiming costs for acquisition and remodeling as part of larger projects to address increased enrollment, degraded facilities or other instructional needs, and argues that claimants

[67] Exhibit A, IRC, pages 23-24.

[68] Exhibit A, IRC, page 25.

[69] Exhibit A, IRC, page 26.

[70] Exhibit A, IRC, page 27.

[71] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 7.

[72] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 7.

who do so would be penalized under the approach of the Controller and the Draft Proposed Decision.[73]

According to the claimant, at the time the funds were spent it made clear (in its Resolution 2009-14, 2008 Long Range Plan, and 2008 Demographic Study) that the costs were incurred to comply with the mandate. The 2008 Study showed decreased enrollment projected until 2017, so there was no enrollment growth need for facility expenditures. In short, the 2008 documents specifically identify the claimant's needs and reasons for the expenditures made at that time.[74]

The claimant also notes that the Parameters and Guidelines authorize reimbursement to acquire and remodel space, and that the Controller's reading of the allowable costs is too narrow. According to the claimant, "where a school district can show that existing space is not usable to meet the additional mandated science instruction requirements (as the District has done here), the cost of acquiring additional space is subject to reimbursement." The claimant also states that where classrooms are insufficient to meet current instructional needs, they cannot be considered "existing" space. And the claimant argues that "upgraded" facilities are not disqualified from reimbursement under the Parameters and Guidelines' Category C (remodeling), which is not conditioned on documentation that the remodel would not have been otherwise required by increases in overall enrollment.[75] Regarding audit Finding 2, the claimant again objects to the presentation of the claimed amounts, stating that it actually claimed $20,349 for fiscal year 2008-2009 and $439,429 for fiscal year 2009-2010, but the audit report doubles the amount claimed for 2009-2010 in order to apply the offsetting savings in audit Finding 4. The claimed costs were for fixtures to equip the additional science classrooms and labs, but were disallowed for the same reasons in Finding 1, because the claimant's documentation does not comply with the Parameters and Guidelines. So the claimant's response is the same as for Finding 1.[76] And as with Finding 1, the claimant characterizes its claims as a "double reduction to total costs" and argues that there is no legal requirement to use the Controller's formula or incremental rate method, which the claimant calls unnecessary and irrelevant.[77] In comments on the Draft Proposed Decision, the claimant incorporates the same arguments it makes against Finding 1, and notes, "the 2002 Plan and 2003 Bond are even less relevant to these expenditures [for materials and supplies] as they were not facilities and not necessarily paid for with facilities funds. [Rather,] … the 2008 Resolution is the proper document for establishing the need for these expenditures."[78]

Regarding the Controller's $4.8 million reduction for costs related to the Helix Charter School, the claimant states that the District "is the owner of Site and facilities at issue, and it is the District, not Helix Charter High School, claiming reimbursement."[79]

---

[73] Exhibit E, Claimant's Comments on the Draft Proposed Decision, pages 7-8.

[74] Exhibit E, Claimant's Comments on the Draft Proposed Decision, pages 8-9.

[75] Exhibit E, Claimant's Comments on the Draft Proposed Decision, pages 9-10.

[76] Exhibit A, IRC, pages 30-31.

[77] Exhibit A, IRC, pages 31-32.

[78] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 10.

[79] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 11.

For Finding 4, the claimant objects to the Controller's finding of unreported offsetting revenue of over $15 million because the new science classrooms and labs were constructed or remodeled using local restricted funds, which were from the proceeds of voter-approved Proposition H general obligation bonds for school construction. The claimant states the local bonds were accounted for by the District as required by state school accounting requirements, but the audit report does not indicate how local bond revenue is mandate reimbursement. The claimant argues that local bond funds are proceeds from taxes like other property taxes (that are used for general fund expenses), and that the Draft Audit Report does not state a legal difference.[80]

The claimant also argues that the Controller's finding regarding the full offset funded by local bond revenue is contrary to the Parameters and Guidelines for the following reasons: First, the local bond revenue is not offsetting revenue that results from the law that established the mandate. Second, the Parameters and Guidelines state that claims for construction costs shall be reduced by state bond funds, but not local bond funds. Third, the local bond fund revenue does not fall into the other categories of offsetting revenue enumerated in the Parameters and Guidelines, such as federal or state block grant, a state restricted funding source for science classrooms or labs, etc. Fourth, local bond fund revenue is not "reimbursement from any source" because it has to be repaid through local property taxes and a reimbursement that must be repaid is not a reimbursement. And the audit report does not state a legal basis that would allow local property tax proceeds to be considered reimbursement of construction costs. Fifth, although bond proceeds are required to be accounted for in restricted accounts, the account code used for bond proceeds is not determinative of the mandate reimbursement issue.[81]

In comments on the Draft Proposed Decision, the claimant reiterates its argument that the Controller may not offset mandated costs with local bond funds because such funds are "proceeds of taxes intended by the voters for local capital projects." According to the claimant:

> To claim that proceeds from a local bond measure are an available source of funds to satisfy the State's obligation to provide subvention would have the Controller replace the will of the voters in a local bond election with the State's will (i.e., a mandated cost), and renders meaningless the Article XIII B, section 6, requirement for mandate reimbursement through subvention.[82]

The claimant further asserts that offsetting local bond funds from its reimbursement claims is contrary to the Parameters and Guidelines, and that it leads to absurd results because:

> [The] use of local bond proceeds . . . or any other financing vehicle the claimant might use, to offset subvention obligations, would allow the State to essentially clear out any obligation once the Claimant proceeds to comply with the mandate [because claimants would] always be in the position of using its available resources, whether general fund, local bonds, or other available financing

[80] Exhibit A, IRC, page 66 (Final Audit Report).

[81] Exhibit A, IRC, pages 36-37.

[82] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 13.

> solutions, to comply with the mandate, in anticipation of receiving the subvention funds later.[83]

The claimant also argues that the local bond funds are "proceeds of taxes" restricted to capital projects approved by the electorate, stating:

> . . . Article XIII B, section 6, prevents the State from redirecting the limited pot of local tax revenues to fulfill State mandates. This is precisely why, in 2008, the Commission amended the parameters and guidelines for the Graduation Requirements mandate: to make sure that proceeds of taxes were not pulled into the calculus of offsetting revenues. (*Cal. School Boards Assn. v. State of California* (2018) ("CSBA III") 19 Cal.App.5th 566, 582, review granted.) In its findings, the Commission stated that "'such an interpretation [i.e., use of proceeds of taxes to offset] would require the local school districts to use proceeds of taxes on a state-mandated program. This violates the purpose of article XIII B, section 6 [which] was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues and restrict local spending in other areas.' " (*CSBA III*, supra, 19 Cal.App.5th at 582, quoting Commission, Revised Final Staff Analysis [relating to 2008 Amendments to the Parameters and Guidelines], pp. 53-54.) While the *CSBA III* court disagreed with claimant's position vis-à-vis use of State funds as offsetting revenue, it did not consider the use of local bond funds for such purpose.[84]

The claimant states that the Education Code does not allow tax revenue to be used for any purpose other than retirement of local bonds and "the State Constitution does not permit the bonds to be ultimately spent on anything other than the capital projects approved by the voters within the local tax base."[85] The claimant concludes: "the State would effectively be allowed to abscond with local bond proceeds in lieu of paying its mandate reimbursement obligations if the Draft Proposed Decision is adopted by the Commission."[86]

B. State Controller's Office

The Controller maintains that the audit reductions are correct and that the IRC should be denied.

The Controller states that the audit was timely because it was commenced within three years of the claimant's submission of an amended claim on January 24, 2012, that the Controller received on January 26, 2012. Because the audit notification letter was dated January 6, 2015, the Controller argues that the audit was timely initiated within the three-year deadline of Government Code section 17558.5.[87]

The Controller disagrees that it used an incorrect standard or misconstrued the nature and scope of the audit. The Controller conducted a performance audit in accordance with generally

---

[83] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 16.

[84] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 17.

[85] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 18.

[86] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 18.

[87] Exhibit B, Controller's Late Comments on the IRC, page 12.

accepted government audit standards, and appropriately stated that neither the efficiency or effectiveness of program operations were audited, nor were the claimant's financial statements. The Controller conducted a program audit to assess the eligibility of program costs and whether the costs claimed comply with the program's Parameters and Guidelines.

The Controller also disagrees that specific documentation standards for the program have not been identified. Rather, the Controller asserts, they are found in Section V. and Section VIII. of the Parameters and Guidelines.

Regarding the presentation of the audit findings, the Controller states that the claimant's methodology reverses the order of the claiming instructions by reducing costs by revenues first, and then determining the incremental increase related to the mandate, so that costs funded by state bonds are not reported on the claim forms. The Controller states that the separate identification of costs and revenues has no impact on total claimed costs. "We believe that our revised presentation accurately reflects net costs and does not mislead the public."[88]

The disputed audit findings (Findings 1, 2, and 4) are summarized above in the Background and are more fully analyzed in the Discussion below. The Controller stands by its audit findings, and supports the conclusion and recommendation of the Draft Proposed Decision.[89]

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[90] 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."[91]

---

[88] Exhibit B, Controller's Late Comments on the IRC, page 13.

[89] Exhibit D, Controller's Comments on the Draft Proposed Decision.

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

[91] *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.

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.[92] 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.]' "[93]

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.[94] 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.[95]

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

Government Code section 17561 authorizes the Controller to audit the reimbursement claims and records of local government to verify the actual amount of the mandated costs, and to reduce any claim that the Controller determines is excessive or unreasonable. If the Controller reduces a claim on a state-mandated program, the Controller is required by Government Code section 17558.5(c) to notify the claimant in writing, specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment. The claimant may then file an IRC with the Commission "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.[96]

---

[92] *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.

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

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

[95] 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

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

In this case, the Final Audit Report, dated June 21, 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).[97]

At the time the Final Audit Report was issued, the Commission's regulations required that an IRC be timely filed "no later than three years following the date of the Office of State Controller's final audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim" in order to be complete.[98] Because the claimant filed the IRC on June 8, 2017,[99] within three years of date of the Final Audit Report, the IRC was timely filed.

B. The Controller Timely Initiated the Audit of the 2009-2010 Amended Reimbursement Claim and Timely Completed the Audit of All Claims by Meeting the Statutory Deadlines Imposed by Government Code Section 17558.5.

Government Code section 17558.5(a) requires the Controller to initiate an audit no later than three years after the date the reimbursement claim is filed or last amended, whichever is later. However, section 17558.5 also provides that if no funds are appropriated or no payment is made "to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim."[100] Section 17558.5 also requires the audit to be completed no later than two years after it is commenced.[101]

1. The audit of the 2009-2010 amended reimbursement claim was timely initiated.

The claimant argues that the audit of the 2009-2010 reimbursement claim was not timely initiated and is therefore void because the Controller made a $10 payment to the claimant on November 29, 2011, and the Controller initiated the audit more than three years later, by an audit conference letter dated January 6, 2015.[102]

---

[97] Exhibit A, IRC, page 41 (Final Audit Report).

[98] Former California Code of Regulations, title 2, sections 1185.1(c), 1185.2(a) (Register 2014, No. 21). Section 1185.1(c) was amended, operative October 1, 2016, to clarify that: "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. The filing shall be returned to the claimant for lack of jurisdiction if this requirement is not met."

[99] Exhibit A, IRC, page 1.

[100] Government Code section 17558.5(a) (as amended, Stats. 2004, ch.890).

[101] Government Code section 17558.5(a) (as amended, Stats. 2004, ch.890).

[102] Exhibit A, IRC, pages 11 and 77 (Audit Entrance Conference Letter).

The Controller acknowledges the $10 payment in the Final Audit Report,[103] but asserts that the audit was timely because it was commenced within three years of the claimant's later submission of an amended reimbursement claim, which the Controller received on January 26, 2012. Because the audit notification letter was dated January 6, 2015, the Controller argues that the audit of the 2009-2010 amended claim was timely initiated within the three-year deadline of when the amended claim was filed pursuant to Government Code section 17558.5(a).[104]

The Commission finds that the audit of the 2009-2010 amended reimbursement claim was timely initiated.

It is undisputed that a claim for fiscal year 2009-2010, requesting reimbursement to staff the new science course in the amount of $2,560,930, was signed on January 19, 2011,[105] and submitted to the Controller "by the due date in Government Code section 17560," or by February 15, 2011.[106] The claimant states that the reimbursement claim was filed on January 26, 2011.[107] The Legislature appropriated $1,000 in the State Budget Act for fiscal year 2009-2010 to all school districts for the *Graduation Requirements* program and deferred the appropriation of the remaining amount.[108] From that $1,000 appropriation, the Controller paid the claimant $10 for the *Graduation Requirements* program for fiscal year 2009-2010 on November 29, 2011, with a "prorated balance due of $2,560,920.00" ($10 less than the reimbursement claim filed).[109] Thereafter, on January 9, 2012, the claimant signed an *amended* reimbursement claim for fiscal year 2009-2010, which added a claim for the costs of acquiring additional space and substantially increased the claim for reimbursement to $13,997,548.[110] The amended claim was mailed to the Controller by certified mail on January 24, 2012, and received by the Controller on January 26, 2012.[111] The audit of the amended 2009-2010 reimbursement claim was initiated on either December 18, 2014, or January 6, 2015.[112] The audit notification letter is dated

---

[103] Exhibit A, IRC, page 41, 44, 46 (Final Audit Report).

[104] Exhibit B, Controller's Late Comments on the IRC, page 12.

[105] Exhibit A, IRC, pages 2591-2593 (2009-2010 Reimbursement Claim).

[106] Exhibit A, IRC, page 48 (Final Audit Report, page 5, fn. 3); Exhibit B, Controller's Late Comments on the IRC, page 3, footnote 2. Government Code section 17560(a) states: "Reimbursement for state-mandated costs may be claimed as follows: (a) A local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year."

[107] Exhibit A, IRC, page 11.

[108] Statutes 2009, 4th Extraordinary Session, chapter 1, Item 6110-295-0001, schedule (5), effective July 28, 2009.

[109] Exhibit A, IRC, page 83 (Payment Check).

[110] Exhibit A, IRC, pages 48, fn. 3 (Final Audit Report), 2600 (Amended Reimbursement Claim for Fiscal Year 2009-2010).

[111] Exhibit A, IRC, page 2600; Exhibit B, Controller's Late Comments on the IRC, page 12.

[112] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 4; Exhibit B, Controller's Late Comments on the IRC, page 12.

January 6, 2015, and the letter acknowledges that an auditor contacted the claimant regarding the audit on December 18, 2014.[113] Thus, the claimant was on notice of the audit as early as December 18, 2014, although the official audit notification is dated January 6, 2015.

Government Code section 17558.5(a), as last amended in 2004, states:

> A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for this 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 no later than two years after the date that the audit is commenced.

The first sentence of section 17558.5(a) requires the Controller to initiate the audit no later than three years from the date the reimbursement claim is filed or last amended, *whichever is later*. The second sentence has generally been understood to toll the time for the Controller to initiate the audit when no funds are appropriated for the program in the fiscal year in which the claim was filed and requires the Controller to initiate the audit based on the date the initial payment is actually made on the claim, rather than when the reimbursement claim was filed. The claimant relies on the second sentence of Government Code 17558.5(a) and insists that the period to initiate the audit began to accrue when the Controller made the $10 payment on the 2009-2010 claim on November 29, 2011, which would make the deadline to initiate the audit November 29, 2014.

The Commission finds, however, that the first sentence of Government Code section 17558.5(a) is controlling and that the Controller timely initiated the audit of the 2009-2010 *amended* reimbursement claim within three years after the date the amended claim was filed.

In 2011, the Fourth District Court of Appeal in *California School Boards Assoc. v. State of California*, concluded that "the Legislature's practice of nominal funding of state mandates [by appropriating $1,000 to all school districts] with the intention to pay the mandate in full with interest at an unspecified time *does not constitute a funded mandate* under the applicable constitutional and statutory provisions."[114] Thus, the $1,000 appropriation was not considered a constitutionally sufficient appropriation to fund the program and essentially amounts to no appropriation by the Legislature and no funds to be disbursed by the Controller pursuant to Government Code section 17561(d).

The claimant contends that the Commission should not rely on the *California School Boards Assoc.* case, since it did not address payments made by the Controller in the context of a timely audit under Government Code section 17558.5, and it is undisputed that the Controller, in fact, made a payment on November 29, 2011.[115]

---

[113] Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

[114] *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 791. Emphasis added.

[115] Exhibit E, Claimant's Comments on the Draft Proposed Decision, pages 3-5.

The Commission disagrees with the claimant. The court in the *California School Boards Assoc.* case specifically held that a nominal appropriation of $1,000 for a mandated program, which amounted to an estimated appropriation of $1 per school district if all school districts filed claims, violates article XIII B, section 6 *and* the Government Code statutes that implement the Constitution, including section 17561, which governs the payment of state-mandated costs by the Controller following an appropriation by the Legislature. The court recognized that Government Code section 17561 "is the primary code section that sets forth the State's duties once a mandate is determined by the Commission." Section 17561(a) provides that the state shall reimburse each local agency and school district for *all* costs mandated by the state. Section 17561(b) states that "For the initial fiscal year during which costs are incurred . . . any statute mandating these costs shall provide an appropriation therefor." Section 17561(b) further states "In subsequent fiscal years appropriations for these costs shall be included in the annual Governor's Budget and in the accompanying budget bill." Section 17561(c) provides that "The amount appropriated to reimburse local agencies and school districts for costs mandated by the state shall be appropriated to the Controller for disbursement."[116] And, when mandate program funds are appropriated, Government Code section 17561(d) requires the Controller to pay any eligible claim by October 15, or 60 days after the date the appropriation for the claim is effective, whichever is later. The court held that the purpose of article XIII B, section 6 and these implementing statutes is to:

> . . . . require each branch of government to live within its means, and to prohibit the entity having superior authority (the State) from circumventing this restriction by forcing local agencies . . . to bear the State's costs, even for a limited time period. By imposing on local school districts the financial obligation to provide state-mandated programs on an indeterminate and open-ended basis, the State is requiring school districts to use their own revenues to fund programs or services imposed by the state. Under this deferral practice, *the State* has exercised its authority to order many new programs and services, but *has declined to pay* for them until some indefinite time in the future. This essentially is a compelled loan and directly contradicts the language and the intent of article XIII B, section 6 and the implementing statutes.[117]

Accordingly, the court upheld the finding that the state's practice of paying only a nominal amount for a mandated program while deferring the balance of the cost "constitutes *a failure to provide a subvention of funds* for the mandates as required by article XIII B, section 6 and violates the constitutional rights conferred by that provision and the specific procedures set forth at sections 17500 et seq."[118] Therefore, in fiscal year 2009-2010, the Controller could not have made a payment under Government Code section 17561(d) sufficient to trigger the initiation of

---

[116] *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 786-787, emphasis added.

[117] *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 787, emphasis added.

[118] *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 790-791, emphasis added.

an audit because the Legislature failed to provide a subvention of funds under Government Code section 17561(c).

Even if a court were to agree with the claimant that a $10 payment is sufficient to trigger the deadline to initiate the audit, the claimant is still wrong. The $10 payment was made on the original filed reimbursement claim, and not on the later-filed *amended* claim, which was the only claim audited by the Controller for that fiscal year.[119] Government Code section 17561(d) states that the Controller shall pay any "eligible claim." The original filed claim (totaling $2,560,930) was timely filed on January 26, 2011, and therefore, constitutes an "eligible claim" under Government Code section 17561.[120] The $10 check issued by the Controller on November 29, 2011, indicates that it was for the *Graduation Requirements* program for fiscal year 2009-2010, with a "prorated balance due of $2,560,920.00" ($10 less than the reimbursement claim originally filed).[121] At the time the $10 check was issued, the only "eligible claim" filed was the original claim requesting reimbursement of $2,560,930. Had the original claim been the only claim filed for fiscal year 2009-2010, then, under the claimant's theory, the Controller would have had to start the audit of that claim within three years of payment, or by November 29, 2014.

However, that is not what happened. The claimant later filed an *amended* 2009-2010 reimbursement claim to take the place of the original claim on January 26, 2012, adding additional claims for reimbursement.[122] Government Code section 17561(d)(3) allows the filing of an amended claim as long as it is filed within a year of the filing deadline. The amended claim for fiscal year 2009-2010 was timely filed and was, therefore, an eligible claim. But no payment was made on the amended claim after it was filed, and the amended claim was the *only* claim for that fiscal year that was audited by the Controller.[123]

Thus, in this case, the time to audit the amended reimbursement claim was triggered by the first sentence in section 17558.5(a), requiring the Controller to initiate the audit "no later than three years after the date that the actual reimbursement claim is filed or last amended, *whichever is later*." With the filing of the amended claim on January 26, 2012, the Controller had until January 26, 2015 to initiate the audit. The Controller timely initiated the audit on either December 14, 2014, or January 6, 2015, before the deadline.[124]

This conclusion is consistent with how statutes of limitation are generally interpreted. The general rule for defining when a cause of action accrues is the time when the cause of action is complete with all of its elements. In other words, the statute of limitations begins to run upon the

---

[119] Exhibit A, IRC, page 48, fn. 3 (Final Audit Report).

[120] Exhibit A, IRC, pages 11, 48, fn. 3 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 3, footnote 2.

[121] Exhibit A, IRC, page 83 (Payment Check).

[122] Exhibit A, IRC, pages 48, fn. 3 (Final Audit Report), 2600-2602 (Amended Reimbursement Claim for Fiscal Year 2009-2010); Exhibit B, Controller's Late Comments on the IRC, page 12.

[123] Exhibit A, IRC, page 47 (Final Audit Report).

[124] Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

occurrence of the last element essential to the cause of action.[125] Here, Government Code 17561(d)(3) allows the timely filing of an amended reimbursement claim, which was the last essential element in this case to trigger the Controller's authority to audit the claim. The filing of the amended reimbursement claim started the three-year time period in which to initiate an audit under Government Code section 17558.5(a).

Accordingly, the Commission finds that the audit of the 2009-2010 amended reimbursement claim was timely initiated.

2. The audit of all claims was timely completed.

Government Code section 17558.5(a) also provides that an audit must be completed "not later than two years after the date that the audit is commenced."[126] As indicated above, the audit was initiated on either December 18, 2014, when the claimant was first contacted regarding the audit, or on January 6, 2015, the date of the audit notification letter. Regardless of which is considered the audit initiation date, the audit was timely completed.

An audit is completed when the Controller issues the final audit report to the claimant, which constitutes the Controller's final determination on the claims and provides the claimant with written notice of the claim components adjusted, the amounts adjusted, and the reasons for the adjustment.[127] This notice enables the claimant to file an IRC. Here, the Final Audit Report, which includes these components, is dated June 21, 2016,[128] well before a two-year completion deadline of either December 18, 2016, or January 6, 2017. Therefore, the Commission finds that the Controller's audit of the reimbursement claims in the audit period was timely completed in accordance with Government Code section 17558.5.

C. The Controller's Reduction in Finding 1 of Costs Incurred To Construct Science Classrooms and Laboratories Is Correct as a Matter of Law Because the Claimant Did Not Comply with the Documentation Requirements in the Parameters and Guidelines.

Finding 1 of the audit report states that costs of $29,633,952 were incurred for the audit period to construct new science classrooms and laboratory space.[129] The Controller found the entire amount was unallowable because the claimant did not comply with the documentation requirements in the Parameters and Guidelines. According to the Controller, the claimant did not provide documentation that it analyzed the existing science facilities and determined that no facility existed to reasonably accommodate the increased units of science course enrollments due to the mandate, as required by the Parameters and Guidelines. Instead, the claimant simply asserted that the mandate doubled the number of science courses by law. Thus, the claimant determined the increased construction costs related to the mandate by reducing the total new

[125] *Norgart v. Upjohn Co*. (1999) 21 Cal.4th 383, 397.

[126] Government Code section 17558.5, (as last amended by Stats. 2004, ch. 890).

[127] Government Code section 17558(c).

[128] Exhibit A, IRC, page 41 (Final Audit Report).

[129] Exhibit A, IRC, page 50 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 14.

science building costs by 50 percent (after reducing claims by 50 percent to account for state matching funds). Moreover, the Controller found that the claimant's documentation indicates that the construction was due to the buildings being old, the need for more modern science facilities, and overcrowding at several of the school sites due to new residential areas in the claimant's attendance boundaries.[130] Based on the claimant's documents, the Controller found that the costs for construction of science classrooms and laboratories were not incurred as a result of the mandate.

The claimant asserts that the Controller's reduction is incorrect because:

> The mandate doubled the requirement for science labs and classrooms, but the audit report findings necessarily presume, without foundation, that at that time of the new law the District could have had 200% capacity for all science courses. The audit findings would also assume that other existing (non-science) classrooms at each campus would already have been appropriately configured and equipped space for the new courses. Since the District is high school grades only, all sites are similarly configured and there is no presumption of "under-utilized" facilities. Historical boundaries are based on matching enrollment to existing facilities, so there is no reasonable presumption that any campus is under-utilized in a manner that could be relieved by adjusting attendance borders. Enrollment did not double at the time of the new mandate, or any year since, so normal enrollment growth is not a factor to the need to increase the number of classrooms and labs.[131]

The claimant also states: "[w]hile it is arguable that the number of science teachers and consumable supplies would vary directly with science classroom enrollment, it is not necessarily logical that one-time construction costs and the cost of equipment would vary directly with science classroom enrollment" since facilities and equipment are used for many years.[132]

The claimant further argues that the costs are supported by thousands of pages of documentation included in the annual claims, and that the documentation meets the requirements of the Parameters and Guidelines.[133]

Finally, the claimant asserts that costs for upgrades and replacement should be reimbursable because facilities age and deteriorate:

> The mandate has been in place since 1984 and it is reasonable to expect the need for upgrades and replacement over time either due to deterioration of the facilities or otherwise by the state-defined curriculum. This does not invalidate these costs for mandate reimbursement. Even if it is perceived that the costs are just upgrades to or replacement of existing facilities, these costs would still be subject to mandate reimbursement because of the increased requirement for science courses which is not a one-time requirement, but a continuing mandate. This is

---

[130] Exhibit A, IRC, page 50 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, pages 14-15.

[131] Exhibit A, IRC, page 23.

[132] Exhibit A, IRC, page 27.

[133] Exhibit A, IRC, page 20.

the same reason that increased science teacher staffing costs continue to be reimbursable.[134]

The Commission finds that the Controller's reduction of costs for construction in Finding 1 is correct as a matter of law.

1. The Parameters and Guidelines require school districts to submit documentation to show that the costs claimed were incurred as a direct result of the mandate; that units of science course enrollment increased because of the test claim statute; that space for science classroom and labs would not have otherwise been acquired due to an increase in high school enrollment; and that no facilities existed to reasonably accommodate the increased enrollment for the additional mandated science course.

The claimant argues that the *Graduation Requirements* mandate has been in place since the 1980s and it is reasonable to expect the need for upgrades and replacement over time due to deterioration of the facilities. The claimant further asserts that it is illogical that one-time construction costs would vary directly with science classroom enrollment since facilities and equipment are used for many years and thus, such information should not be required.[135] Similarly, in comments on the Draft Proposed Decision, the claimant further states that "it is illogical to suggest that once in existence, science classroom space will be sufficient to meet future requirements" because "[o]bviously, the curriculum needs around science instruction advance with time and the facilities needed to support this curriculum must also change."[136] The claimant's comments imply that construction costs for new science classrooms should be reimbursable simply because the mandate exists, and since the mandate increased the high school graduation requirements from one science course to two science courses, it was appropriate to determine the increased construction costs related to the mandate simply by reducing the total new science building costs incurred in fiscal year 2009-2010 by 50 percent (after reducing claims by 50 percent to account for state matching funds).[137] The claimant's interpretation of the Parameters and Guidelines is not correct.

The Commission adopted the Parameters and Guidelines in 1988. At that time, the test claimant was primarily seeking reimbursement for the construction of two new science laboratories and the renovation of a third science laboratory based on allegations of lacking adequate space to comply with the mandated second science course, which requirement became effective in the 1986-1987 school year.[138] Education Code section 51225.3 as added by the test claim statute, only mandated a *second* science course for high school graduation in either biological or physical science. Under prior law, former section 51225 had already required other course offerings for high school graduation, including one science course required for high school graduation, and

---

[134] Exhibit A, IRC, page 21.

[135] Exhibit A, IRC, pages 21, 27.

[136] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 10.

[137] Exhibit A, IRC, pages 26, 49 (Final Audit Report).

[138] Exhibit F, Commission on State Mandates, Test Claim Decision, *Graduation Requirements*, CSM-4181, November 20, 1986, page 3.

preserved the right of a school district to specify and offer courses it required for high school graduation, so those requirements were not found to be reimbursable since they were not new.[139]

The Commission approved reimbursement for the acquisition of additional space, but included language in the Parameters and Guidelines to ensure that the costs claimed were incurred only as a direct result of the mandated *second* science course. Thus, Section V. of the Parameters and Guidelines states that a reimbursable "[i]ncreased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate."[140] Section V.A. of the Parameters and Guidelines authorizes reimbursement for the acquisition of additional space "*only to the extent* that districts can document that the space would not have been otherwise acquired due to increases in the number of students enrolling in high school and that it was not feasible, or would be more expensive to acquire space by remodeling existing facilities."[141] The Legislature, then enacted a statute which required the Commission to amend the Parameters and Guidelines to include this limiting language, and the amendment was adopted in 1991.[142]

Section VIII. of the Parameters and Guidelines further requires the claimant to provide the following documentation supporting the costs claimed:

> For this program, supporting documentation shall include the following:
>
> 1. Documentation of increased units of science course enrollments due to the enactment of Education Code Section 51225.3 necessitating such an increase.
> 2. Documentation of lack of appropriately configured and equipped space in existing facilities for the new courses.
> 3. Certification by the Board that an analysis of all appropriate science facilities within the district was conducted, and a determination made that no such facilities existed to reasonably accommodate increased enrollment for the additional science courses required by the enactment of Education Code Section 51225.3. To reasonably accommodate includes:
>   a. Adjusting attendance boundaries to balance attendance between under-utilized and over-utilized secondary school facilities within the district.
>   b. Taking advantage of other available secondary school science facilities that are within a secure walking distance of the school.
> 4. Documentation that the additional space for conducting new science classes is required only when the space would not have otherwise been acquired due to an increase in high school enrollment.

---

[139] Exhibit F, Commission on State Mandates, Test Claim Decision, *Graduation Requirements*, CSM-4181, November 20, 1986, pages 2-3.

[140] Exhibit A, IRC, page 87 (Parameters and Guidelines).

[141] Exhibit A, IRC, page 88 (Parameters and Guidelines). Emphasis added.

[142] Statutes 1990, chapter 459, section 4(a). The Commission amended the Parameters and Guidelines on January 24, 1991.

5. Documentation that remodeling existing facilities was not feasible or would have been more expensive than acquiring additional space.[143]

The current Parameters and Guidelines as last amended in 2008 govern this IRC and still include these provisions. There has been no request filed to amend the Parameters and Guidelines to specifically address or authorize costs incurred due to the age of science classrooms used for the mandated second science course. Thus, the Parameters and Guidelines do not authorize reimbursement for construction costs simply because the mandate exists and science classrooms are now old, as asserted by the claimant. Nor do the Parameters and Guidelines allow reimbursement based on an assumption that the number of science courses doubled as a result of the mandate.

Rather, in order for construction costs of science classroom space to be reimbursable, a claimant is required to show that:

- The costs claimed were required as a result of the mandate;[144]
- The governing board conducted an analysis of all science facilities, and determined (with the adoption of a certification) that no science facilities exist to reasonably accommodate the increased enrollment for the additional science course mandated by the test claim statute;[145] and
- Provide documentation showing the:
    - Increased units of science course enrollments due to the mandate.
    - Lack of appropriately configured and equipped space in existing facilities for the new science course mandated by the state.
    - Space would not have otherwise been acquired due to an increase in high school enrollment.
    - Remodeling existing facilities was not feasible or would have been more expensive than acquiring additional space.[146]

The Parameters and Guidelines are binding and regulatory in nature, and claimants are required by law to file reimbursement claims in accordance with them.[147] In addition, the claimant has the burden to show that it has incurred increased costs mandated by the test claim statute and that any reduction made by the Controller is incorrect.[148]

---

[143] Exhibit A, IRC, page 92 (Parameters and Guidelines).

[144] Exhibit A, IRC, page 87 (Parameters and Guidelines).

[145] Exhibit A, IRC, page 92 (Parameters and Guidelines).

[146] Exhibit A, IRC, page 92 (Parameters and Guidelines).

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

[148] Evidence Code section 500 states: "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for

The claimant has not provided documentation required by the Parameters and Guidelines showing that the costs claimed for construction of new science classrooms were incurred as a direct result of the mandate. Thus, the Controller's reduction is correct as a matter of law.

Based on this record, and as described below, the Commission finds that the claimant did not provide documentation required by the Parameters and Guidelines showing that the costs claimed for construction were limited to the mandate; that the units of *science course enrollment increased* because of the test claim statute; or that space for new science classrooms and laboratories would not have otherwise been acquired due to an increase in high school enrollment. Therefore, the Controller's reduction is correct as a matter of law. The relevant documents in the record are summarized or quoted below.

In 2002, the District adopted a Long Range Facilities Master Plan, which indicates that District facilities needed to be modernized and renovated.[149] The Master Plan states that most of the District's schools were built over 40 years ago. "They are old," "[t]hey are undersized and do not meet CDE minimum essential facilities," and "[t]hey are out of date for the current educational programs and the needs of the community."[150] The Master Plan notes that the District's facilities do not have the room for the overall increased enrollment in the District and that renovations and upgrades are needed for science and technology, as follows:

---

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

[149] Exhibit A, IRC, page 157 (2002 Long Range Facilities Master Plan).

[150] Exhibit A, IRC, page 156 (2002 Long Range Facilities Master Plan).

> The District will not be able to meet the proposed California state standards for science and technology without some major renovations and upgrades of support facilities as well as classrooms. Students will have difficulty achieving the same level of academic skill as students who attend schools where they can plug in computers without blowing circuits, where there is running water for science experiments and where the teacher has the ability to enhance the lessons with a variety of teaching materials.
>
> . . . The District's 11 schools were originally built to hold approximately 20,000 students. The current enrollment (October 2001) is 23,639. Not only does the District not have enough permanent classrooms, there are not enough support facilities in toilet rooms, drinking fountains, libraries, science labs or parking for the population at every school. The District also loses valuable outdoor athletic space at each school as existing blacktops and fields are covered with portable classrooms.[151]

The Master Plan further states that the "enrollment increase has resulted in overcrowding at 80% of the schools. As a result, many schools lack . . . science labs, restrooms, classrooms and support facilities."[152] The Master Plan explains that during the recession in the early 1990's, the governing board decided to spend its limited dollars on the immediate needs of the classroom, and that bonds were depleted and state matching funds were limited to keep up with the District's "Deferred Maintenance Program."[153] Thus, "in order to satisfy the facility needs of Grossmont Union High School District's expanding student enrollment along with its aging facilities, the Governing Board has decided to implement a Long Range Facilities Master Plan," which "includes a comprehensive inventory of the repairs, upgrades and future construction needs at all campuses over the next 10 years."[154] The plan states that one of the most critical priorities is new and upgraded science labs.[155] Site surveys were conducted for each campus of the district, and "science lab upgrade or improvements" or "science room renovation" were listed as "priorities" or "typical improvement issues" for Grossmont High School, El Cajon High

---

[151] Exhibit A, IRC, page 156 (2002 Long Range Facilities Master Plan).

[152] Exhibit A, IRC, page 157 (2002 Long Range Facilities Master Plan).

[153] Exhibit A, IRC, page 159 (2002 Long Range Facilities Master Plan). The Deferred Maintenance Program is a state grant program that allows school districts to seek state matching funds to finance major repair or replacement of plumbing, heating, air conditioning, electrical, roofing and floor systems and the exterior and interior painting of school buildings, or such other items of maintenance as may be approved by the State Allocation Board. As a condition of participating in the program, school districts are required to comply with certain program and accounting requirements. (See Exhibit F, Commission on State Mandates, Statement of Decision, *Deferred Maintenance Program*, 02-TC-44, October 27, 2011.)

[154] Exhibit A, IRC, page 160 (2002 Long Range Facilities Master Plan).

[155] Exhibit A, IRC, pages 160, 243 (2002 Long Range Facilities Master Plan).

School, El Capitan High School, Granite Hills High School, Monte Vista High School, Valhalla High School, and Chaparral High School.[156]

In October 2003, the governing board passed a resolution to call for an election on whether $297 million in general obligation bonds should be issued and sold for the "improvement, renovation, reconstruction and rehabilitation of the District's existing schools . . . ."[157] The resolution states that school facilities are 40 to 60 years old and have outdated science labs and classrooms; and that the growth in student enrollment in the District increased "resulting in severely overcrowded conditions in the existing school facilities thereby creating the need to construct a new high school to serve students in the Alpine/Blossom Valley region of the District and to thereby relieve overcrowding in the District's existing school facilities."[158] The resolution also addresses the accountability requirements of Proposition 39, a voter-approved constitutional amendment passed in 2000 that lowered the voting threshold for school bonds from 2/3 to 55 percent and added school-bond accountability requirements, such as a citizen's oversight committee, annual financial and performance audits, and identification of construction projects.[159] Thus, the resolution includes a list of projects to be funded with the proceeds of the proposed bond, which includes the expansion and upgrade of science labs at the following high schools: Grossmont, Helix Charter, El Cajon, El Capitan, Granite Hills, Monte Vista, Santana, Valhalla, and West Hills.[160] The resolution further states the use of the bond proceeds is restricted to construction, rehabilitation, or replacement of school facilities, including furnishing and equipping school facilities, and not for any other purpose.[161] In addition, the ballot measure for the bond cited the need to comply with the Americans with Disabilities Act.[162]

Based on this resolution, a local school bond measure, Proposition H, was put on the ballot in March 2004, to authorize $274 million "for critically needed repairs and upgrades to our local high schools" and "will allow the High School District to . . . renovate outdated classrooms,

---

[156] Exhibit A, IRC, pages 245, 248, 253, 256, 263-264, 266, 268-269, 271, 273-274, 276, 278, 283, 285, 286, 293 (2002 Long Range Facilities Master Plan). One new science lab was recommended for Mt. Miguel High School on page 261, but it was not listed as a typical improvement or priority. No science-related upgrades were mentioned for Steele Canyon High School (pp. 290-292), the Homestead/Frontier Facility (p. 296), the Viking Center, or the Work Training Center (pp. 299-305).

[157] Exhibit A, IRC, page 1142 (District Resolution 2003-148).

[158] Exhibit A, IRC, pages 1141-1142 (District Resolution 2003-148).

[159] California Constitution, article XVI, section 18. Exhibit A, IRC, page 1141 (District Resolution 2003-148).

[160] Exhibit A, IRC, pages 1146-1149 (Ballot Measure for District Resolution 2003-148). Although upgrades were listed for Mount Miguel and Steele Canyon High Schools, there was no mention of science classrooms or laboratories in the Ballot Measure.

[161] Exhibit A, IRC, page 1143 (District Resolution 2003-148).

[162] Exhibit A, IRC, pages 1146-1149, 1152-1154 (Bond Ballot Measure).

science labs and school facilities . . . ."[163] The voters were told that bond funds were needed because:

> Local high school facilities are aging. After 30-50 years of constant use, most high schools in our community are old and deteriorated, some are overcrowded, and virtually all need repair and renovation. After the unsuccessful attempt to pass Proposition T in 2002, the High School District reexamined the facility needs of each school. Based on need and the input of parents, teachers, staff and community, a specific plan to rehabilitate aging schools and relieve overcrowding was developed. Proposition H was placed on the ballot to authorize implementation of the plan to renovate and upgrade all of our high schools.[164]

The construction and needed repairs are identified in the ballot measure, and include the expansion and upgrade of outdated science labs at Grossmont, El Cajon Valley, El Capitan, Granite Hills, Santana, Valhalla, High Schools; and for Monte Vista High School, the measure states "consolidate and upgrade outdated science classrooms."[165] Proposition H was passed by the District's voters in March 2004.[166]

In late 2006 and early 2007, members of the Governing Board and the public were dissatisfied with the progress of the improvements, as well as the expenditure of Proposition H funds, and the overall management of Proposition H.[167] In February 2007, the District created a Bond Advisory Commission to make recommendations to the governing board regarding the renovations and repairs to the existing schools in satisfaction of Proposition H.[168] The Bond Advisory Commission reported that available Proposition H money ($274 million) and state matching funds ($140 million) fell well-below estimated construction costs of $600 million for all desired renovations because of the rate of inflation for construction materials soared.[169] In

---

[163] Exhibit B, Controller's Late Comments on the IRC, page 31 ("Yes on H For Our Local High Schools").

[164] Exhibit B, Controller's Late Comments on the IRC, page 31 ("Yes on H For Our Local High Schools").

[165] Exhibit B, Controller's Late Comments on the IRC, pages 36-41 ("Yes on H For Our Local High Schools"). There is no specific mention in the ballot measure of upgrading or expanding science classrooms or laboratories at other facilities, such as Helix Charter, Mount Miguel, West Hills, Steele Canyon, or Chaparral High Schools, or the Viking Center, Homestead/Frontier School, or the Work Training Center.

[166] Exhibit A, IRC, pages 1142 (Governing Board Resolution 2003-148), Exhibit B, Controller's Late Comments on the IRC, pages 15, 31-43 (Proposition H materials), 617 (Governing Board Agenda Item).

[167] Exhibit B, Controller's Late Comments on the IRC, page 166 (Bond Advisory Commission Final Report).

[168] Exhibit B, Controller's Late Comments on the IRC, page 15, 49 (Bond Advisory Commission Final Report).

[169] Exhibit B, Controller's Late Comments on the IRC, page 50 (Bond Advisory Commission Final Report).

addition, the "Repair and Renovation Subcommittee," one of four subcommittees formed by the Bond Advisory Commission, recommended building new science buildings instead of renovating existing science classrooms:

> We found that science classrooms are nothing more than a regular classroom with one sink. These classrooms appear beyond renovation to get them up to a modern science facility. We strongly recommend the existing science classrooms be converted to regular classrooms, the antiquated portables be scrapped and classes moved to the converted science classrooms, and that new science buildings be constructed.[170]

The subcommittee's recommendation further states:

> We saw portable structures originally intended to be temporary, that were old and deteriorated. Some portables were over 20 years old.
>
> Additionally, we observed "science" classrooms that were no more than a classroom with a sink.
>
> Therefore, we strongly recommend that this three-part improvement:
>
> A. Construct a new science building with dedicated, modern science classrooms.
> B. Convert existing "science" classrooms to regular, up to date classrooms.
> C. Eliminate older portable classrooms as much as possible within state requirements.
>
> This three-part improvement should be done at these campuses:
>
> 1. Grossmont High School
> 2. Helix Charter High School
> 3. El Cajon Valley High School
> 4. El Capitan High School
> 5. Granite Hills High School
> 6. Monte Vista High School
> 7. Santana High School
> 8. Valhalla High School.
> 9. Chaparral High School[171]

The report also noted that "With the planned new science labs (Phase 3A) approximately $18,000,000 of new construction match money will be used."[172]

On June 14, 2007, the Governing Board accepted the final report of the Bond Advisory Commission and acknowledged that "the BAC [Bond Advisory Commission] has presented a

---

[170] Exhibit B, Controller's Late Comments on the IRC, page 171 (Bond Advisory Commission Final Report).

[171] Exhibit B, Controller's Late Comments on the IRC, pages 173-174 (Bond Advisory Commission Final Report).

[172] Exhibit B, Controller's Late Comments on the IRC, page 96 (Bond Advisory Commission Final Report).

comprehensive approach and roadmap for satisfying all of the Prop H promises relating to repairs and renovation of existing schools, ADA compliance, and construction of a 12th high school."[173]

On August 29, 2007, the Citizens' Bond Oversight Committee recommended the construction of new science classrooms. The summary of their meeting states that "The District will be moving forward with building new science classrooms, although this is a deviation from the bond language which specified that the classrooms would be modernized." The summary further states that building new science classrooms "will have a beneficial effect on State Matching Funds generated; the District will receive another $10M of state dollars from new construction."[174]

On June 20, 2008, the District adopted a revised Long Range Facilities Master Plan to determine "[m]odernization work completed or expected to be completed utilizing Proposition H funds; [m]odernization work needed to complete the modernization of all campus facilities not originally anticipated for completion under Proposition H; [and] [m]odernization work needed to bring all campuses up to a common standard or 'parity'."[175] The revised Plan contains a list of goals, which includes the goal to "[i]dentify and maximize the potential for State matching funds for modernization and new construction," and to "[d]evelop funding options and proposed strategies for creating the resources upon which the district can execute phases of the Plan."[176] The revised Plan further states that "[o]n many campuses, newly constructed facilities were assumed to replace heavily deteriorated facilities where demolition and reconstruction made more sense."[177]

On July 31, 2008, the governing board adopted Resolution No. 2009-14, to address, for the first time, the test claim statute and identify the claimant's compliance with "California Education Code Section 51225.3, Graduation Requirements for Science."[178] The staff analysis and recommendation to adopt the resolution states in relevant part:

> **Issue:**
>
> On January 22, 1987, the Commission on State Mandates adopted a Statement of Decision finding that the Graduation Requirements test claim constitutes a reimbursable state-mandated program by requiring students, beginning with the 1986-1987 school year, to complete at least two courses in science before receiving a high school diploma. Under prior law, the Education Code only

[173] Exhibit B, Controller's Late Comments on the IRC, page 232 (Minutes of Governing Board Meeting, June 14, 2007).

[174] Exhibit A, IRC, page 620, 624 (Citizens' Bond Oversight Committee, Summary of Meeting, August 29, 2007.)

[175] Exhibit B, Controller's Late Comments on the IRC, pages 234, 236.

[176] Exhibit B, Controller's Late Comments on the IRC, page 237.

[177] Exhibit B, Controller's Late Comments on the IRC, page 240.

[178] Exhibit B, Controller's Late Comments on the IRC, page 613 (District staff recommendation to adopt Resolution 2009-14).

required the completion of one science course. In accordance with Government Code section 17519, a school district that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

Plan:

The Proposition H Bond Measure calls for construction of new science classrooms at seven (7) school sites. The expansion of the science program meets the graduation requirements mandated by the State of California. This resolution finds that the Grossmont Union High School District has inadequate facilities to meet the graduation requirements, which, therefore, necessitates construction of new facilities.

Fiscal Impact:

There is no fiscal impact as a result of the adoption of this resolution.

Recommended Action:

Adoption of Resolution (2009-14) identifying Grossmont Union High School District's Compliance with California Education Code Section 51225.3, Graduation Requirements for Science.[179]

Accordingly, Resolution No. 2009-14 states that the test claim statute "has caused the District's existing science facilities to fail to accommodate the current needs of the District;" that sufficient, appropriately configured and equipped science classroom facilities do not currently exist; that adjusting district boundaries or using other facilities are not a viable options; and that constructing or acquiring new facilities is necessary when and where remodeling existing facilities is not appropriate, as follows:

> WHEREAS, Section 51225.3 of the California Education Code as added by Chapter 498, Statutes of 1983, requires school districts to provide an additional high school science course thereby increasing student graduation requirements; and
>
> WHEREAS, the Grossmont Union High School District did in Fiscal Years 2007 and 2008 and continues to experience a lack of appropriate high school science classroom facilities, the District has performed the following:
>
> 1. A study of existing appropriately configured and equipped science classroom facilities;
> 2. An analysis of existing science facilities throughout the District; and
> 3. A cost analysis of new facilities versus remodeling existing facilities.[180]

The Resolution further declares that:

---

[179] Exhibit B, Controller's Late Comments on the IRC, page 613 (District staff recommendation to adopt Resolution 2009-14).

[180] Exhibit B, Controller's Late Comments on the IRC, page 614 (District Resolution 2009-14).

1. Sufficient, appropriately configured and equipped science classroom facilities do not currently exist;
2. Adjusting attendance boundaries, or utilizing other secondary science facilities within a secure walking distance are not a viable means of mitigating the District's lack of appropriate high school science classroom facilities;
3. Remodeling existing facilities . . . is . . . significantly less expensive than acquiring new facilities;
4. Constructing or acquiring new facilities is necessary when and where remodeling existing facilities is not appropriate; and
5. It is necessary to lease or otherwise obtain temporary classroom facilities during the period of remodeling or new construction.

NOW THEREFORE, BE IT RESOLVED that Chapter 498, Statutes of 1983, has caused the District's existing science facilities to fail to accommodate the current needs of the District and the Grossmont Union High School District has therefore approved new construction, remodeling, equipment purchase, and or temporary student classroom lease proposals as described in contemporaneous governing board agendas and related documentation.[181]

Also on July 31, 2008, the claimant's staff recommended that the governing board adopt a second resolution (Resolution 2009-17) to determine that inadequate science facilities continue to exist, and to construct new science classrooms to meet the State's graduation requirements for science.[182] The staff recommendation for this resolution states in relevant part:

Topic:

Resolution (2009-17) Determining that Inadequate Science Facilities Exist

Issue:

On December 3, 2003, the Grossmont Union High School District Governing Board, by a unanimous vote, approved the placement of Proposition H on the ballot. The measure passed on March 2, 2004. By adopting Resolution No. 2003-148, the Board made a finding that the physical conditions of the existing school facilities did not satisfy the safety and technological and curriculum standards of the District thereby creating the need to modernize, renovate, rehabilitate and expand such existing school facilities, replace portable classrooms, furnish and/or equip such school facilities and/or lease school facilities.

Plan:

[181] Exhibit B, Controller's Late Comments on the IRC, pages 614-615 (District Resolution 2009-14).

[182] Exhibit B, Controller's Late Comments on the IRC, pages 617-618 (Agenda Item and District Resolution 2009-17).

> Construct new science classrooms at Grossmont, El Cajon, El Capitan, Granite Hills, Monte Vista, Santana, and Valhalla High Schools to meet the State graduation requirements for science.
>
> **Fiscal Impact:**
>
> There is no fiscal impact as a result of the adoption of this resolution.
>
> **Recommended Action:**
>
> Adoption of Resolution (2009-17) Determining that Inadequate Science Facilities Exist[183]

Resolution 2009-17 adopted July 31, 2008, itself states:

> WHEREAS, prior to the Proposition H Bond measure, the Grossmont Union High School District conducted a facilities needs study and determined that the existing school facilities did not satisfy the safety and technological and curriculum standards of the District thereby creating the need to modernize, renovate, rehabilitate and expand such existing school facilities, replace portable classrooms, furnish and/or equip such school facilities and/or lease school facilities; and
>
> WHEREAS, the Grossmont Union High School District adopted Resolution No. 2003-148 making said finding and approving placement of the bond measure on the ballot; and
>
> WHEREAS, the District has on a regular basis presented reports to the Governing Board and the Citizen's Bond Oversight Committee regarding the status of Proposition H and the science classrooms; and
>
> NOW THEREFORE, BE IT RESOLVED that the Governing Board of the Grossmont Union High School District hereby determines *that the findings of the facility study completed prior to the Bond measure as they relate to science classrooms remain current in that there continues to exist inadequate science facilities and that the cost of remodeling would not provide appropriate science classrooms as called for in the State graduation requirements*.[184]

In 2009, the Citizens' Bond Oversight Committee issued its Annual Report, which reported on the status of the Proposition H work, noting that science building construction was underway at eight of the District's high schools, with the first to be open in February 2010. According to the report:

> Prop H work is at full speed with active construction on ten high school campuses. In total, Prop H will modernize 291 classrooms and provide 87 new classrooms. To date, 264 classrooms have been modernized and eight new

[183] Exhibit B, Controller's Late Comments on the IRC, page 617 (Agenda Item for District Resolution 2009-17).

[184] Exhibit B, Controller's Late Comments on the IRC, page 618 (District Resolution 2009-17). Emphasis added.

> classrooms will be opened in February 2010. Work was divided into several phases:
>
> [¶]…[¶]
>
> Phase 3A: Science building construction is underway at Grossmont, Helix, El Cajon Valley, El Capitan, Granite Hills, Monte Vista, Santana, and Valhalla High Schools. The science building at El Cajon Valley will be the first to open in February 2010.[185]

Finally, the claimant's IRC contains documentation, including invoices, supporting the total costs incurred for construction.[186]

The claimant contends that these documents fully support the reimbursement claim for the acquisition of additional space. The claimant argues that the documentation shows a link between the claimed costs and the mandate, in that the claimant studied and understood that part of its facility needs included adequate science classrooms to allow for the additional science course mandated by the state.[187] The claimant points to the 2002 Master Plan, which mentioned that "The District will not be able to meet the proposed California State standards for science and technology without some major renovations and upgrades" and that "There are not enough . . . science labs . . . at every school."[188] The claimant also relies on the 2003 Board Resolution, which stated that "current facilities do not satisfy the . . . curriculum standards of the District."[189] In addition the 2008 Long Range Facilities Plan, which considered "key instructional priorities and facilities [sic] needs, . . . the need to 'continue to provide a quality learning environment . . . consistent with the Education Code'," and the need for "classrooms, libraries and science labs . . . to meet the high school curriculum."[190]

The claimant further argues that the Parameters and Guidelines "do not exclude the cost of complying with the mandate simply because those costs were incurred as part of larger construction projects which addressed multiple needs."[191] The claimant further argues that denying reimbursement to a school district that acquired additional space to provide the mandated class as part of a larger facilities plan or project would penalize claimants:

> [A]dopting the Draft Proposed Decision's approach would penalize school districts which acquired the necessary facilities to provide the mandated additional science instruction as part of larger plans or projects. It would suggest that school districts must entirely separate these projects in order to meet

---

[185] Exhibit B, Controller's Late Comments on the IRC, page 677 (Citizen's Bond Oversight Committee 2009 Annual Report).

[186] Exhibit A, IRC, pages 3141-4210.

[187] Exhibit E, Claimant's Comments on the Draft Proposed Decision, pages 6-7.

[188] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 6.

[189] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 6.

[190] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 7.

[191] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 7.

> "documentation" requirements. This could substantially increase the monetary cost and administrative burden of such projects – and ultimately the reimbursable costs. The Parameters and Guidelines do not impose this requirement and the Commission should not create it by disallowing the costs necessary to acquire and remodel space to provide the mandated additional science instruction.[192]

In addition, "[w]hile the 2002 Plan and 2003 Bond resolution outlined a broad facilities plan," the claimant urges the Commission to focus on the 2008 documents "which specifically identify the District's needs and reasons for the expenditures made at that time."[193] The claimant also states that a 2008 Study projected dropping enrollment until 2017, so there was no need for facility expenditures due to high school enrollment growth.[194] The claimant also asserts that the 2008 Resolution, which states that the District "'continues to experience a lack of appropriate high school science classroom facilities,' that it had studied 'existing appropriately configured and equipped science classrooms [sic] facilities,' and based on this analysis concluded that 'Sufficient, appropriately configured and equipped classroom science classroom facilities do not currently exist . . . ."[195]

Finally, the claimant addresses the issue of science course enrollment by stating that "[w]hile it is arguable that the number of science teachers and consumable supplies would vary directly with science classroom enrollment, it is not necessarily logical that one-time construction costs and the cost of equipment would vary directly with science classroom enrollment" since facilities and equipment are used for many years.[196] In comments on the Draft Proposed Decision, the claimant alleges that it "submitted enrollment information showing the increase in student class enrollment following the mandated additional science instruction."[197]

The Parameters and Guidelines require the claimants to:

- Show that the costs claimed were required as a result of the mandate;
- Show that the governing board conducted an analysis of all science facilities, and determined (with the adoption of a certification) that no science facilities exist to reasonably accommodate the *increased enrollment for the additional science course* mandated by the test claim statute; and
- Provide documentation showing the:
    - Increased units of science course enrollments due to the mandate.
    - Lack of appropriately configured and equipped space in existing facilities for the new science course mandated by the state.

---

[192] Exhibit E, Claimant's Comments on the Draft Proposed Decision, pages 7-8.

[193] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 9.

[194] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 9.

[195] Exhibit E, Claimant's Comments on the Draft Proposed Decision, pages 8-9.

[196] Exhibit A, IRC, page 27.

[197] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 7.

- The new classroom space would not have otherwise been acquired due to an increase in high school enrollment.
- Remodeling existing facilities was not feasible or would have been more expensive than acquiring additional space.[198]

Here, the evidence in the record (the Resolutions adopted in 2008) show a lack of appropriately configured and equipped space in existing science facilities at seven school sites, and that remodeling was not feasible or would have been more expensive than acquiring additional space. Resolution 2009-14 states that "the findings of the facility study completed prior to the Bond measure as they relate to science classrooms remain current in that there continues to exist inadequate science facilities and that the cost of remodeling would not provide appropriate science classrooms as called for in the State graduation requirements."[199] The 2002 facility study completed prior to the Bond measure showed that science classrooms were old, deteriorated, and inadequate because they were not "modernized" in accordance with the claimant's deferred maintenance plan.[200] Resolution 2009-17 also includes a finding that the facility study completed prior to the Bond measure as it relates to science classrooms remains current in that there continues to exist inadequate science facilities and that the cost of remodeling would not provide appropriate science classrooms as called for in the State graduation requirements.[201] This is supported by the 2007 report by the Bond Advisory Commission, which found that the claimant's science classrooms "appear beyond renovation to get them up to a modern science facility," and, thus, the claimant decided to construct new science classrooms, which was approved by the Bond Oversight Committee.[202] The finding is also supported by the 2008 revised Long Range Facilities Master Plan, which continued to focus on "modernization" of school facilities and noted that "[o]n many campuses, newly constructed facilities were assumed to replace heavily deteriorated facilities where demolition and reconstruction made more sense."[203] Thus, there is evidence in the record showing a lack of appropriately configured and equipped space in existing science facilities for the claimant's science courses at seven of its high schools, including the second science course mandated by the state.

---

[198] Exhibit A, IRC, page 87-92 (Parameters and Guidelines).

[199] Exhibit B, Controller's Late Comments on the IRC, pages 614-615 (District Resolution 2009-14).

[200] Exhibit A, IRC, page 156-160 (2002 Long Range Facilities Master Plan), 1141-1142 (District Resolution 2003-148).

[201] Exhibit B, Controller's Late Comments on the IRC, page 618 (District Resolution 2009-17). Emphasis added.

[202] Exhibit B, Controller's Late Comments on the IRC, pages 173-174 (Bond Advisory Commission Final Report), page 232 (Minutes of Governing Board Meeting, June 14, 2007); Exhibit A, IRC, page 620, 624 (Citizens' Bond Oversight Committee, Summary of Meeting, August 29, 2007).

[203] Exhibit B, Controller's Late Comments on the IRC, page 240.

However, these documents also show inadequate facilities to meet *all* of the science classes offered by the claimant. There is no distinction in the record between the science class required by prior law and any other science classes offered at the discretion of the claimant, and the second science course mandated by the state. The record shows that some of the claimant's school sites offered nine different science courses during the audit period including Biology, Chemistry, Physical Science, Physics, Conceptual Physics, Earth Science, Coordinated/Integrated Science, "Science Projects," Oceanography, Anatomy and Physiology, and "Other."[204] As indicated above, the claimant calculated the increased construction costs related to the mandate simply by reducing the total new science building costs for fiscal year 2009-2010 by 50 percent (after reducing claims by 50 percent to account for state matching funds).[205] That calculation, based on the assumption of a 50-percent increase in science course enrollment, is not consistent with the Parameters and Guidelines and thus, there is no evidence that the costs claimed were limited to the mandate.

Moreover, there is no "[d]ocumentation of *increased units of science course enrollments* due to the enactment of Education Code Section 51225.3 necessitating such an increase," as required by the Parameters and Guidelines.[206] In comments on the Draft Proposed Decision, the claimant alleges, without citation to the record, that it "submitted enrollment information showing the increase in student class enrollment following the mandated additional science instruction."[207] However, the information submitted with the claims consists of total high school enrollment by school for both fiscal years, and the course enrollment for each science class offered by the claimant's schools in 2008-2009.[208] The claimant has not submitted documentation of any increased units of science course enrollments as a direct result of the *second* science course mandated by the state and thus, did not comply with the Parameters and Guidelines.

In addition, there is no documentation showing that the new science classrooms would not have otherwise been acquired due to an increase in high school enrollment. The 2002 Long Range Facilities Master Plan states that the "enrollment increase has resulted in overcrowding at 80% of the schools," and "[a]s a result, many schools lack . . . *science labs*, restrooms, classrooms and support facilities."[209] In 2004, the voters of Proposition H were told that bond funds were needed "rehabilitate aging school and *relieve overcrowding*."[210] Nevertheless, in comments on

---

[204] See, e.g., Exhibit A, IRC, pages 2568, 2570, 2574, 2578 (science course offerings in 2008-2009 for El Cajon Valley High School, El Capitan High School, Granite Hills High school, Monte Vista High School).

[205] Exhibit A, IRC, pages 26, 49 (Final Audit Report).

[206] Exhibit A, IRC, page 92 (Parameters and Guidelines). Emphasis added.

[207] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 7.

[208] Exhibit A, IRC, pages 1408-1424, 2565-2587 (total high school enrollment by school and course enrollment information by school for 2008-2009), and 2607 (total high school enrollment for 2009-2010).

[209] Exhibit A, IRC, page 157 (2002 Long Range Facilities Master Plan).

[210] Exhibit B, Controller's Late Comments on the IRC, page 31 ("Yes on H For Our Local High Schools").

the Draft Proposed Decision, the claimant asserts that a 2008 study showed that dropping enrollment was projected until 2017 and, thus, there was no need for facility expenditures due to enrollment growth.[211] The claimant, however, does not provide a citation to the document relied on, and the record before the Commission does not contain a "2008 study." However, the 2007 Final Report from the Proposition H Bond Advisory Commission contains a discussion about whether the district should build a new school as originally planned, based on the belief that "future high school enrollments . . . [would be] flat or slowly declining."[212] The report states, however, that the "demographic projections [of declining enrollment] may be incorrect, and that the "far East County is likely to experience growth in student population."[213] The Report further states that the "real problem, acknowledged in Prop H, is school overcrowding in several of our high schools;" that "three of the District's high school campuses are deemed 'extremely overcrowded' with students packed into portables or other 'temporary' facilities;" and that "[e]ven with a slowing or flat demographic trend these schools will remain overcrowded for many years."[214] Thus, the evidence does not support the claimant's assertion that the expenditures for new facilities were not due to overall high school enrollment.

Based on this record, the Commission finds that the Controller's reduction of all costs claimed for acquiring additional space for science classrooms is correct as a matter of law.

Because the Controller's finding on the claimant's lack of documentation reduced the claims for acquiring new classroom space to zero, the Commission makes no findings on the other disputed reductions in Finding 1; namely, the Controller's methodology to determine the increased science course enrollment as a result of the mandate, or the reduction of science classroom construction at the Helix Charter High School.[215]

D. The Controller's Reduction of Costs Incurred for Materials and Supplies in Finding 2 Is Correct as a Matter of Law, and the Controller's Recalculation Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support Because the Claimant Did Not Comply with the Documentation Requirements in the Parameters and Guidelines.

Section V.E. of the Parameters and Guidelines authorizes reimbursement for "the increased cost for supplying the new science class with science instructional materials (textbooks, materials, and supplies)," if the costs are supported by specified documentation.[216] Section V. also states that reimbursement is only required for the "increased costs that the claimant is required to incur

---

[211] Exhibit E, Claimant's Comments on the Draft Proposed Decision, pages 8-9.

[212] Exhibit B, Controller's Late Comments on the IRC, page 51 (Bond Advisory Commission Final Report).

[213] Exhibit B, Controller's Late Comments on the IRC, page 51 (Bond Advisory Commission Final Report).

[214] Exhibit B, Controller's Late Comments on the IRC, page 51 (Bond Advisory Commission Final Report).

[215] Exhibit A, IRC, pp 50-51, 58 (Final Audit Report).

[216] Exhibit A, IRC, page 88 (Parameters and Guidelines).

as a result of the mandate."[217] And Section VIII. requires that the costs be supported with documentation showing the "increased units of science course enrollments due to the enactment of Education Code Section 51225.3 necessitating such an increase."[218]

In fiscal year 2009-2010, the District incurred $860,978 in costs for materials and supplies to furnish and equip the new science buildings. These costs were part of the science classroom and lab construction costs discussed in Finding 1 and were funded and claimed in the same manner.[219] The Controller reduced the entire amount because the District's documentation did not comply with the documentation requirements in the Parameters and Guidelines.[220]

The Controller also reduced $56,208 during the audit period because the claimant overstated its costs for textbooks, materials, and supplies by using a 50 percent incremental increase in science course enrollment as a result of the mandate without having documentation, as required by the Parameters and Guidelines, to support the 50-percent figure. The Controller recalculated the increased enrollment as a result of the additional year of science instruction mandated by the test claim statute using a One-Quarter Class Load formula (a method similar to the reasonable reimbursement methodology in the Parameters and Guidelines to determine teacher salary costs). Using this formula, the Controller divided the increased number of science classes identified, by the total number of science offerings for the fiscal year, resulting in an incremental increase in enrollment of 40.14 percent (167/416) for 2008-2009 and at 47 percent (154.7/329) for 2009-2010, for a reduction of $56,208 during the audit period.[221]

The claimant argues that the Controller's method is "unnecessary and irrelevant" because there is no legal requirement to use the Controller's incremental increase cost formula, and there are no incremental costs to be deducted because the District did not claim any incremental increased costs.[222] The claimant states that since the mandate doubled the number of science courses by law, it reduced the unmatched amount claimed by 50 percent to account for the preexisting requirement for science courses.[223]

The Commission finds that the reduction of costs for materials and supplies is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

---

[217] Exhibit A, IRC, page 87 (Parameters and Guidelines).

[218] Exhibit A, IRC, page 92 (Parameters and Guidelines).

[219] Exhibit A, IRC, pages 30-31, 58 (Final Audit Report).

[220] Exhibit A, IRC, pages 57-58 (Final Audit Report). The total audit reduction for 2009-2010 was $869,918 (plus indirect costs) because unallowable costs were limited to the costs claimed. Exhibit A, IRC, page 57 (Final Audit Report).

[221] Exhibit A, IRC, pages 50 and 58 (Final Audit Report).

[222] Exhibit A, IRC, pages 31-32.

[223] Exhibit A, IRC, page 26; Exhibit B, Controller's Late Comments on the IRC, page 19.

1. The reduction of $860,978 for materials and supplies for the newly constructed science classrooms is correct as a matter of law.

The District incurred costs for materials and supplies in fiscal year 2009-2010 to furnish and equip the new classrooms, and the costs were expensed as part of the new science classrooms in the District's accounting records.[224] The claimant states that the costs were claimed for fixtures to equip the additional science classrooms.[225] The Controller reduced the costs claimed because the claimant did not meet the specific documentation requirements in the Parameters and Guidelines to support that the costs resulted from the mandate.[226] According to the Controller:

> [A] portion of the materials and supplies costs in the district's claims were charged against restricted resources (Proposition H) as part of the science construction costs. The OPSC [state Office of Public School Construction] provides matching funds for the construction of new buildings, including classroom furniture and fixtures. School districts are allowed to purchase necessary items including, but not limited to, desks, chairs, and supplies to equip the new buildings. The district disputes the reduction related to the portion of materials and supplies charged against the construction projects.
>
> We disagree with the district's contention that specific documentation requirements are unclear. …[T]he district did not provide documentation of increased science course enrollments due to the implementation of E[ducation] C[ode] section 51225.3 as required by the parameters and guidelines. It is also our contention that the district did not provide documentation to meet the remaining specific documentation requirements outlined in the parameters and guidelines . . . . The documentation provided does not support that alternatives were considered in the context of the mandate program, that the space would not have otherwise been acquired due to an increase in high school enrollment, or that remodeling existing facilities was not feasible or would have been more expensive than acquiring additional space. The analysis and subsequent board resolution provide support for passage of Proposition H . . ., authorizing the issuance of bonds to fund various construction projects.
>
> The provided information for the time period subsequent to the bond issuance does not support the need for facilities to implement the mandate; however, it does illustrate the need for the district to comply with the requirements of the Proposition H and the district's desire to maximize state matching funds in the process.

---

[224] Exhibit A, IRC, page 58 (Final Audit Report).

[225] Exhibit A, IRC, pages 30-31. Acquisition of "additional equipment and furniture" is in component V.B. of the Parameters and Guidelines, but the record indicates that the Controller reduced claims for "materials and supplies" in component V.E. Exhibit A, IRC, page 88 (Parameters and Guidelines).

[226] Exhibit A, IRC, page 58 (Final Audit Report). Exhibit B, Controller's Late Comments on the IRC, pages 18-19.

> Although not disputed in its response, the district's space acquisition and related materials and supplies costs are identified as Proposition H expenditures in its records, charged against restricted resources, and reported as such to external oversight entities.[227]

The claimant disputes the reduction on the same grounds as the Controller's reduction in Finding 1 for construction costs for the additional science classroom space; i.e., that the provided documents support the costs claimed and that school districts are entitled to reimbursement for upgrades and replacement costs due to deterioration of the facilities or otherwise by the state-defined curriculum.[228]

The Commission finds that the Controller's reduction is correct as a matter of law. The Parameters and Guidelines do not authorize reimbursement for upgrades and replacement costs due to deterioration of the facilities, as asserted by the claimant. Rather, the plain language of the Parameters and Guidelines authorizes reimbursement for materials and supplies only if the school district has documentation of increased units of science course enrollments that are due to the mandate.[229] The record does not contain any supporting documentation of increased units of science course enrollments due to the mandate. Rather, the claimant simply asserts that the test claim statute doubled the number of science courses by law.[230]

Moreover, as described above, the evidence in the record shows that the claimant constructed new science classrooms and laboratories and equipped those new classrooms with materials and supplies because its existing facilities were aging and outdated (including outdated science labs) and needed to be modernized in accordance with its deferred maintenance plan.[231] The record does not show that the costs for materials and supplies were incurred as a result of the mandate, as required by the Parameters and Guidelines.[232]

Accordingly, because the claimant did not comply with the documentation requirements in the Parameters and Guidelines to support its costs for materials and supplies, the Commission finds that the Controller's reduction is correct as a matter of law.

---

[227] Exhibit B, Controller's Late Comments on the IRC, pages 18-19.

[228] Exhibit A, IRC, pages 21 and 31; Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 10.

[229] Exhibit A, IRC, page 92 (Parameters and Guidelines).

[230] Exhibit A, IRC, page 26. Exhibit B, Controller's Late Comments on the IRC, page 19.

[231] Exhibit A, IRC, page 1141 (District Resolution 2003-148). As the Controller notes, the governing board resolution addresses accountability requirements of Proposition 39, a voter-approved constitutional amendment passed in 2000 that lowered the voting threshold for school bonds from 2/3 to 55 percent and added accountability requirements, such as the citizen's oversight committee, annual financial and performance audits, authorization to raise revenue through additional property taxes, and identification of construction projects. Exhibit B, Controller's Late Comments on the IRC, pages 14, 25-29.

[232] Exhibit A, IRC, page 87 (Parameters and Guidelines).

2. The reduction of $56,208 for the incremental increase in material and supply costs is correct as a matter of law and the recalculation is not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller also reduced $56,208 of costs incurred during the audit period because the claimant overstated costs for materials and supplies by using an incremental increase in enrollment of 50 percent, without providing any documentation to support the 50 percent figure. The claimant states that because the mandate doubled the number of science courses by law, it calculated the increased costs for materials and supplies by reducing the unmatched cost by 50 percent to account for the preexisting requirement for science courses.[233]

The Commission finds that the Controller's reduction is correct as a matter of law. Section V. of the Parameters and Guidelines states that "only actual costs may be claimed" and "claimant is only allowed to claim and be reimbursed for increased costs" that are "limited to the cost of an activity that the claimant is required to incur as a result of the mandate."[234] In addition, Section VIII. of the Parameters and Guidelines authorizes reimbursement for materials and supplies only if the claimant has documentation of increased units of science course enrollments due to the mandated additional science course.[235] The Parameters and Guidelines do not authorize the use of a 50 percent increase in costs as a result of the mandate, or a "double reduction of costs" as the claimant calls it. Since the claimant provides no documentation to support the 50 percent figure, or that its costs resulted from increased science course enrollments as a result of the mandate, the Controller's reduction is correct as a matter of law.

The Commission also finds that the Controller's recalculation of costs for materials and supplies is not arbitrary, capricious, or without evidentiary support. Since the claimant provided no documentation to support its cost claiming methodology for materials and supplies, the Controller could have reduced those costs to $0 because the claimant did not comply with the Parameters and Guidelines. Instead, the Controller recalculated the claimant's increased costs using a formula to isolate costs for the mandated additional year of science instruction (a method similar to the reasonable reimbursement methodology authorized in the Parameters and Guidelines to determine teacher salary costs).[236] Using this formula, the Controller divided the increased number of science classes identified, by the total number of science offerings for the fiscal year, resulting in an incremental increase of 40.14 percent (167/416) for 2008-2009 and 47 percent (154.7/329) for 2009-2010.[237]

---

[233] Exhibit A, IRC, pages 26-27, 50 and 58 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 19.

[234] Exhibit A, IRC, page 87 (Parameters and Guidelines).

[235] Exhibit A, IRC, page 92 (Parameters and Guidelines).

[236] Exhibit A, IRC, page 91 (Section VII. of the Parameters and Guidelines, Reasonable Reimbursement Methodology to claim teacher salary costs, which isolates the increased enrollment resulting from the additional year of science instruction by dividing the total number of pupils in grades 9-12 by the number four, and then dividing that number by an average class size.)

[237] Exhibit A, IRC, pages 50 and 58 (Final Audit Report).

The claimant provides no evidence or documentation to show that the Controller's calculation of increased costs is incorrect or arbitrary or capricious. Instead, the claimant argues that the Controller's methodology "constitute[s] a standard of general application without appropriate state agency rulemaking and is therefore unenforceable."[238]

The Commission disagrees. The claimant has not demonstrated that the Controller's formula for determining increased costs as a result of the mandate is an unenforceable underground regulation because there is no indication that the Controller intended its formula, or any other audit method it used, to be a rule that applies generally to a class of cases. The California Supreme Court has held that interpretations that arise in the course of case-specific adjudications are not regulations.[239]

It is notable that the claimant admits in the IRC that "it is arguable that … consumable supplies would vary directly with science classroom enrollment."[240] The Controller's formula for determining the costs of the incremental increase for materials and supplies (dividing the increased number of science classes by the total number of science offerings for the year) accounts for variations in science classroom enrollment, but claimant's "double reduction" or "50-percent reduction" claiming method does not account for enrollment variations.

In sum, the Commission finds that the Controller's reduction of $56,208 related to the incremental increase in costs for materials and supplies as a result of the mandate is correct as a matter of law and the Controller's recalculation of the costs is not arbitrary, capricious, or entirely lacking in evidentiary support.

E. The Controller's Finding 4, that the Local Bond Funds Used To Construct the Science Classrooms Are Offsetting Revenue that Should Have Been Identified and Deducted from the Reimbursement Claims, Is Correct as a Matter of Law Because Reimbursement Under Article XIII B, Section 6 of the California Constitution Is Not Required for the Expenditure of Local Bond Proceeds.

As indicated above in the discussion of Findings 1 and 2, the Controller reduced all costs for construction of science classrooms and laboratories ($29,633,952), and all costs for construction-related materials and supplies to furnish and equip the new science classrooms ($860,978), because the claimant did not support its claims with documentation required by the Parameters and Guidelines. Fifty percent of these costs were funded by local school construction bonds approved by the District's voters in 2004 (Proposition H), and 50 percent by state bond matching funds (that were not claimed).[241]

As a separate ground for reducing these costs, the Controller found that the claimant failed to identify and deduct from its claims offsetting revenue from the local school-construction bonds received under Proposition H. The Controller concluded that the 50 percent funded by local restricted bond funds and incurred during the audit period ($14,816,976 for construction, and $430,489 for materials and supplies, for a total of $15,247,465) should have been fully offset

[238] Exhibit A, IRC, page 25.

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

[240] Exhibit A, IRC, page 27.

[241] Exhibit A, IRC, page 64 (Final Audit Report).

against the total costs incurred for these expenses ($30,494,930).[242] Thus, "[n]otwithstanding the audit adjustments in Finding 1 and Finding 2, the costs net of State bonds for Component A ($14,816,975) and a portion of Component E ($430,489) are still zero, as the remainder was fully funded with local restricted funds."[243] In other words, the Controller found that none of the costs claimed for construction and related materials and supplies are subject to reimbursement under article XIII B, section 6.

The claimant argues that "local bond funds are proceeds from taxes like other property taxes (that are used for general fund expenses)," and thus, there are no offsetting revenues.[244] According to the claimant:

> The local bond revenue is not otherwise "reimbursement for this mandate from any source" because, unlike state bond revenue, it must be repaid by the District tax base. A "reimbursement" that has to be repaid is not reimbursement. Local bond obligations are retired by local property taxes. Local property taxes also fund a portion of the District general fund annual operating costs but are not mandate reimbursement.[245]

The claimant further asserts that offsetting the bond revenue leads to absurd results because:

> [The] use of local bond proceeds . . . or any other financing vehicle the claimant might use, to offset subvention obligations, would allow the State to essentially clear out any obligation once the Claimant proceeds to comply with the mandate [because claimants would] always be in the position of using its available resources, whether general fund, local bonds, or other available financing solutions, to comply with the mandate, in anticipation of receiving the subvention funds later.[246]

The claimant contends that the local bond funds should be protected "proceeds of taxes," similar to the unrestricted school district funding under Proposition 98, which was at issue in the recent case of *California School Boards Assoc., et al. v. State of California*, California Supreme Court, Case No. S247266:

> . . . Article XIII B, section 6, prevents the State from redirecting the limited pot of local tax revenues to fulfill State mandates. This is precisely why, in 2008, the Commission amended the parameters and guidelines for the Graduation Requirements mandate: to make sure that proceeds of taxes were not pulled into the calculus of offsetting revenues. (*Cal. School Boards Assn. v. State of California* (2018) ("CSBA III") 19 Cal.App.5th 566, 582, review granted.) In its findings, the Commission stated that "'such an interpretation [i.e., use of proceeds

[242] Exhibit A, IRC, page 65 (Final Audit Report).

[243] Exhibit A, IRC, page 64 (Final Audit Report).

[244] Exhibit A, IRC, pages 66 (Final Audit Report).

[245] Exhibit A, IRC, page 36.

[246] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 16.

> of taxes to offset] would require the local school districts to use proceeds of taxes on a state-mandated program. This violates the purpose of article XIII B, section 6 [which] was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues and restrict local spending in other areas.' " (*CSBA III*, supra, 19 Cal.App.5th at 582, quoting Commission, Revised Final Staff Analysis [relating to 2008 Amendments to the Parameters and Guidelines], pp. 53-54.) While the *CSBA III* court disagreed with claimant's position vis-à-vis use of State funds as offsetting revenue, it did not consider the use of local bond funds for such purpose.[247, 248]

Finally, the claimant argues that the Controller's finding regarding the full offset funded by local bond revenue is contrary to the Parameters and Guidelines for the following five reasons: First, the local bond revenue is not offsetting revenue that results from the law that established the mandate. Second, the Parameters and Guidelines state that claims for construction costs shall be reduced by state bond funds, but do not mention local bond funds. Third, the local bond fund revenue does not fall into the other sources enumerated in the Parameters and Guidelines, such as a federal or state block grant, or a state restricted funding source for science classrooms or labs. Fourth, the claimant asserts that local bond fund revenue is not "reimbursement from any source" because it has to be repaid through local property taxes. A reimbursement that must be repaid is not a reimbursement. And the audit report does not state a legal basis that would allow local property tax proceeds to be considered reimbursement of construction costs. Fifth, although bond proceeds are required to be accounted for in restricted accounts, the account code used for bond proceeds is not determinative of the mandate reimbursement issue.[249]

The Commission finds that the Controller's conclusion, that local school-construction bonds are offsetting revenue that is required to be identified and deducted from the reimbursement claim for construction-related costs, is correct as a matter of law.

Section IX. of the Parameters and Guidelines addresses offsetting revenues as follows:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, federal, state, and block grants; total science teacher salary costs, including related indirect costs, that are funded by restricted resources as identified by the California Department of Education California School Accounting Manual; funds appropriated to school districts from the Schiff-Bustamante Standards-Based Instructional Materials Program (Ed.

---

[247] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 17.

[248] 2019 WL 6904534 (The issue decided by the California Supreme Court in the *CSBA* case was that the state does not violate article XIII B, section 6, of the California Constitution when it identifies general education funding it already provides to school districts and county offices of education as "offsetting revenue" for the purpose of reimbursing state mandates.) Therefore, the *CSBA* case cited by the claimant, which does not address bond funding issues, is not relevant to this IRC.

[249] Exhibit A, IRC, pages 36-37.

> Code, §§ 60450 et seq., repealed by Stats. 2002, ch. 1168 (AB 1818, § 71, eff. Jan. 1, 2004) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials; funds appropriated from the State Instructional Materials Fund (Ed. Code, § 60240 et seq.) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials; and other state funds, shall be identified and deducted from this claim. The State Controller's Office (SCO) will adjust the claims for any prior reimbursements received from the Graduation Requirements program from claims submitted for the period beginning January 1, 2005.
>
> If the school district or county office submits a valid reimbursement claim for a new science facility, the reimbursement shall be reduced by the amount of state bond funds, if any, received by the school district or county office to construct the new science facility.[250]

Although the Parameters and Guidelines do not expressly require that local school construction bonds be identified as offsetting revenue, they do state that "reimbursement for this mandate from any source, including but not limited to… shall be identified and deducted from this claim."[251] Local bond proceeds are included as "any source" of reimbursement.[252] Thus, the Commission disagrees with the claimant's argument that offsetting revenue is limited to state and Federal funds. The Parameters and Guidelines make no such restriction.

More importantly, the Parameters and Guidelines must be interpreted in a manner consistent with the California Constitution,[253] and harmonized with principles of mandates law.[254] As explained below, costs that are funded by local school construction bonds are excluded from mandate reimbursement under article XIII B of the California Constitution.

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."[255]

---

[250] Exhibit A, IRC, page 93 (Parameters and Guidelines).

[251] Exhibit A, IRC, page 93 (Parameters and Guidelines).

[252] The phrase "including but not limited to is a term of enlargement, and signals the … intent that [a statute] applies to items not specifically listed in the provision." *In Re. D. O.* (2016) 247 Cal. App.4th 166, 175.

[253] See *State Board of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813, 823, holding that a Board tax rule was null and void, as applied, because it violated the Constitution.

[254] *Clovis Unified School Dist. v. Chaing* (2010) 188 Cal.App.4th 794, 811-812.

[255] *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].

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A drastically reduced property tax revenue previously enjoyed by local governments by providing that "the maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property," and that the one percent (1%) tax was to be collected by counties and "apportioned according to law to the districts within the counties…"[256] In addition to limiting the property tax, section 4 also restricts a local government's ability to impose special taxes by requiring a two-thirds approval by voters.[257]

Article XIII B was adopted by the voters as Proposition 4 in 1979, less than 18 months after the addition of article XIII A, and was billed as "the next logical step to Proposition 13."[258] Unlike article XIII A "the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, Article XIII B places limits on the authorization to expend the 'proceeds of taxes.'"[259]

Article XIII B established an "appropriations limit," or spending limit for each "entity of local government," defined to include school districts, beginning in fiscal year 1980-1981.[260] 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.[261]

No "appropriations subject to limitation" may be made in excess of the appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.[262]

Article XIII B does not limit the ability to spend government funds collected from *all sources*. The appropriations limit is based on "appropriations subject to limitation," which means, "any authorization to expend during a fiscal year the *proceeds of taxes* levied by or for that entity."[263] For local government, "proceeds of taxes" subject to the appropriations limit includes all tax revenues; proceeds from regulatory charges and fees to the extent such proceeds exceed the costs

---

[256] California Constitution, article XIII A, section 1 (adopted June 6, 1978).

[257] California Constitution, article XIII A, section 1 (adopted June 6, 1978).

[258] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

[259] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

[260] California Constitution, article XIII B, section 8(d), (h) (adopted Nov. 6, 1979; amended by Proposition 111, June 5, 1990).

[261] See also Government Code section 7901(a) and (b).

[262] California Constitution, article XIII B, section 2 (adopted Nov. 6, 1979; amended by Proposition 111, June 5, 1990).

[263] California Constitution, article XIII B, section 8 (adopted Nov. 6, 1979; amended by Proposition 111, June 5, 1990). Emphasis added.

reasonably borne by government in providing the product or service; the investment of tax revenue; and subventions received from the state (other than pursuant to section 6).[264] No limitation is placed on the expenditure of revenues that do not constitute "proceeds of taxes."[265] According to Government Code section 53715, the constitutional definition of "proceeds of taxes" does not include proceeds from the sale of local bonds:

> As used in Article XIII B of the California Constitution, the term "proceeds of taxes" *does not include the proceeds from the sale of bonds*, notes, warrants or other obligations required for the purpose of financing or refinancing the acquisition, construction, or completion of public improvements or projects or any rents, charges, assessments, or levies, other than tax levies, made pursuant to law, the proceeds of which are required for the payment of principal and interest, or to otherwise secure such obligations, and to pay the costs and expenses associated therewith.[266]

In addition, article XIII B, section 8(i) provides that "'appropriations subject to limitation' *do not include* local agency loan funds or indebtedness funds . . . ." Article XIII B, section 9(a) states that "appropriations subject to limitation" for each entity of government do not include "[a]ppropriations for debt service." "Debt service" is defined in section 8(g) of article XIII B:

> [A]ppropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, *or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose.*[267]

And article XIII B, section 7 makes it clear that "[n]othing in this Article shall be construed to impair the ability of the state or of any local government to meet its obligations with respect to existing or future bond indebtedness."[268]

In 1991, the California Supreme Court in the *County of Fresno* case reiterated that article XIII B was not intended to reach beyond taxation and would not restrict the growth of appropriations financed from nontax sources, and specifically identified bond funds as nontax revenue:

> Article XIII B of the Constitution, however, *was not intended to reach beyond taxation*. That fact is *apparent from the language of the measure*. It is confirmed by its history. In his analysis, the Legislative Analyst declared that Proposition 4

---

[264] California Constitution, article XIII B, section 8; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 448.

[265] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

[266] Emphasis added.

[267] Emphasis added.

[268] See also, *Bell v. Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32, where the court found that debt service on a proposed tax allocation bond was not an "appropriation subject to the limitation" as defined in article XIII B. Rather, tax allocation bonds constitute "bond indebtedness" exempt under article XIII B, section 7.

> "would not restrict the growth in appropriations financed from other [i.e., nontax] sources of revenue, including federal funds, *bond funds*, traffic fines, user fees based on reasonable costs, and income from gifts." (Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), analysis by Legislative Analyst, p. 16.)[269]

Thus, the claimant's argument that the *County of Fresno* case "makes clear that the only locally-derived amounts permitted to be included in the calculus of offsetting revenues are where a local agency can levy assessments or fees," is wrong.[270] The California Supreme Court expressly put "bond funds" in the category of "nontax revenue" that are not proceeds of taxes subject to the appropriations limit of article XIII B.

Section 6 was included in article XIII B to require that "[w]henever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service…" Article XIII B, section 6 was specifically designed to protect the *tax revenues* of local governments from state mandates that would require expenditure of tax revenues:

> Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I*, *supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid*.; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.[271]

The California Supreme Court most recently recognized that the purpose of section 6 was 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*."[272]

Thus, article XIII B, section 6 must be read in light of the tax and spend limitations imposed by articles XIII A and XIII B, and requires the state to provide reimbursement only when a local government is mandated by the state to expend proceeds of taxes subject to the appropriations

---

[269] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487. Emphasis added.

[270] Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 17.

[271] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487. Emphasis in original.

[272] *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).

limit of article XIII B. Article XIII B, section 6 was designed to protect tax revenues, and not the receipt or repayment of local bonds.

In this case, article XIII B, sections 7, 8, and 9, and Government Code section 53715 make it clear that local bond funds are not "proceeds of taxes," and repayment of those bonds is not an "appropriation subject to limitation." The claimant's arguments ignore these authorities. School districts cannot accept the benefits of bond funding that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.[273]

In sum, the state is not required to reimburse the claimant for local bond proceeds used to acquire science classrooms and laboratories and science class materials and supplies. Thus, the Controller's Finding 4, that the claimant's Proposition H bond funds are offsetting revenue that should have been identified and deducted from the claimant's reimbursement claims, is correct as a matter of law.

V. Conclusion

Based on the foregoing, the Commission denies this IRC.

[273] *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Civil Code Sections 1834 and 1846; Food and Agriculture Code Sections 31108, 31752, 31752.5, 31753, 32001, and 32003; As Added or Amended by Statutes 1998, Chapter 752 (SB 1785) Fiscal Years 2007-2008, 2008-2009 Filed on August 1, 2017 Town of Apple Valley, Claimant	Case No.: 17-9811-I-04 *Animal Adoption* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted July 24, 2020*) (*Served July 27, 2020*)

INCORRECT REDUCTION CLAIM

The Commission on State Mandates adopted the attached Decision on July 24, 2020.

Heather Halsey, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Civil Code Sections 1834 and 1846; Food and Agriculture Code Sections 31108, 31752, 31752.5, 31753, 32001, and 32003; As Added or Amended by Statutes 1998, Chapter 752 (SB 1785) Fiscal Years 2007-2008, 2008-2009 Filed on August 1, 2017 Town of Apple Valley, Claimant	Case No.: 17-9811-I-04 *Animal Adoption* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted July 24, 2020*) (*Served July 27, 2020*)

DECISION

The Commission in State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 24, 2020. Annette Chinn and Adrianna Atteberry appeared on behalf of the claimant. Jim Venneman appeared on behalf of the State Controller's Office.

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

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

Member	**Vote**
Lee Adams, County Supervisor	Yes
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	Absent
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Yes
Carmen Ramirez, City Council Member	Yes
Jacqueline Wong-Hernandez, Representative of the State Controller	Yes

Summary of the Findings

This IRC was filed in response to the following alleged reductions by the State Controller's Office (Controller) of the Town of Apple Valley's (claimant's) annual reimbursement claims under the *Animal Adoption*, 98-TC-11 program for fiscal years 2007-2008 and 2008-2009: disallowance of construction of new facilities costs (Finding 1); reduction of care and maintenance costs resulting from the Controller's recalculation of total annual salaries and benefits incurred for all pertinent care and maintenance activities as an element of the formula for calculating the care and maintenance costs related to the mandate (Finding 2); and disallowance of the rate proposed by the claimant for indirect costs(Finding 7). In addition, the claimant alleges that the necessary and prompt veterinary care costs were claimed in the composite cost per animal per day under the care and maintenance component and that these costs should have been allowed by the Controller.

The Commission finds that this IRC was timely filed.

The Commission further finds that the Controller's reduction of all costs claimed for acquiring additional shelter space by purchasing land and constructing a new shelter facility is correct as a matter of law because the claimant failed to provide adequate supporting documentation required by the Parameters and Guidelines showing that the costs were incurred as a direct result of the mandate. The record instead shows that the claimant acquired additional space by purchasing land and constructing a new facility because of the availability of redevelopment agency funds; an overall increase in population in the Town of Apple Valley; the need for additional office space; its plan to accommodate growth needs over the twenty-year planning horizon; its plan to expand the shelter facility to accommodate potential contracts with outside government agencies; and the temporary nature of the existing animal shelter where the animals were housed because long-term contracting arrangements with other shelters were terminated by the claimant for reasons unrelated to the mandate.

The Commission finds that the Controller's disallowance of care and maintenance costs as claimed, is correct as a matter of law because the claimant did not comply with the specific formula required by the Parameters and Guidelines. The claimant calculated the total annual care and maintenance costs by lumping together all shelter expenditures (with the exclusion of the Spay/Neuter Program expenditures) and adding a 40 percent overhead factor for the Municipal Services Director, instead of adding up only those categories of expenditures that are specified in the Parameters and Guidelines formula that directly relate to the care and maintenance of animals.[1] However the first part of the formula requires a claimant to calculate the total annual costs incurred to provide care and maintenance for all animals housed in its shelter(s) by adding up pertinent labor, materials, supplies, indirect costs, and contract services costs and then that number is divided by the annual census of all animals housed in the shelter to determine the cost per animal per day, which is multiplied by the number of impounded animals that die during the increased holding period or are ultimately euthanized (i.e., those animals for which there is no fee authority) and by each reimbursable day.[2] The costs for care and maintenance cannot be interpreted beyond the reasonable scope of the approved activity, to

[1] Exhibit A, IRC, pages 303-304 (Final Audit Report,).

[2] Exhibit A, IRC, pages 266-267 (2006 Parameters and Guidelines Amendment).

include labor, materials, supplies, indirect costs, and contract services costs incurred for other activities conducted by the shelter beyond *care and maintenance.* Thus, the disallowance of care and maintenance costs as claimed is correct as a matter of law.

However, the Controller's recalculation of annual labor costs, which is a part of the first step in the calculation of care and maintenance, is arbitrary, capricious, and entirely lacking in evidentiary support. To recalculate annual labor costs, the Controller requested the duty statements of the employee classifications that provide care and maintenance to assist in determining the percentage of the daily workload for each classification devoted to care and maintenance.[3] The Controller then reduced the percentages provided by the claimant for the following classifications, so that the sum of all percentages equals 100 percent: Animal Shelter Attendant/Assistant, Animal Control/Customer Service Technician, Animal Control Officer, Registered Veterinary Technician, and Animal Shelter Supervisor.[4] On the one hand, the Controller asserts that the percentages were reduced based on its review of the duty statements.[5] On the other hand, it appears from the record that the Controller's allocation of percentages, including those for the animal shelter attendant and the animal shelter supervisor, were reduced in order for the allocation of percentages to simply add up to 100 percent.[6] If the methodology used by the Controller estimates percentages of *time* spent by the claimant's employees on care and maintenance, then adding these percentages across all employee classifications to a limit of 100 percent does not make sense and is arbitrary, capricious, and entirely lacking in evidentiary support. For example, five employees could spend 60 percent of their time on care and maintenance, which clearly exceeds 100 percent. If the Controller used a factor or methodology *other than time* to calculate annual labor costs, then the record provides no explanation of that methodology. The Final Audit Report refers to "*the extent of*" and "*percentages of employee classification involvement*" and "*applicable percentages of actual salaries and benefits costs,*" but does not explain how the extent of involvement and the applicable percentages were determined and applied with respect to individual employee classifications and balanced across classifications to 100 percent.[7] The Controller simply states that "[w]hen considering care and maintenance, we view the activity as a whole, where the responsibilities are divided among various employee classifications, and the sum of the responsibilities performed by the employees equals 100%."[8] This statement does not explain what was being calculated, or how the Controller came up with annual labor costs of $210,000 for fiscal year 2007-2008 and $155,101 for fiscal year 2008-2009.[9] Accordingly, to the extent that the Controller's recalculation of care

[3] Exhibit A, IRC, page 305 (Final Audit Report).

[4] Exhibit A, IRC, pages 305-306 (Final Audit Report).

[5] Exhibit A, IRC, page 314 (Final Audit Report).

[6] Exhibit A, IRC, pages 305 (Final Audit Report), 363-366 (Claimant's Response to Draft Audit Report).

[7] Exhibit A, IRC, page 306 (Final Audit Report), emphasis added.

[8] Exhibit B, Controller's Comments on the IRC, page 28.

[9] Exhibit A, IRC, page 306 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, page 29.

and maintenance costs in Finding 2, which adjusted the percentages allocated to the classifications performing annual care and maintenance services during the audit period, results in a reduction of care and maintenance costs, that reduction is arbitrary, capricious, and entirely lacking in evidentiary support.

The Commission finds that the Controller's disallowance of indirect costs included in the claimant's calculation of care and maintenance costs, the Controller's refusal to consider the indirect cost rate proposal (ICRP) submitted in 2016 in support of indirect costs for fiscal year 2007-2008 and 2008-2009, and the recalculation of indirect costs at the ten percent default rate are correct as a matter of law. The claimant did not claim indirect costs as a separate item, but incorporated overhead costs into the care and maintenance cost component by adding in a 40 percent overhead factor for the Municipal Services Director.[10] This does not comply with the Parameters and Guidelines. The Parameters and Guidelines provide only two options for calculating indirect costs: (1) using ten percent of direct labor costs, excluding fringe benefits, or (2) if indirect costs exceed ten percent, then preparing an ICRP for approval by the Controller.[11] The Controller's allowance of indirect costs at the ten percent default rate is correct as a matter of law. Since the claimant did not prepare and submit ICRPs with its reimbursement claims, it was only entitled to the ten percent default rate under the Parameters and Guidelines and claiming instructions.

Finally, the reimbursement claims filed by the claimant do not identify any costs for necessary and prompt veterinary care. The line item for "veterinary care" was left blank in both reimbursement claims.[12] Since these costs were not claimed on the reimbursement claim form, there was no "reduction" of these costs and the Commission does not have jurisdiction. The Commission's jurisdiction is limited to alleged incorrect *reductions* of costs claimed.[13]

Accordingly, the Commission partially approves this IRC, and requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission regulations, that the Controller reinstate the following costs which were incorrectly reduced:

- To the extent the Controller's recalculation of care and maintenance costs in Finding 2, which adjusted the percentages allocated to the classifications performing annual care and maintenance services during the audit period, results in a reduction of care and maintenance costs.

All other reductions made by the Controller are correct as a matter of law.

[10] Exhibit A, IRC, page 328 (Final Audit Report).

[11] Exhibit A, IRC, page 274 (2006 Parameters and Guidelines Amendment).

[12] Exhibit A, IRC, pages 403 and 641 (Claim Summaries for Amended Reimbursement Claims for Fiscal Years 2007-2008 and 2008-2009).

[13] Government Code section 17551(d).

COMMISSION FINDINGS

I. Chronology

02/11/2009	The date on the claimant's fiscal year 2007-2008 reimbursement claim.[14]
02/09/2010	The date on the claimant's fiscal year 2008-2009 reimbursement claim.[15]
02/09/2010	The date on the claimant's amended fiscal year 2007-2008 reimbursement claim.[16]
N/A	The claimant's amended fiscal year 2008-2009 reimbursement claim is not dated.[17]
06/15/2015	The Controller initiated the audit.[18]
06/08/2016	The Controller issued the Draft Audit Report.[19]
06/17/2016	The claimant filed comments with the Controller on the Draft Audit Report.[20]
08/15/2016	The Controller issued the Final Audit Report.[21]
08/01/2017	The claimant filed the IRC. [22]
10/19/2017	The Controller filed comments on the IRC.[23]
11/20/2017	The claimant filed rebuttal comments.[24]
03/17/2020	Commission staff issued the Draft Proposed Decision.[25]
04/07/2020	The Controller filed comments on the Draft Proposed Decision.[26]

[14] Exhibit A, IRC, page 519 (2007-2008 Reimbursement Claim).

[15] Exhibit A, IRC, page 664 (2008-2009 Reimbursement Claim).

[16] Exhibit A, IRC, page 401 (2007-2008 Amended Reimbursement Claim). See also Exhibit A, IRC, page 293, FN 3 (Final Audit Report stating that the claimant submitted an amended claim on February 16, 2010, totaling $878,735).

[17] Exhibit A, IRC, page 640 (2008-2009 Amended Reimbursement Claim).

[18] Exhibit B, Controller's Comments on the IRC, page 6 (Affidavit of Assistant Division Chief Jim L. Spano, page 2).

[19] Exhibit A, IRC, page 122.

[20] Exhibit A, IRC, page 337.

[21] Exhibit A, IRC, page 286; Exhibit B, Controller's Comments on the IRC, page 6 (Affidavit of Assistant Division Chief Jim L. Spano, page 2).

[22] Exhibit A, IRC, page 1.

[23] Exhibit B, Controller's Comments on the IRC, page 1.

[24] Exhibit C, Claimant's Rebuttal Comments, page 1.

[25] Exhibit D, Draft Proposed Decision.

[26] Exhibit E, Controller's Comments on the Draft Proposed Decision.

04/07/2020 The claimant requested a one month extension to file comments on the Draft Proposed Decision and a postponement of hearing, which was granted for good cause.

05/07/2020 The claimant filed comments on the Draft Proposed Decision.[27]

II. Background

A. The *Animal Adoption* Program

The *Animal Adoption*, 98-TC-11 program arose from amendments to the Civil Code and Food and Agriculture Code made by Statutes 1998, chapter 752 (SB 1785).[28] The purpose of the test claim statute was to carry out the state policy that "no adoptable animal should be euthanized if it can be adopted into a suitable home" and "no treatable animal should be euthanized."[29] Generally, the program increases the holding period to allow for the adoption and redemption of stray and abandoned dogs, cats, and other specified animals before the local agency can euthanize the animal, and requires:

- verification of the temperament of feral cats;
- posting of lost and found lists;
- maintenance of records for impounded animals; and
- "necessary and prompt veterinary care" for impounded animals.

On January 25, 2001, the Commission partially approved the Test Claim, for the increased costs in performing the following activities:

1. Providing care and maintenance during the increased holding period for impounded dogs and cats that are ultimately euthanized. The increased holding period shall be measured by calculating the difference between three days from the day of capture and four business days from the day after impoundment, as specified below in 3 (a) and 3 (b), or six business days from the day after impoundment (Food & Agr. Code, §§ 31108, 31752);
2. Providing care and maintenance for four business days from the day after impoundment, as specified below in 3 (a) and 3 (b), or six business days from the day after impoundment, for impounded rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles, or tortoises legally allowed as personal property that are ultimately euthanized (Food & Agr. Code, § 31753);
3. For dogs, cats, and other specified animals held for four business days after the day of impoundment, either:

[27] Exhibit F, Claimant's Comments on the Draft Proposed Decision.

[28] Sometimes referred to as the Hayden Bill.

[29] Civil Code section 1834.4, Penal Code section 559d, and Food and Agricultural Code section 17005 as added or amended by Statutes 1998, chapter 752.

(a) Making the animal available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or

(b) For those local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, establishing a procedure to enable owners to reclaim their animals by appointment at a mutually agreeable time when the agency would otherwise be closed (Food & Agr., Code §§ 31108, 31752, and 31753);

4. Verifying whether a cat is feral or tame by using a standardized protocol (Food & Agr. Code, § 31752.5);

5. Posting lost and found lists (Food & Agr. Code, § 32001);

6. Maintaining records on animals that are not medically treated by a veterinarian, but are either taken up, euthanized after the holding period, or impounded (Food & Agr. Code, § 32003); and

7. Providing "necessary and prompt veterinary care" for abandoned animals, other than injured cats and dogs given emergency treatment, that are ultimately euthanized (Civ. Code, §§ 1834 and 1846).[30]

The Commission adopted the Parameters and Guidelines for this program on February 28, 2002.[31] The 2002 Parameters and Guidelines, in addition to the activities identified in the Test Claim Statement of Decision, provided reimbursement for one-time activities of developing policies and procedures; training; and developing or procuring computer software for maintaining records; as well as:

- Acquiring additional space by purchase or lease and/or construction of new facilities to provide appropriate or adequate shelter necessary to comply with the mandated activities during the increased holding period for impounded stray or abandoned dogs, cats, and other animals.[32]

- Remodeling/renovating existing facilities to provide appropriate or adequate shelter necessary to comply with the mandated activities during the increased holding period for impounded stray or abandoned dogs, cats, and other animals.[33]

Section VI. of the Parameters and Guidelines required the claimants to provide source documents that show the evidence of the validity of claimed costs and their relationship to the mandate. The

---

[30] Exhibit B, Controller's Comments on the IRC, pages 72-73 (Statement of Decision, *Animal Adoption*, 98-TC-11, adopted January 25, 2001).

[31] See Exhibit A, IRC, page 257 (2006 Parameters and Guidelines Amendment); Exhibit G, Staff Analysis and Proposed Parameters and Guidelines, *Animal Adoption*, 98-TC-11, Item 4, February 28, 2002.

[32] Exhibit G, Staff Analysis and Proposed Parameters and Guidelines, *Animal Adoption*, 98-TC-11, Item 4, February 28, 2002, page 23.

[33] Exhibit G, Staff Analysis and Proposed Parameters and Guidelines, *Animal Adoption*, 98-TC-11, Item 4, February 28, 2002, page 25.

supporting documentation must be kept on file by the agency during the audit period required by Government Code section 17558.5. In this respect, claimants are required to provide documentation evidencing the determination and specific findings by the governing board that acquiring additional space by purchase or lease and/or constructing new facilities, or remodeling existing facilities is necessary for the increased holding period required by the test claim statute.[34]

On March 12, 2003, the Joint Legislative Audit Committee authorized an audit of the *Animal Adoption* mandate, which was completed by the Bureau of State Audits on October 15, 2003. The audit report recommended that the Legislature direct the Commission to amend the Parameters and Guidelines to correct the formula for determining the reimbursable portion of acquiring additional shelter space, and to detail the documentation necessary to support reimbursement claims. In 2004, AB 2224 (Stats. 2004, ch. 313) was enacted to direct the Commission to amend the Parameters and Guidelines for the *Animal Adoption* program to:

1. Amend the formula for determining the reimbursable portion of acquiring or building additional shelter space that is larger than needed to comply with the increased holding period to specify that costs incurred to address preexisting shelter overcrowding or animal population growth are not reimbursable.
2. Clarify how the costs for care and maintenance shall be calculated.
3. Detail the documentation necessary to support reimbursement claims under this mandate, in consultation with the Bureau of State Audits and the Controller's office.

On January 26, 2006, the Commission adopted the Parameters and Guidelines Amendment, *Animal Adoption*, 04-PGA-01 and 04-PGA-02, applicable to claims beginning July 1, 2005, in accordance with AB 2224, which apply to the reimbursement claims at issue in this case.[35] The amended Parameters and Guidelines require, among other things, contemporaneous source documents to show the validity of costs claimed and their relationship to the reimbursable activities, and clarify the formulas for claiming reimbursement for acquiring additional shelter space by purchase, lease and construction, and the increased costs for care and maintenance as explained in the analysis below.

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

The Controller determined, in its Final Audit Report, that out of the $2,256,209 in total costs claimed for fiscal years 2007-2008 and 2008-2009, $215,608 was allowable and $2,040,601 was

[34] Exhibit G, Staff Analysis and Proposed Parameters and Guidelines, *Animal Adoption*, 98-TC-11, Item 4, February 28, 2002, pages 24-26.

[35] Exhibit A, IRC, page 257 (2006 Parameters and Guidelines Amendment).

unallowable.[36] The audit report contains nine sections with findings and recommendations, titled "Finding 1" through "Finding 8," and one section, titled "Other Issue."[37]

Findings 1, 2, and 3 include reductions of the costs claimed; Findings 4, 5, 6, 7, and 8 identify allowable costs that were not separately claimed or identified under appropriate program components, but were recalculated by the Controller; and "Other Issue" disallows the claimant's request to add costs for necessary and prompt veterinary care that were not claimed on the reimbursement claim form, but were requested in response to the Draft Audit Report.[38]

The claimant challenges only the following findings: disallowance of costs for acquiring additional space by purchasing land and constructing a new facility (Finding 1);[39] the Controller's recalculation of total annual salaries and benefits as an element of the formula for calculating the care and maintenance costs related to the mandate (Finding 2);[40] and the allowable amount of indirect costs (Finding 7).[41] In addition, the claimant alleges that the necessary and prompt veterinary care costs (addressed under "Other Issue") were claimed in the composite cost per animal per day under the care and maintenance component and that the claimant should have been given an opportunity to provide support for these costs during the audit. Thus, the claimant alleges that reimbursement for necessary and prompt veterinary costs should have been allowed by the Controller.[42] The Controller's findings with respect to the issues in dispute are described below.

1. Finding 1 (Unallowable Costs for Acquiring Additional Space by Purchasing Land and Constructing a New Facility)

In the fiscal year 2007-2008 reimbursement claim, the claimant requested reimbursement of $745,135 for acquiring additional space by the purchase of land and construction of a new animal shelter facility.[43] The reimbursement claim explains that the land acquisition costs totaled $865,000, and that facility construction costs totaled $572,231, for total costs of

---

[36] Exhibit A, IRC, page 286; see also Exhibit A, IRC, pages 401-407 (2007-2008 Amended Reimbursement Claim); Exhibit A, IRC, pages 640-645 (2008-2009 Amended Reimbursement Claim). The cover page of the IRC, however, states the total amount reduced during the audit period as $2,105,792, exceeding the amount of reductions identified in the audit report by $65,191. (Exhibit A, IRC, page 1.)

[37] Exhibit A, IRC, pages 295-335 (Final Audit Report).

[38] Exhibit A, IRC, pages 295-335 (Final Audit Report).

[39] Exhibit A, IRC, pages 3-4.

[40] Exhibit A, IRC, pages 9-10. The claimant has not challenged the remaining findings with respect to the Controller's recalculation of care and maintenance costs in Finding 2. These include overstated materials and supplies; incorrect reporting of animal census data; the number of eligible animals; and the number of reimbursable days representing the increased holding period. (Exhibit A, IRC, pages 294, 301, 307-312 (Final Audit Report))

[41] Exhibit A, IRC, pages 11-12.

[42] Exhibit A, IRC, pages 5-9.

[43] Exhibit A, IRC, page 403 (2007-2008 Amended Reimbursement Claim).

$1,437,231; but that the claimant was only requesting reimbursement of 51.8 percent of that amount, for a total claim for fiscal year 2007-2008 of $745,135.[44]

In the fiscal year 2008-2009 reimbursement claim, the claimant requested reimbursement of $1,233,364 for construction of the new facility.[45] The claim form identifies total facility costs of $11,008,301, less the 2007-2008 costs of $1,437,231, for total costs remaining of $9,571,070; but that the claimant was only requesting reimbursement of 12.9 percent of that amount, for a total claim for fiscal year 2008-2009 of $1,233,364.[46]

Thus, for fiscal years 2007-2008 and 2008-2009, total costs of $1,978,499 were claimed for acquisition of additional space by the purchase of land and construction of a new facility.

The Controller disallowed the entire $1,978,499 claimed on the ground that the claimant did not provide sufficient documentation establishing, in a manner required by the Parameters and Guidelines that acquiring additional space by purchasing land and constructing a new shelter facility was a direct result of the increased holding period established by the test claim statutes.[47] Based on documentation provided by the claimant, the Controller determined that the claimant's animal shelter was constructed because of population growth, the temporary nature of the existing shelter, and the cost-effectiveness of taking on the project and the availability of redevelopment funds at that time.[48] The Controller also found that the claimant did not provide detailed calculations for determining the reimbursable portion of costs for acquiring additional shelter space attributable to the mandate and in accordance with the formula required by the Parameters and Guidelines, and that many of the expenses claimed were outside of the audit period.[49]

2. Finding 2 (Care and Maintenance; the Controller's Recalculation of Total Annual Salaries and Benefits)

Costs of $153,233 were claimed for care and maintenance for the audit period, but the Controller found that the claimant did not correctly apply the care and maintenance formula to calculate the costs, which included unallowable and misapplied costs, and found that $119,649 is unallowable and only $33,584 is allowable for the two-year audit period.[50]

The claimant elected to use the actual cost method to claim costs for care and maintenance. The actual cost method is a specific formula required by the Parameters and Guidelines and is designed to reimburse a proportion of total care and maintenance costs based on the incremental increase in service (the increased holding period) and the animals for which no fees can be

---

[44] Exhibit A, IRC, page 404 (2007-2008 Amended Reimbursement Claim).

[45] Exhibit A, IRC, pages 641-642 (2008-2009 Amended Reimbursement Claim).

[46] Exhibit A, IRC, page 642 (2008-2009 Amended Reimbursement Claim).

[47] Exhibit A, IRC, pages 295-301 (Final Audit Report).

[48] Exhibit A, IRC, page 295 (Final Audit Report).

[49] Exhibit A, IRC, pages 295-301 (Final Audit Report).

[50] Exhibit A, IRC, page 301 (Final Audit Report). Note that the Controller recalculated the associated indirect costs separately under indirect costs.

collected (animals that are not adopted, redeemed, or released to a nonprofit animal rescue organization, but instead die during the increased holding period or are ultimately euthanized). The formula requires a claimant to calculate the total amount of eligible costs incurred to provide care and maintenance for animals housed in the shelter (which includes total labor, materials, supplies, indirect costs, and contract services) divided by the annual census of animals housed, to determine a cost per animal per day. The cost per animal per day is then multiplied by the number of impounded animals that die during the increased holding period or are ultimately euthanized, by each reimbursable day (which depends on the animal and when the animal was impounded).[51]

The claimant, however, calculated the total annual care and maintenance costs required by the formula by lumping together all shelter expenditures (with the exclusion of the Spay/Neuter Program expenditures) and adding a 40 percent overhead factor for the Municipal Services Director, instead of adding up only those categories of expenditures that are specified in the Parameters and Guidelines that directly relate to the care and maintenance of animals. The claimant then divided the overall total by the annual census of animals to determine the cost per animal per day. The cost per animal per day was then multiplied by the number of animals euthanized during the year, which was then multiplied by a factor of two or four to correspond to the number of extra days in the holding period.[52]

The Controller determined that the claimant's methodology was incorrect, since the calculation assumes that all shelter costs (including animal licensing, adoption, education, training, meetings, conferences, office-related expenditures, and veterinary medical services) are related to the care and maintenance of animals.[53] The Controller recalculated the costs for care and maintenance and the claimant disputes the recalculation of annual labor costs.

The claimant did not claim salaries and benefits for the audit period for care and maintenance. Instead, the claimant misclassified those costs under the category of services and supplies.[54] To recalculate these costs, the Controller requested the duty statements of the employee classifications that provide care and maintenance to determine the percentage of the daily workload for each classification devoted to care and maintenance.[55]

The claimant's animal shelter management provided a list of personnel who participate in the care and maintenance functions and information relating to the level of involvement of each classification according to the employee's job duty description and staffing requirements during the audit period.[56] The Final Audit Report includes the following table to detail the percent of animal care and maintenance per employee classification "as determined by shelter management" and allowed by the Controller:

---

[51] Exhibit A, IRC, pages 266-269 (Parameters and Guidelines); page 303 (Final Audit Report).

[52] Exhibit A, IRC, pages 303-304 (Final Audit Report).

[53] Exhibit A, IRC, page 304 (Final Audit Report).

[54] Exhibit A, IRC, page 304 (Final Audit Report).

[55] Exhibit A, IRC, page 305 (Final Audit Report).

[56] Exhibit A, IRC, page 305 (Final Audit Report).

FY 2007-2008 and FY 2008-2009	
Employee Classification:	
Animal Shelter Attendant/Assistant	60%
Animal Control/Customer Service Technician	5%
Animal Control Officer	5%
Animal Control Supervisor	5%
Registered Veterinary Technician	20%
Animal Shelter Supervisor	5%
	100%[57]

The Controller also requested that the claimant provide actual salary amounts paid to the employee classifications directly involved with the care and maintenance function. Due to record retention and software issues, the claimant provided salary information for fiscal year 2007-2008 only. The claimant agreed to use the fiscal year 2007-2008 salary amounts as a base for fiscal year 2008-2009, and then the Controller applied the 2008-2009 CPI index of 1.01 percent.[58]

In response to the Draft Audit Report, the claimant disagreed with the percentages of time attributed by the Controller for animal care and maintenance for the animal shelter attendant and the animal shelter supervisor, and contended that the animal shelter attendant's time devoted to care and maintenance should be 85 percent, rather than 60 percent; and that the animal shelter supervisor's time devoted to care and maintenance should be 10 percent, rather than 5 percent.[59] The claimant also contended that the Controller erroneously concluded that staff time for care and maintenance across positions had to total 100 percent, and that the "decision to restrict the allocation of time spent on the entire group of people to 100% is illogical and arbitrary."[60] The claimant states that "each position can spend varying amounts of time on an activity – to the maximum of 100% per person."[61]

The Controller's finding did not change and the Final Audit Report states the following:

> The town did not claim salaries and benefits for the audit period. In the absence of supporting documentation for actual salary and benefit costs incurred for the care and maintenance of animals during the course of the audit, we requested duty

[57] Exhibit A, IRC, page 305 (Final Audit Report). The same information and findings were included in the Draft Audit Report. Exhibit A, IRC, pages 138-139 (Draft Audit Report).

[58] Exhibit A, IRC, pages 304-305 (Final Audit Report).

[59] Exhibit A, IRC, pages 314 (Final Audit Report), 362 (Claimant's Response to the Draft Audit Report).

[60] Exhibit A, IRC, pages 314 (Final Audit Report), 362 (Claimant's Response to the Draft Audit Report).

[61] Exhibit A, IRC, pages 314 (Final Audit Report), 362 (Claimant's Response to the Draft Audit Report).

> statements for the employee classifications directly involved in care and maintenance activities in order to assist in determining the percentage of the daily workload that staff devoted to caring for and maintaining the animals. The duty statements are very detailed in the description of essential job functions for each classification. For example, the duty statement for the Animal Shelter Attendant classification lists 11 essential job functions, one of which describes care and maintenance activities. The duty statement for the Animal Shelter Supervisor classification lists 21 essential job functions, one of which describes care and maintenance activities. Contrary to what the town believes, it is not reasonable to apply 100% of any classification's workload solely to care and maintenance activities. Based on the detailed duty statements provided, these employees are also performing many activities that are reimbursable under other components of this mandated program (necessary and prompt veterinary care, maintaining non-medical records, lost and found lists), as well as various administrative activities and non-mandated activities.[62]

3. Finding 7 (Reduction of Indirect Costs)

The Controller found that $12,708 in indirect costs is allowable.[63] The claimant did not claim indirect costs as a separate item but incorporated indirect costs into the Care and Maintenance cost component by adding in a 40 percent overhead factor for the Municipal Services Director.[64] The Controller found this approach to be incorrect and not in accordance with the Parameters and Guidelines. The Parameters and Guidelines allow claimants to use ten percent of direct labor, excluding fringe benefits, or preparing an indirect cost rate proposal (ICRP). The Controller recalculated indirect costs as a separate reimbursable cost item using the ten percent default rate.[65] The Controller did not consider an ICRP submitted by the claimant in April 2016, that was prepared in response to the Draft Audit Report. The Final Audit Report states the following:

> With its response to the draft audit report, the town submitted calculations for an ICRP for both fiscal years of the audit period. Submitting an ICRP at this time would require us to re-open the audit and conduct further fieldwork to analyze and verify the indirect cost rates that the town is now proposing. However, the indirect costs that are allowable for the audit period were calculated using an acceptable methodology as prescribed in the parameters and guidelines. Further, the town agreed with this method as being the best option, in discussions that took place on April 12, 2016. Therefore, we are not considering the additional information provided for indirect cost rate calculations.[66]

---

[62] Exhibit A, IRC, page 314 (Final Audit Report).

[63] Exhibit A, IRC, page 328 (Final Audit Report).

[64] Exhibit A, IRC, page 328 (Final Audit Report).

[65] Exhibit A, IRC, pages 328-329 (Final Audit Report).

[66] Exhibit A, IRC, page 331 (Final Audit Report).

4. Other Issue—Necessary and Prompt Veterinary Care Costs

Although the Controller made no finding relating to the necessary and prompt veterinary care in the Draft Audit Report issued on June 8, 2016, the Controller incorporated a section titled "Other Issue" in the Final Audit Report to address the claimant's comments on the Draft Audit Report requesting reimbursement for necessary and prompt veterinary care costs. The claimant did not identify any veterinary care costs on its reimbursement claims.[67] However, in response to the Draft Audit Report the claimant requested reimbursement of $10,608 for fiscal year 2007-2008 and $10,298 for fiscal year 2008-2009 for wellness vaccine costs and for employee salary and benefit costs for the time to conduct the initial physical exam to determine the animal's baseline health and to administer the wellness vaccine.[68] The Controller states that the claimant did not claim veterinary care costs in its reimbursement claims, and the belated claim would not be considered for the following reasons:

> . . . The salary and benefit costs that the town is requesting reimbursement for are based on a two-day time study that the town conducted from May 18, 2016, to May 20, 2016.
>
> The town did not claim any costs for this component for the audit period. We informed the town on numerous occasions (via email on July 13, 2015, October 14, 2015, February 29, 2016, and March 15, 2016, and by telephone on October 26, 2015, and October 29, 2015) that in order to determine allowable salary and benefit costs for the audit period, it would need to conduct a time study for this cost component. In addition, the results of a two-day time study that the town conducted post-exit conference do not appear adequate to determine allowable costs for the audit period. Similar to our comments above for the indirect cost rate information provided, examining the town's time study at this time would require us to re-open the audit and conduct additional fieldwork to analyze and verify the accuracy of the information provided.
>
> Lastly, during fieldwork, we informed the town that in order to determine allowable materials and supplies costs for the purchase of wellness vaccines, the town would need to provide supporting documentation in the form of invoices in order to determine a unit cost per vaccine. Such information was not provided during the course of the audit or in the response to the draft audit report.[69]

III. Positions of the Parties

A. Town of Apple Valley

The claimant specifically challenges only Findings 1, a portion of Finding 2 relating to salaries and benefits, and Finding 7 of the Final Audit Report. The claimant also challenges the Controller's determination that the claimant did not claim any costs for necessary and prompt veterinary care for the audit period and the Controller's decision not to consider documents to

[67] Exhibit A, IRC, pages 401-407 (2007-2008 Amended Reimbursement Claim), 640-645 (2008-2009 Amended Reimbursement Claim).

[68] Exhibit A, IRC, pages 334-335 (Final Audit Report).

[69] Exhibit A, IRC, page 335 (Final Audit Report).

support costs under this component which were submitted to the Controller after the exit conference and after the Draft Audit Report was issued.

In regard to Finding 1, the claimant argues that the Controller's denial of reimbursement for the costs claimed for construction of the new animal shelter is incorrect, and that, contrary to the Controller's conclusion, the claimant did provide sufficient documentation to demonstrate "that the construction of a new facility was necessary to provide appropriate and adequate shelter space to comply with the mandated activities."[70] Specifically, the claimant relies on two particular statements contained in the items referred to by the claimant, as follows:

> Page 2 of the April 2007, Request for Qualifications to Design the Animal Shelter Facility stated, "The Proposed Animal Control Shelter will be designed to increase the hold time for potentially adoptable animals..." (see Town of Apple Valley's June 17, 2016 Response to the Draft Audit - SCO website- beginning on page 63. http://sco.ca.gov/Files-AUD/MandCosts/08_2016_applevalley_animal.pdf)
>
> Further, at the July 10, 2007 Council meeting audio recording (at 1:32:37 of the recording) contains Councilman Jasper's statement that the need to build a new animal shelter is because it is "Mandated by the State to take care of our animals."[71]

The claimant also points to a number of other documents, arguing that they show that the existing facilities were not properly configured, and that remodeling or contracting with existing private and public shelters was "not feasible."[72]

In addition, the claimant argues that "[t]he records shows that the Town did provide the calculations used to determine the percentage of facility costs claimed."[73] The claimant reiterates in its rebuttal comments that "the computation formulas were included as a part of the original claims" and that the claimant "also provided the SCO with another copy during the audit process."[74] However, the claimant also admits that it "had difficulty computing the Formula for Proportionate Share of Actual Costs . . . because the formula requires data from 1998 such as shelter square footages of facilities and animal populations . . . [and] these numbers were extremely difficult to obtain," and that claimant "deliberately left both [conflicting] computations as a part of the records so that when the SCO reviewed the claim for payment, we could discuss which computation was correct."[75] Finally, the claimant objects to the Controller's conclusion that "[m]*any of the costs claimed occurred outside of the audit period*" because "[c]ost incurred includes obligated and expended costs during the fiscal years claimed,"[76] and both of these

---

[70] Exhibit A, IRC, page 3.

[71] Exhibit A, IRC, page 3.

[72] Exhibit C, Claimant's Rebuttal Comments, pages 1-2.

[73] Exhibit A, IRC.

[74] Exhibit C, Claimant's Rebuttal Comments, page 2.

[75] Exhibit C, Claimant's Rebuttal Comments, page 2.

[76] Exhibit A, IRC, page 4.

categories of costs should qualify as "cost incurred" according to Federal Office of Management and Budget (OMB) A-87 guidelines.[77]

In regard to Finding 2, the claimant disagrees with the Controller's recalculation of salaries and benefits reimbursable under the Care and Maintenance cost component. The claimant disputes the Controller's conclusion in Finding 2 that the claimant did not claim salary and benefits costs for care and maintenance of animals, stating that these costs were claimed as part of the actual cost formula. The claimant then alleges that while recalculating salary and benefits under the care and maintenance component, the Controller wrongly and arbitrarily demanded that the claimant adjust the percentage of actual time spent by various shelter employees on care and maintenance of animals, so that care and maintenance staff time between all positions would total 100 percent.[78] The claimant maintains that the Controller did not provide any reasoning for this requirement.[79] Although according to the claimant the imposition of this requirement resulted in significant reduction of time for various employee classifications, the claimant specifically disputes only the reduction of time allocated to the Animal Shelter Attendant for performance of his care and maintenance duties from 85 percent to 60 percent; and reduction of care and maintenance time allocated to the Animal Shelter Supervisor from 10 percent to 5 percent.[80] The claimant then requests that the allocation of time spent on care and maintenance be based on "actual amounts originally specified by the Shelter Manager, and the subsequent calculation of eligible care and maintenance costs be restored."[81]

In its rebuttal comments, the claimant states that "[t]he Audit Report **falsely implies that the percentage allocations shown in the Final Audit report were determined by the town shelter management staff.**"[82] The claimant explains that upon the Controller's request, the shelter staff performed an analysis of employee's duty statements and provided an allocation of actual time spent by each shelter employee classification on animal care and maintenance and on other activities,[83] as follows:

> Animal Shelter Supervisor = 10% time spent providing care to impounded animals, 90% other duties
>
> Registered Veterinary Technician = 85% time spent caring/maintaining animals, 15% other duties
>
> Animal Control Technician = 25% time spent maintaining shelter disinfecting kennels, 75% other duties

[77] Exhibit C, Claimant's Rebuttal Comments, page 3.

[78] Exhibit A, IRC, pages 9-10.

[79] Exhibit A, IRC, page 10.

[80] Exhibit A, IRC, page 9.

[81] Exhibit A, IRC, page 10.

[82] Exhibit C, Claimant's Rebuttal Comments, page 9, emphasis in original.

[83] Exhibit C, Claimant's Rebuttal Comments, pages 8-10.

Animal Shelter Attendant = 80% time spent caring/maintaining the animals and 5% overseeing volunteer and work releases (who provide care and maintenance), 15% other duties

Animal Control Supervisor = 5% Shelter (morning cleaning/feeding dogs), 95% animal control duties

Animal Control Officer I = 10% Shelter (morning cleaning/feeding dogs), 90% animal control duties

Animal Control Officer II = 10% Shelter (morning cleaning/feeding dogs), 90% animal control duties[84]

However, because the total time spent on care and maintenance of animals among all of these employees added up to more than 100 percent, the Controller's staff communicated to the claimant via phone and by email that it must reduce reported time so that all of the care and maintenance time would add up to 100 percent among all of the employee classifications.[85] As directed by the Controller, the claimant made artificial reductions in time allocations, which were not based on the actual time spent by each category of employees on care and maintenance, but were necessary so that all of the care and maintenance time would add up to 100 percent, as required by the Controller.[86] As a result, the Final Audit Report reflects the following reduced allocation of time per employee classification during the audit period "[t]o make all employees time add to 100% per SCO request":[87]

Animal Shelter Supervisor	5%
Registered Veterinary Technician	20%
Animal Control Technician	5%
Animal Shelter Attendant	60%
Animal Control Supervisor	5%
Animal Control Officer I	5%
Animal Control Officer II	0%[88]

The claimant argues that the Controller's requests that the claimant make these reductions did not have a legitimate basis and "were incorrect and arbitrary and resulted in improper reductions of eligible Town costs."[89] The claimant refutes the Controller's argument that these reductions resulted from the Controller's determination of what would be a reasonable allocation of care and maintenance time for each job classification based on the Controller's analysis of job

[84] Exhibit C, Claimant's Rebuttal Comments, pages 8-9.

[85] Exhibit C, Claimant's Rebuttal Comments, pages 8-9.

[86] Exhibit C, Claimant's Rebuttal Comments, page 9.

[87] Exhibit C, Claimant's Rebuttal Comments, page 9.

[88] Exhibit C, Claimant's Rebuttal Comments, page 9.

[89] Exhibit C, Claimant's Rebuttal Comments, pages 9-10.

descriptions provided by the claimant. According to the claimant, such determination based on the reviewing job descriptions alone would be questionable because while some job duties take much more employee time than others, "[t]here is no indication of how much employee time is required to be spent on each activity on the Job Description documents."[90] On the other hand, the claimant states that its initial allocation of time for each job classification is correct and based on the shelter staff analysis, as was requested by the Controller, describing specific care and maintenance activities performed by the employees in each classification and the percentage of their time spent on these activities.[91]

Finally, the claimant notes that the Controller did not require most other audited local agencies to limit their allocations of care and maintenance time among various employee classifications to 100 percent, and therefore it "is not the common methodology used" by the Controller.[92] According to the claimant's analysis of the audit reports for other *Animal Adoption* programs, "Besides the Town of Apple Valley, only three other agencies (Antioch, Placer and Santa Barbara audits) of the over 43 audits were similarly forced to reduce their employee time allocations to total to 100% between a group of employees." [93] The claimant states that "All other agencies that used the 'Actual Cost Method to compute Care and Maintenance Costs were allowed to use their actual allocations'"[94] For example, according to the claimant, the Town of Apple Valley, Contra Costa County was allowed to use the following allocation of time, exceeding the total of 100 percent:

Contra Costa Audit - Technicians = 91.667%
Senior Technicians = 91.38%
Utility Workers =91.38%
Special Services Workers = 55%[95]

The claimant also provided excerpts from several *Animal Adoption* program audits to show that similarly situated agencies were not required to balance the percentages of time devoted by various employee classifications to care and maintenance activities to 100 percent.[96]

In regard to Finding 7, the claimant disagrees with the Controller's conclusion that the claimant did not claim indirect costs, and that therefore there was no reduction when the Controller recalculated allowable indirect costs.[97] The claimant argues that indirect costs were included in

[90] Exhibit C, Claimant's Rebuttal Comments, page 10.

[91] Exhibit C, Claimant's Rebuttal Comments, page 10.

[92] Exhibit C, Claimant's Rebuttal Comments, page 10.

[93] Exhibit C, Claimant's Rebuttal Comments, page 10.

[94] Exhibit C, Claimant's Rebuttal Comments, page 11.

[95] Exhibit C, Claimant's Rebuttal Comments, page 11.

[96] Exhibit C, Claimant's Rebuttal Comments, pages 31-46.

[97] Exhibit C, Claimant's Rebuttal Comments, page 13.

the computed cost per animal per day in accordance with the formula provided in the Parameters and Guidelines for actual costs under the care and maintenance cost component.[98]

Further, the claimant argues that the Controller incorrectly recalculated allowable indirect costs using ten percent indirect cost rate because actual indirect costs incurred by the claimant were higher than ten percent and that the claimant should have been given the opportunity to "support [its] costs with actual overhead (ICRP) rates" based on the ICRP prepared and submitted to the Controller with its formal response to the Draft Audit Report. The claimant states that the Controller wrongly denied the claimant's request to consider its ICRP and to recalculate allowable indirect costs based on the ICRP rate during the audit.[99] The claimant admits that it did not prepare an ICRP to support its claim for indirect costs with its reimbursement claims, but insists that it was not required to do so, because the methodology that the claimant used to calculate costs for its reimbursement claims did not require preparation of an ICRP.[100] Finally, the claimant states that its submission of the ICRPs after the release of Draft Audit Report was timely because it was submitted "within the audit response period of time allotted to the Claimant,"[101] and argues that the Controller should have continued the audit in order to review the claimant's two ICRPs because "[t]here was still at least another year in which the audit had to conclude statutorily."[102]

In regard to the "Other Issue—Necessary and Prompt Veterinary Care Costs," the claimant disagrees with the Controller's conclusion that the claimant did not claim any costs for the necessary and prompt veterinary care, because these costs were included in the composite cost per animal per day under the care and maintenance component.[103] The claimant further argues that because the Controller informed the claimant that if some of the costs were not properly supported, then the claimant would have an opportunity to support the incurred costs during the audit. The claimant argues that the Controller should not have later refused to consider the claimant's "Prompt and Necessary Veterinary Care" time study, conducted post-exit conference, to support the cost of labor for the initial physical examination and administration of the wellness vaccine.[104] In addition, the claimant argues that in the absence of actual invoices documenting the cost of wellness vaccines, the Controller should have allowed the claimant some other alternative to support these costs. The claimant alleges that the Controller offered and allowed other alternatives to other local agencies that could not locate the actual, old invoices to support the cost of the vaccine.[105] The claimant further argues that the Controller was not justified to disallow further time studies or to refuse further review of supporting documents on the ground

[98] Exhibit C, Claimant's Rebuttal Comments, page 13.

[99] Exhibit A, IRC, page 11.

[100] Exhibit A, IRC, page 11.

[101] Exhibit A, IRC, page 12.

[102] Exhibit A, IRC, page 11.

[103] Exhibit A, IRC, page 5.

[104] Exhibit A, IRC, pages 5-6.

[105] Exhibit A, IRC, pages 8-9.

that it would have to re-open audit field work to review them because, by law, the Controller had another year to complete the audit.[106]

The claimant filed comments on the Draft Proposed Decision, addressing the findings relating to the Controller's recalculation of care and maintenance costs. After receiving the Controller's comments on the Draft Proposed Decision, which indicate that the Controller will reinstate $13,559 for care and maintenance, the claimant recalculated the costs and believes that allowable costs should total $30,262, and not $13,559 as identified by the Controller, based on the "staff participation percentages determined by the town."[107] The claimant therefore contacted the Controller's Office about the discrepancy in the re-calculation, and submitted an email from the Controller's Office, dated April 15, 2020, for the record.[108] The Controller's April 15, 2020 email states that the Controller adjusted only the Animal Shelter Attendants' time from 60 percent to 85 percent, and the Animal Shelter Supervisor's time from five percent to ten percent, and that $9,486 and not $13,559 as originally stated, should be reinstated to the claimant.[109]

The claimant contends that the Controller's recalculation is wrong and that the Draft Proposed Decision "intended that ALL actual "staff participation percentages determined by the town," . . . be used to determine allowable care and maintenance costs."[110]

The claimant has no new evidence or further comments to provide regarding the reductions made to Facility Construction costs, Indirect Costs, and Necessary and Prompt Veterinary Care components.[111]

B. State Controller's Office

With respect to the space and facilities acquisition costs (Finding 1), the Controller explains that the primary reason for the disallowance of the entire amount claimed was that "the town did not support, through a Board agenda or other similar supporting documentation that the construction was a direct result of the increased holding period requirements of this mandated program."[112] The Controller states that although the claimant provided some of the city council's documents related to the history of the shelter contractual arrangements from the late 1990s, and the documents pertaining to the city's decisions about construction of the new shelter, none of the documents in the record include "language stating that acquiring additional space and/or construction of new facilities is necessary for the increased holding period requirements of the mandated program," as required by Parameters and Guidelines.[113] The Controller disagrees with

[106] Exhibit A, IRC, page 7.

[107] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 1.

[108] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 1-2, 5, 14.

[109] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 14 (emphasis in original).

[110] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 1.

[111] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 2.

[112] Exhibit B, Controller's Comments on the IRC, page 13.

[113] Exhibit B, Controller's Comments on the IRC, pages 12-14.

the claimant's argument that the statement made by then Mayor Pro Tem Jasper at a Town Council meeting held on July 10, 2007 "that a new animal shelter is needed because it is '[m]andated by the State to take care of our animals," provides evidence that the construction of a new shelter was undertaken in order to comply with the mandated activities.[114] Upon review of the recording of the July 10, 2007 Town Council meeting, the Controller concluded that, although Mr. Jasper made the alleged statement, "there was no discussion at that meeting concerning shelter overcrowding due to the increased holding period or any other topics related to the requirements of the mandated program," and Mr. Jasper's statement alone, relied upon by the claimant, does not address any specific requirements of the mandated program. It merely refers to a general obligation to take care of animals, which in itself "is not a new requirement resulting from the test claim legislation."[115] In addition, the Controller states that the record does not include "a statement that 'remodeling existing facilities is not feasible and/or is more expensive than acquiring additional space and/or constructing new facilities' or that 'contracting with existing private or public shelters in the area to house the increase of impounded stray or abandoned dogs, cats, or other animals... is not feasible or is more expensive than acquiring additional space and/or constructing new facilities," which is also required by the Parameters and Guidelines.[116]

In response to the claimant's argument regarding its calculation of the reimbursable share of construction costs, the Controller notes that the mandated program allows reimbursement under this cost component only for a proportionate share of actual costs incurred, which must be calculated using a specific formula provided in the amended Parameters and Guidelines. The Controller argues that these required calculations, first provided by the claimant only in response to the Draft Audit Report, are incorrect and lack supporting documentation.[117]

Finally, the Controller addresses the claimant's argument that all the costs claimed under the space and facilities acquisition component should be counted as incurred during the claimed period, 2007-2008 and 2008-2009 fiscal years. The Controller explains that upon review of the Transaction Detail Report representing total construction project costs of $11,008,301, which was submitted by the claimant in support of its 2007-2008 and 2008-2009 claims, the records for the transactions corresponding to the alleged costs date between 2007 and 2010 as follows:

- FY 2007-08 - $1,437,396
- FY 2008-09 - $3,044,818
- FY 2009-10 - $6,522,080
- FY 2009-10 - $ 4,007[118]

Accordingly, the Controller argues that while the claimant correctly based its calculation of allegedly allowable costs for the 2007-2008 claim on $1,437,396 of total costs incurred in 2007-

[114] Exhibit B, Controller's Comments on the IRC, page 14.

[115] Exhibit B, Controller's Comments on the IRC, page 14.

[116] Exhibit B, Controller's Comments on the IRC, page 15.

[117] Exhibit B, Controller's Comments on the IRC, page 16.

[118] Exhibit B, Controller's Comments on the IRC, page 16.

2008 fiscal year, it incorrectly based its calculation of costs for the 2008-2009 claim on the full remaining amount of the project costs incurred between 2007 and 2010. The Controller claims that only the $3,044,818 amount incurred in the 2008-2009 fiscal year, as supported by the Transaction Detail Report, should have been used for calculation of allowable costs for the 2008-2009 claim.[119]

With respect to the recalculation of allowable salaries and benefits under the care and maintenance cost component (Finding 2), the Controller disagrees with the claimant's contention that the Controller "arbitrarily" reduced time for two employee classifications.[120] The Controller maintains that the claimant did not claim salary and benefits for this component because it misclassified costs, and did not have supporting documentation for actual salary and benefit costs incurred specifically for the care and maintenance of animals during audit period.[121] In the absence of required documentation "detailing the percentage of time various classifications of employees spent on care and maintenance or any other activities," the Controller determined allowable salaries and benefits for the care and maintenance component using "an appropriate and reasonable methodology" on the basis of "two items" provided by the claimant: "1) actual salary amounts paid to those employee classifications directly involved with care and maintenance function; and 2) the duty statements for the identified classifications to help determine approximately how much of their workload is devoted to care and maintenance functions," which "include activities such as feeding, watering, grooming, and cleaning the animals."[122]

The Controller acknowledges that "[w]hen considering care and maintenance, we view the activity as a whole, where the responsibilities are divided among various employee classifications, and the sum of the responsibilities performed by the employees equals 100%."[123] The Controller also states it reduced allocation of time originally proposed by the claimant because the Controller determined it to be unreasonable, based on its own analysis of the duty statements, which are "very detailed; and in this case, helped determine to what extent an employee classification's duties are directly related to care and maintenance activities."[124] Based on the analysis of the "essential job functions" listed in the duty statements of the two contested classifications, the Controller concluded that "the 60% allocation for the Animal Shelter Attendant classification and the 5% allocation for the Animal Shelter Supervisor classification are reasonable determinations of the actual time spent by these employees performing care and maintenance activities."[125]

---

[119] Exhibit B, Controller's Comments on the IRC, page 16.

[120] Exhibit B, Controller's Comments on the IRC, pages 27-29.

[121] Exhibit B, Controller's Comments on the IRC, pages 27-29.

[122] Exhibit B, Controller's Comments on the IRC, pages 27-29.

[123] Exhibit B, Controller's Comments on the IRC, page 28.

[124] Exhibit B, Controller's Comments on the IRC, page 29.

[125] Exhibit B, Controller's Comments on the IRC, page 29.

With respect to the recalculation of indirect costs (Finding 7), the Controller maintains that the claimant did not directly claim reimbursement for indirect costs.[126] Instead, the claimant "computed a 40% overhead factor and included this in its alternative formula for claiming costs using the Actual Cost Method reserved for Care and Maintenance costs."[127] The Controller argues that "including a factor for overhead within a cost component is not an option outlined in the parameters and guidelines for claiming indirect costs," which provide for two options: either using ten percent of direct labor, excluding fringe benefits, or preparing an ICRP pursuant to the OMB Circular A-87.[128] The Controller further explains that the claimant initially agreed with the Controller's use of the ten percent default rate for indirect costs. However, the claimant later changed its mind in its response to the Draft Audit Report, requesting recalculation of indirect costs using an ICRP rate submitted by the claimant for both fiscal years of the audit period.[129]

As to the claimant's argument that the Controller decided to end the audit a year before the statutory deadline, the Controller argues that it was not obligated to reopen audit fieldwork and to keep the audit open to consider a newly submitted ICRP.[130] The Controller states that it is the Controller's responsibility to conduct an audit in the most efficient manner.[131] While "pursuant GC section 17558.5, subdivision (b), the SCO is required to complete an audit no later than two years after the date the audit commenced," this is a limitation on the length of the audit and not a requirement that the Controller keep the audit open for the entire two years.[132]

With respect to the claimant's request for reimbursement of necessary and prompt veterinary care costs ("Other Issue—Necessary and Prompt Veterinary Care Costs"), the Controller reiterates its conclusion in the Final Audit Report that these costs were not claimed for either fiscal year of the audit period.[133] The Controller explains that although the claimant used total shelter costs, including all veterinary costs, when it calculated the care and maintenance component, it would be impossible to correctly determine or segregate out which portion of these overall costs was attributable to the necessary and prompt veterinary care costs.[134] At the same time, the Controller acknowledges that it agreed to work with the claimant during the audit and advised the claimant on numerous occasions throughout the audit that it would need to conduct time studies (one for performing an initial physical exam and one for administering wellness vaccines), and to submit invoices to support any material and supplies costs.[135] However, the Controller argues that the claimant did not timely perform the time studies and did not submit the

[126] Exhibit B, Controller's Comments on the IRC, page 30.

[127] Exhibit B, Controller's Comments on the IRC, page 30.

[128] Exhibit B, Controller's Comments on the IRC, page 30.

[129] Exhibit B, Controller's Comments on the IRC, page 30-32.

[130] Exhibit B, Controller's Comments on the IRC, page 30-32.

[131] Exhibit B, Controller's Comments on the IRC, page 32.

[132] Exhibit B, Controller's Comments on the IRC, page 32.

[133] Exhibit B, Controller's Comments on the IRC, pages 17, 21.

[134] Exhibit B, Controller's Comments on the IRC, page 21.

[135] Exhibit B, Controller's Comments on the IRC, page 17.

required documentation to support the cost of vaccines.[136] Furthermore, the Controller argues that the time study submitted by the claimant after the exit conference and in response to the Draft Audit Report was inadequate and not supported by source documents.[137] The Controller argues that under these circumstances, the claimant is not entitled to reinstatement of costs that were never claimed.[138] The Controller also states that it is the claimant's sole responsibility to promptly provide supporting documents, including time studies, and the Controller is not responsible to ensure that the claimant completes the studies and submits all the supporting documents.[139] Nevertheless, the Controller states that it worked with the claimant and sent the claimant numerous reminders throughout the year to submit required documents and to conduct the time studies.[140] Further, the Controller asserts that it gave the claimant notice that it was planning to end the audit, and worked with the claimant to agree on the date for the exit conference.[141]

The Controller filed comments on the Draft Proposed Decision, supporting the findings in the Draft Proposed Decision and stating it will reinstate to the claimant $13,559 ($12,562 for salaries and benefits and $997 for related indirect costs) for care and maintenance costs.[142]

However, the Controller, in a later April 15, 2020 email exchange with the claimant now states that the Controller will adjust only the Animal Shelter Attendants' time from 60 percent to 85 percent, and the Animal Shelter Supervisor's time from five percent to ten percent, and that $9,486 and not $13,559 as originally stated, should be reinstated to the claimant as follows:

> I spent some time reviewing your spreadsheet and comparing it with our calculations and figured out our differences are due to the percentages of time. We are only adjusting the Animal Shelter Attendants time from 60% to 85%, and the Animal Shelter Supervisor's time from 5% to 10%. We took these percentages directly from the Commission's Draft Proposed Decision and the Town of Apple Valley's Response to the Audit Report (see attached PDF).
>
> I updated your Post IRC spreadsheet to clearly show the SCO's calculation for the audit (pre IRC), and SCO's calculation post IRC. I color-coordinated the different categories, which I think makes things clearer to view.
>
> With that being said, during this review, we found a formula error with our initial calculations, and confirmed that **the amount to be reinstated is $9,486 ($8,860**

[136] Exhibit B, Controller's Comments on the IRC, pages 24-27.

[137] Exhibit B, Controller's Comments on the IRC, pages 24-25.

[138] Exhibit B, Controller's Comments on the IRC, page 21.

[139] Exhibit B, Controller's Comments on the IRC, page 21.

[140] Exhibit B, Controller's Comments on the IRC, pages 21-24.

[141] Exhibit B, Controller's Comments on the IRC, pages 17-24.

[142] Exhibit E, Controller's Comments on the Draft Proposed Decision, page 1.

in salaries and benefits and $626 in indirect costs) and not $13,559 - which is what I had included in the April 7, 2020 letter to the Commission.[143]

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[144] 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."[145]

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.[146] 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

---

[143] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 14 (emphasis in original).

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

[145] *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.

[146] *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.

connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[147]

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.[148] 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.[149]

A. The Claimant Timely Filed this IRC Within Three Years from the Date the Claimant First Received the Written Notice of Adjustment from the Controller, as Required by the Commission's Regulations.

California Code of Regulations, title 2, section 1185.1 provides for the period of limitation in which an IRC must be timely filed:

> 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 reason for the adjustment. The filing shall be returned to the claimant for lack of jurisdiction if this requirement is not met.[150]

Here, the Final Audit Report is dated August 15, 2016.[151] The IRC was filed with the Commission less than three years later on August 1, 2017.[152] Accordingly, this IRC was timely filed within the period prescribed in Code of Regulations, title 2, section 1185.1.

B. The Controller's Reduction of All Costs Claimed for the Acquisition of Additional Space by Purchasing Land and Constructing a New Shelter Facility (Finding 1), Is Correct as a Matter of Law Because the Claimant Failed to Provide Adequate Supporting Documentation, as Required by the Parameters and Guidelines, Showing that the Costs Were Incurred as a Direct Result of the Mandate.

In its 2007-2008 and 2008-2009 reimbursement claims, the claimant alleged that it incurred reimbursable state-mandated costs for acquiring additional space by purchasing land and

---

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

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

[149] 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

[150] California Code of Regulations, title 2, section 1185.1(c) (Register 2016, No. 38).

[151] Exhibit A, IRC, page 291 (Final Audit Report).

[152] Exhibit A, IRC, page 1.

constructing a new shelter, and claimed a percentage of overall acquisition costs, totaling $1,978,499 for the audit period.[153]

The Controller found that "the entire amount" of $1,978,499 claimed for the audit period is unallowable because the claimant "did not support, through a Board Agenda or other similar supporting documentation, that the construction was a direct result of the increased holding period requirements of this mandated program."[154] The Controller explains in the Final Audit Report that this was the primary reason for the reduction.[155] The Controller also found that that the claimant's documents did not include the following information required by the Parameters and Guidelines:

> . . . a statement that 'remodeling existing facilities is not feasible and/or is more expensive than acquiring additional space and/or constructing new facilities' or that 'contracting with existing private or public shelters in the area to house the increase of impounded stray or abandoned dogs, cats, or other animals . . . is not feasible or is more expensive than acquiring additional space and/or constructing new facilities.[156]

The claimant disputes the finding and requests "the allowable share of facility construction costs be restored."[157] The claimant argues that it "provid[ed] material that shows that the construction of a new facility was necessary to provide appropriate and adequate shelter space to comply with the mandated activities,"[158] and that "the project was necessary and due in part to the requirements of the passage of the new State Mandate program which required increased space due the increased hold time for animals and also because the facility was not configured or equipped properly."[159]

In its response to the Draft Audit Report, the claimant argued as follows:

> Because the SCO is requesting specific wording to "prove" the facility construction was necessary due to increased space needed due to changes in State Law (Hayden Bill) we believe page two, Section E of the attached "Request For Qualifications/Request for Proposals (RFQ/RFP)" to Provide Architectural Design Services for New Municipal Services Animal Shelter Facility addresses this concern:
>
> **"The Project: The project will include design of a purpose built Animal Shelter Facility including office space. The proposed Animal Control Shelter**

---

[153] Exhibit A, IRC, pages 403-404 (2007-2008 Amended Reimbursement Claim), 641-642 (2008-2009 Amended Reimbursement Claim).

[154] Exhibit A, IRC, page 295 (Final Audit Report).

[155] Exhibit A, IRC, page 301 (Final Audit Report).

[156] Exhibit B, Controller's Comments on the IRC, page 15.

[157] Exhibit A, IRC, pages 3-4.

[158] Exhibit A, IRC, page 3.

[159] Exhibit A, IRC, page 4.

> **will be designed to increase the hold time for animals and improve customer service."**
>
> This RFQ/RFP was released on April 2, 2007, resulting from the authorization by the Town Council following the special meeting in February 2007 and a meeting in March 2007.[160]

The claimant further stated

> At the July 10, 2007 Town Council Meeting when the Town Council approved the Architectural Design Contract for the Animal Shelter Facility, the minutes do not reflect the entire conversation of the Town Council. If you listen to the discussion that led to the approval of the Notice to Proceed with Design of the Shelter, there was clearly discussion regarding the lack of space and need to expand the facility.
>
> At 1:32:37 of the recording of the July 10, 2007 Town Council Meeting, Councilman Jasper makes the comment regarding the need of building a new animal shelter is because it is "Mandated by the State to take care of our animals."[161]

In the IRC narrative, the claimant adds a brief overview of the town's animal sheltering arrangements from late 1990s through September 2008, when according to claimant, discussion and planning began to construct a new shelter facility:

> In the late 1990s through almost the end of FY 2003-04 (May 2004), the Town contracted with Victor Valley Animal Protective League for their shelter services. This arrangement ended because of increased costs for sheltering services being presented by Victor Valley Animal Protective League without audited records to support the increased fee request. (See Appendix C)
>
> In June of 2004, the Town contracted with the City of Hesperia to care and shelter their animals because the Town ended their contract with Victor Valley Animal Protective League and needed emergency animal sheltering services while the Town constructed a temporary animal shelter for Apple Valley animals. Sheltering with the City of Hesperia ended when the Town completed the renovation of an old residential dwelling and warehouse structure in March of 2005. The renovation provided a temporary animal sheltering facility within the

---

[160] Exhibit A, IRC, page 347 (Claimant's Response to the Draft Audit Report), emphasis in original; Exhibit A, IRC, page 299 (Final Audit Report); Exhibit A, IRC, page 3 (quoting this language from page two of the April 2007 RFQ in support of the argument that the new facility was necessary to comply with the mandate).

[161] Exhibit A, IRC, page 347 (Claimant's Response to the Draft Audit Report); Exhibit A, IRC, page 299 (Final Audit Report); Exhibit A, IRC, page 3; Exhibit C, Claimant's Rebuttal Comments, page 1 (stating that "audio discussion provided in our IRC supports [the] requirement" that the record include "language stating that acquiring additional space and or construction of a new facility is necessary for the increased holding period of the mandated program" and including links that appear to be to audio recordings).

> Town's jurisdiction and eliminated the need for animal services staff to travel outside of their jurisdiction to place impounded animals into a contract shelter for housing and an easily accessible facility where town residents could look for their lost pets. (Appendix C)
>
> It soon became evident that this facility was inadequate because the building was not purpose built and did not provide necessary, isolation, quarantine or kennel space for an increasing number of impounded animals or adequate rooms to provide necessary medical treatment. Discussion and planning began to construct a new Shelter Facility in September 2008, with specific consideration for increased kennel capacity, quarantine rooms, isolation facilities for sick/injured animals, increased holding times and a ventilation system to filter airborne diseased [sic] and minimize cross contamination of animals. (See Appendix C)[162]

In its rebuttal comments, the claimant further specifies that it satisfied the requirements that "[r]emodeling is not feasible" and "[e]xisting facilities are not properly configured," because although it remodeled a small residential building and warehouse to temporarily care for animals after its sheltering contract with the City of Hesperia ended in 2005, "only two years later, the governing body found that facility was not 'purpose built and did not provide necessary isolation, quarantine or kennel space for an increased number of impounded animals."[163] Finally, the claimant alleges that it contracted with existing private and public shelters through 2005, but found these arrangement "unsatisfactory (not feasible)."[164] Specifically, (1) "Council expressed concerns to the Victor Valley Animal Protective League because of increased costs 'without audited records to support the increased fee request,'" and (2) "[l]ater when the Town contracted with the City of Hesperia, the Town Council wished to 'eliminate the need for residents to travel outside of their jurisdiction to place impounded animals…'"[165] The claimant argues that this record "demonstrates that the governing body of the Town of Apple Valley did attempt to find alternative animal housing arrangements, but for various reasons found these arrangements not feasible."[166]

As described below, the Commission finds that the Controller's reduction is correct as a matter of law because the claimant failed to provide adequate supporting documentation required by the Parameters and Guidelines that the costs were incurred as a direct result of the increased holding period mandated by the test claim statutes; that constructing new facilities was necessary for the increased holding period because the existing facilities did not reasonably accommodate impounded stray or abandoned dogs, cats and other specified animals that are ultimately

---

[162] Exhibit A, IRC, page 3. Appendix C contains three documents: (1) Minutes of February 10, 2004 Town Council Regular Meeting; (2) Proposed agenda item for August 10, 2004 Council meeting; and (3) Proposed agenda item for September 9, 2008 Town Council meeting. See Exhibit A, IRC, pages 200-209.

[163] Exhibit C, Claimant's Rebuttal Comments, page 1.

[164] Exhibit C, Claimant's Rebuttal Comments, page 2.

[165] Exhibit C, Claimant's Rebuttal Comments, page 2.

[166] Exhibit C, Claimant's Rebuttal Comments, page 2.

euthanized; that the existing facilities were not appropriately configured or equipped to comply with the increased holding period; and that remodeling existing facilities or contracting with existing private or public shelters was not feasible or is more expensive than acquiring additional space by purchasing land and constructing new facilities to comply with the increased holding period.

1. **The Parameters and Guidelines Require the Claimant to Show, with Contemporaneous Supporting Documentation, that the Governing Board Determined that the New Facilities Were Necessary for the Increased Holding Period Mandated by the Test Claim Statutes Because the Existing Facilities Did Not Reasonably Accommodate Impounded Stray or Abandoned Dogs, Cats and Other Specified Animals that Are Ultimately Euthanized; that Existing Facilities Are Not Appropriately Configured or Equipped to Comply with the Increased Holding Period; and that Remodeling Existing Facilities or Contracting with Existing Private or Public Shelters Is Not Feasible or Is More Expensive than Acquiring Additional Space by Purchasing Land and Constructing New Facilities to Comply with the Increased Holding Period Mandated by the Test Claim Statutes.**

The Parameters and Guidelines authorize reimbursement for the acquisition of additional space "by purchase, lease and/or construction" of new facilities to comply with the increased holding mandated by the state, beginning January 1, 1999. The Parameters and Guidelines authorize reimbursement for the proportionate share of actual costs (based on a specified formula) required to plan, design, acquire, and build facilities in a given year based on the pro rata representation of impounded stray or abandoned dogs, cats, and other animals specified in the test claim statutes that are held during the increased holding period and die during the increased holding period or are ultimately euthanized, to the total population of animals housed in the facility during the entire holding period required by law.[167] The Parameters and Guidelines also state, in accordance with Statutes 2004, chapter 313, that costs incurred to address preexisting shelter overcrowding or animal population growth are *not* reimbursable.[168]

To be eligible for reimbursement, the claimant must show that the costs incurred for the acquisition of additional space by the purchase of land and construction of a new facility were required as a direct result of the mandate.[169] Under the Parameters and Guidelines, the costs are reimbursable *only* to the extent that an eligible claimant submits, with its reimbursement claim, contemporaneous documentation reflecting a "determination by the governing board that acquiring additional space and/or constructing new facilities is necessary for the increased holding period mandated by Statutes of 1998, Chapter 752 because the existing facilities do not reasonably accommodate impounded stray or abandoned dogs, cats, and other specified animals

[167] Exhibit A, IRC, pages 260-262 (2006 Parameters and Guidelines Amendment).

[168] Exhibit A, IRC, page 261 (2006 Parameters and Guidelines Amendment).

[169] Exhibit A, IRC, page 259 (2006 Parameters and Guidelines Amendment).

that are ultimately euthanized."[170] The Parameters and Guidelines describe the supporting documentation and findings required for reimbursement of these costs:

> Acquiring additional space and/or construction of new facilities is reimbursable only to the extent that an eligible claimant submits, with the initial and/or subsequent reimbursement claim, documentation reflecting the following:
>
> > A determination by the governing board that acquiring additional space and/or constructing new facilities is necessary for the increased holding period required by Statutes 1998, Chapter 752 because the existing facilities do not reasonably accommodate impounded stray or abandoned dogs, cats, and other specified animals that are ultimately euthanized. The determination by the governing board shall include all of the following findings:
> >
> > - The average daily census of impounded stray or abandoned dogs, cats, and other animals specified in Statutes of 1998, Chapter 752 that were impounded in 1998. For purposes of claiming reimbursement under section IV.B.1, average Daily Census is defined as the average number of impounded stray or abandoned dogs, cats, and other animals specified in Statutes of 1998, Chapter 752 housed on any given day, in a 365-day period;
> > - The average daily census of impounded stray or abandoned dogs, cats, and other animals specified in Statutes of 1998, Chapter 752 that were impounded in a given year under the holding periods required by Food and Agriculture Code sections 31108, 31752, and 31753, as added or amended by Statutes of 1998, Chapter 752;
> > - Existing facilities are not appropriately configured and/or equipped to comply with the increased holding period required by Statutes of 1998, Chapter 752;
> > - Remodeling existing facilities is not feasible or is more expensive than acquiring additional space and/or constructing new facilities to comply with the increased holding period required by Statutes 1998, chapter 752; and
> > - Contracting with existing private or public shelters in the area to house the increase of impounded stray or abandoned dogs, cats, or other animals specified in Statutes 1998, chapter 752 is not feasible or is more expensive than acquiring additional space and/or constructing new facilities to comply with the increased holder [sic] period required by Statutes 1998, chapter 752. This finding should include the cost to contract with existing shelters.[171]

[170] Exhibit A, IRC, page 262 (2006 Parameters and Guidelines Amendment).

[171] Exhibit A, IRC, pages 262-263 (2006 Parameters and Guidelines Amendment).

The Parameters and Guidelines further clarify that the documentation requirements may be satisfied in whole or in part by the following:

- staff agenda items,
- staff reports,
- minutes of governing board meetings,
- transcripts of governing board meetings,
- certification by the governing board describing the findings and determination, and/or
- a resolution adopted by the governing board pursuant to Food and Agriculture Code section 31755, as added by Statutes of 1999, Chapter 81 (Assembly Bill 1482).[172, 173]

2. The Claimant's Supporting Documentation Does Not Comply with the Parameters and Guidelines.

The IRC record contains thirteen documents relevant to the issue at hand.[174] These are documents in the record consisting of the governing board meeting minutes, proposed agenda items, proposed documents for review/action by the governing board, staff correspondence describing decisions of the governing board, and a link to the recording of the governing board meeting. These documents are analyzed below in chronological order.

---

[172] Section 31755 of the Food and Agricultural Code was an urgency statute to postpone compliance with the longer holding periods required by the test claim statute for one year, until July 1, 2000, for some public agencies, if they met all the conditions prescribed in Section 31755. One of these conditions was a resolution adopted by the local agency that the agency's animal shelter provider could not reasonably comply with the longer holding periods because of the lack of sufficient facilities. The resolution adopted pursuant to Food and Agriculture Code section 31755 required public notice and specific findings of fact, including "the number of animals impounded in the prior year [1998], the number of animals expected to be impounded under the holding periods required by Sections 31108, 31752, 31752.5, and 31754, as amended or added by Chapter 752 of the Statutes of 1998," and "the percentage of cage space predicted to be needed in order to comply with the [increased] holding periods," as the basis for the determination that the agency's "animal shelter provider, independently of, or in conjunction with, other animal pounds or animal shelters, cannot reasonably comply with the longer holding periods . . . because of the lack of sufficient facilities." (Food & Ag. Code, § 31755(a).)

[173] Exhibit A, IRC, page 263 (2006 Parameters and Guidelines Amendment).

[174] The rest of the documents included in the record are either documents completely unrelated to the issue of construction of the new shelter facility, or are the types of documents that could not reflect a requisite determination by the governing board that would satisfy the documentation requirements set forth in the Parameters and Guidelines, such as accounting documents or documents prepared by the consultant in relation to the reimbursement claims.

The Commission finds, however, that these documents do not provide evidence required by the Parameters and Guidelines that the governing board determined that acquiring additional space by purchasing land and constructing a new facility is necessary to comply with increased holding period mandated by the state; that the existing facilities are not appropriately configured or equipped to comply with the increased holding period mandated by the state; that remodeling existing facilities is not feasible or is more expensive than acquiring additional space by purchasing land and constructing a new facility to comply with the increased holding period; and that contracting with existing private or public shelters in the area to house the increase of impounded stray or abandoned dogs, cats, or other animals specified in Statutes 1998, chapter 752 is not feasible or is more expensive than acquiring additional space by purchasing land and constructing a new facility to comply with the increased holding period.

Rather, as explained below, the documents show that the claimant acquired additional space and constructed a new facility because of the availability of redevelopment agency funds; an overall increase in population in the Town of Apple Valley; the need for additional office space; its plan to accommodate growth needs over the twenty-year planning horizon; its plan to expand the shelter facility to accommodate potential contracts with outside government agencies; and the temporary nature of the existing animal shelter where the animals were housed because long-term contracting arrangements with other shelters were terminated by the claimant for reasons unrelated to the mandate.

a. Minutes of the February 10, 2004 Town Council Regular Meeting

This is the earliest-dated document submitted by the claimant in support of its IRC, and it is unclear whether it was provided to the Controller.[175] It relates to the sheltering services contract between the claimant and the Victor Valley Animal Protection League (VVAPL), which housed the claimant's animals from "the late 1990s through almost the end of FY 2003-04 (May 2004)."[176]

The Parameters and Guidelines require that in order for the claimant to show that it was mandated to incur construction costs, its supporting documentation must reflect, among other things, a finding by the governing board as follows:

- Contracting with existing private or public shelters in the area to house the increase of impounded stray or abandoned dogs, cats, or other animals specified in Statutes 1998, chapter 752 is not feasible or is more expensive than acquiring additional space and/or constructing new facilities to comply with the increased holder period required by Statutes 1998, chapter 752. This finding should include the cost to contract with existing shelters.[177]

The claimant alleges that this document reflects such a finding by the governing board "because of increased costs 'without audited records to support the increased fee request.'"[178]

[175] Exhibit A, IRC, pages 200-207.

[176] Exhibit A, IRC, page 3.

[177] Exhibit A, IRC, pages 262-263 (2006 Parameters and Guidelines Amendment, pages 6-7).

[178] Exhibit C, Claimant's Rebuttal Comments, page 2.

The section of the document, titled Agenda item # 6 "Agreement for Small Animal Sheltering Services with Victor Valley Animal Protective League, Inc.," reflects a discussion of the following:

- VVAPL proposed increase of the shelter services fee.
- Several Council members expressed concerns regarding the shelter's financial accountability and transparency.
- Councilman Burgnon expressed an opinion that "the Town should search for their own animal control facility" and "recommended that the possibility of an Apple Valley owned facility be discussed at the April 2, 2004 workshop."[179]

The Council ultimately decided not to entertain the shelter's request for increased fees until the shelter provided requested financial information, and, thus, the claimant continued under the existing contract with VVAPL. The Council also authorized staff to consider other entities for sheltering services.[180]

Although, the document reflects that the governing board was dissatisfied with the proposed increase in sheltering fees, no specific findings or mention of either the current or proposed cost to contract with the shelter is reflected in the document. In addition, as discussed further below, the decision to build the new shelter was not made until February 16, 2007,[181] three years after this meeting. Accordingly, a finding that it is not feasible to contract with an existing private or public shelter in the area to house impounded animals to comply with the increased holding period, or that it is more expensive to contract than to construct new facilities, must also relate to the decision to build in 2007.

Furthermore, not at any point during the meeting was it determined or even suggested that existing facilities were not appropriately configured or equipped to comply with the increased holding period, or that new facilities were needed to comply with the increased holding period.[182] On the contrary, the conspicuous absence of any notice of inadequacy of the VVAPL facilities during the discussion documented in these minutes suggests that the claimant had not experienced difficulty in complying with increased holding periods due to inadequate shelter facility space contracted through the VVAPL. In addition, there are no other documents in the record addressing the issue of the increased holding period or inadequacy of shelter facilities between 1999 and 2004. Nor did the claimant's governing board adopt a resolution pursuant to Food and Agriculture Code section 31755 to postpone compliance with the test claim statutes until July 1, 2000, in order to build new shelter facilities to meet the longer holding period requirement.[183] A section 31755 resolution would completely satisfy documentation

---

[179] Exhibit A, IRC, page 205. The claimant did not submit any records from the April 2, 2004 workshop.

[180] Exhibit A, IRC, page 205.

[181] Exhibit A, IRC, page 445.

[182] Exhibit A, IRC, pages 204-205.

[183] It appears that as a supporter of AB 1482, the claimant was aware of the opportunities afforded by Food and Agriculture Code section 31755. See Exhibit G, Senate Judiciary

requirements demonstrating that the construction was necessary to comply with the increased holding period as provided in the Parameters and Guidelines.

Accordingly, the Minutes of February 10, 2004 Town Council Regular Meeting, do not reflect a finding by the governing board that contracting with existing private or public shelters in the area to house impounded animals to comply with the increased holding period, was not feasible or was more expensive than acquiring additional space by the purchase of land and construction of a new facility undertaken in 2007. In addition, the 2004 minutes do not reflect a determination or any findings by the governing board required by the Parameters and Guidelines to show that the existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility would be necessary to comply with the increased holding period mandated by the test claim statutes.

b. Proposed Agenda Item for August 8, 2004 Town Council Meeting

This proposed agenda item is the only document provided by the claimant with respect to its contracting arrangement with the City of Hesperia.

The text of the Proposed Agenda Item for August 8, 2004 Town Council Meeting states as follows:

> On March 31, 2004 the Victor Valley Animal Protective League ceased to provide shelter services for the Town of Apple Valley. With concurrence of Town Council, Town staff negotiated an emergency animal sheltering arrangement for use of the Animal Shelter at the City of Hesperia. The Town has continued to use the Hesperia Shelter since that date.[184]

The text further recommends approval of the attached shelter servicing agreement with the Animal Shelter at the City of Hesperia, which "establishes the terms, and establishes fees associated with the Town's use of the Hesperia Shelter."[185]

Nothing in this document supports the claimant's assertion that the animal sheltering services arrangement with the City of Hesperia was not feasible as a long-term solution because it required the "residents to travel outside of their jurisdiction to place impounded animals…"[186]

In addition, this document does not support any other assertion made by the claimant with regard to the construction of the "temporary animal sheltering facility within the Town's jurisdiction," such as the following:

> Sheltering with the City of Hesperia ended when the Town completed the renovation of an old residential dwelling and warehouse structure in March of 2005. The renovation provided a temporary animal sheltering facility within the

---

Committee Analyses of AB 1482 as amended May 17, 1999, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml (listing Town of Apple Valley as a supporter of the bill) (accessed on March 18, 2019), page 8.

[184] Exhibit A, IRC, page 208.

[185] Exhibit A, IRC, page 208.

[186] Exhibit C, Claimant's Rebuttal Comments, page 2.

> Town's jurisdiction and eliminated the need for animal services staff to travel outside of their jurisdiction to place impounded animals into a contract shelter for housing and an easily accessible facility where town residents could look for their lost pets. (Appendix C).[187]

None of the above facts alleged to be supported by this agenda item in the IRC are mentioned in this agenda item. And, the record contains no other documents that support the above assertions.

Furthermore, the document provides no specific facts or findings regarding the adequacy of available shelter space in view of the increased holding period. And the proposed sheltering agreement was not included with this agenda item for the record on this IRC. Finally, the proposed agenda item is not accompanied by any other documents showing that the Town Council in fact considered and acted on this item.

Thus, this document only reflects that the claimant's staff arranged for sheltering services with the City of Hesperia sometime in 2004, after the VVAPL stopped providing these services; and based on the information contained in the Minutes of February 10, 2004 Town Council Regular Meeting discussed above,[188] it could be inferred that the animal sheltering arrangement with VVAPL was discontinued at that time because of disagreements about fee increases and financial disclosure policies.

Accordingly, the Proposed Agenda Item for August 8, 2004 Town Council Meeting, does not reflect any determination or specific findings required by the Parameters and Guidelines; and is neither sufficient in substance, nor in form to satisfy the documentation requirements of the Parameters and Guidelines to show that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility would be necessary to comply with the increased holding period mandated by the test claim statutes.

c. Minutes of February 16, 2007 Special Meeting (Workshop)

The claimant filed a one-page excerpt from the minutes of February 16, 2007 Special Meeting (Workshop) with its IRC.[189] This document is the first document that discusses specific plans to build a new shelter. The pertinent section of the document, quoted below in its entirety, indicates that "Apple Valley has experienced a population growth;" that the town is in need of new office space; that "existing animal shelter was always a temporary solution;" that the shelter can be designed and constructed using RDA funds on the lot previously occupied by the public works facility; and that "we like to build facilities with a 20 year life that will provide for expansion", as follows:

> 2. Public Facilities Priorities
>
> Patty Saady, Deputy Town Manager, gave a power point presentation and stated that Apple Valley has experienced a population growth. Construction of Town Hall was completed in 2002. It was intended to house all existing staff and the police department, but is nearing capacity. Municipal Services has been relocated

[187] Exhibit A, IRC, page 3.

[188] Exhibit A, IRC, pages 200-207.

[189] Exhibit A, IRC, page 445.

> to the newly completed Police and Code Enforcement building. At the end of the calendar year, we anticipate that there will be no room for growth. The Town owns 2.2 acres at the southwest corner of Civic Center Park, stated Ms. Saady. The existing animal shelter was always a temporary solution. On Tuesday, the Council approved purchase of 7 acres of industrial property on Navajo Road that staff is considering for a new public works facility, and then we can use the existing public works for an animal shelter. Both the existing public works and animal shelter are located in RDA 2. The new land (public works facility) is in close proximity to RDA 2. Both facilities could be designed and constructed using RDA funds. It is critical to begin the Town Hall expansion process now and include funding in the 2007/08 budget cycle, or we will have to rent space. Financially, it makes sense to begin the process. Mayor Pro-Tem Jasper asked, and Ms. Saady replied, that we like to build facilities with a 20 year life that will provide for expansion. Staff would like to bring plans forward to the Council, prior to July 1, for adoption. Councilman Sagona asked, and Ms. Saady replied, that expansion of the existing Town Hall is not efficient. The building was not constructed with the idea of building up. Once we have hired an architect and are in the planning stage, Mayor Pro- Tern Jasper suggested setting up a Council ad hoc committee *to* provide guidance.
>
> There is no funding currently available for a new Community Center, but there are plans on the shelf for a combined Community Center and Aquatics Center. Staff recommends combining into one multi-use building for savings in both construction and operation.
>
> **CONSENSUS:** Council directed staff to proceed with an RFP for architectural design of Town Hall expansion, Public Works, Animal Shelter, Community/Aquatics Multi-Use Center and discuss formation of an ad hoc Council committee.[190]

At this February 16, 2007 special meeting, following a presentation by staff about the opportunity to construct new shelter using RDA funds, the "Council directed staff to proceed with an RFP for architectural design" and "discuss formation of an ad hoc Council committee."[191] However, this document reflects neither a determination by the town council, nor any discussion that "constructing new facilities is necessary for the increased holding period required by Statutes of 1998, Chapter 752 because the existing facilities do not reasonably accommodate impounded stray or abandoned dogs, cats and other specified animals that are ultimately euthanized,"[192] and reflects no findings required for such a determination. There is no discussion of the increased holding period, the inadequacy of prior facilities to comply with the increased holding period, or a cost analysis of various options for complying with the increased holding period. Rather, this document demonstrates that the decision to build was motivated by an overall human population increase in the town, the city's need for additional office space, the

[190] Exhibit A, IRC, page 445.

[191] Exhibit A, IRC, page 445.

[192] Exhibit A, IRC, page 262 (2006 Parameters and Guidelines Amendment).

city's plans for expansion of public facilities, the temporary nature of the existing animal shelter, and the availability of RDA funds.

Accordingly, the minutes from the February 16, 2007 Special Meeting (Workshop), do not reflect any determination by the governing board or any specific findings required by the Parameters and Guidelines to show that existing animal shelter facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility would be necessary to comply with the increased holding period mandated by the state.

d. RFQ/RFP to Design New Animal Shelter Facility, Issued April 2, 2007

On April 2, 2007, the claimant's staff issued a Request for Qualifications/Request for Proposals (RFQ/RFP) to design the "New Shelter and Offices."[193] The claimant argues that page two of this RFQ/RFP reflects that the construction of the new animal shelter was necessary for the mandated increased holding period, as follows:

> "The Project: The project will include design of a purpose built Animal Shelter Facility including office space. The proposed Animal Control Shelter will be designed to increase the hold time for animals and improve customer service."[194]

The claimant asserts that "[t]his RFQ/RFP was released on April 2, 2007, resulting from the authorization by the Town Council following the special meeting in February 2007 and a meeting in March 2007."[195] However, the document submitted by the claimant in relation to February 2007 meeting discussed above, does not include a determination by the Town Council that the construction of the shelter was needed to comply with the increased holding period, and does not address the terms to be included in the RFQ/RFP to accommodate such a need. Moreover, the claimant has provided no documents relating to the March 2007 Council meeting.

The RFQ/RFP provides some background information on current shelter facilities, detailing the size of the facilities totaling approximately 8000 square feet, and suggests that the new facility will be designed to increase the hold time for potentially adoptable animals. However, the RFQ/RFP does not provide animal census data before and after the mandate or indicate that the existing facilities were in some way inadequate to comply with the mandated holding period requirements. Nor does the document indicate that the proposal to design the facility to increase the hold time for adoptable animals, was based on a governing board determination that construction was necessary to comply with the mandated increased holding periods. The RFQ/RFP states as follows in pertinent part:

> The current Animal Control Shelter is located on approximately 3 acres of land and shares buildings and parking with the Public Works Facility. Office space along with cat adoption, dog quarantine, and small dog adoption is housed in a 2400 sq. ft. renovated residential dwelling unit. An additional 5000 square feet of warehouse area is utilized for indoor dog runs and a cat observation area. A 600 square foot outbuilding is used as a euthanasia room and animal treatment room.

[193] Exhibit A, IRC, page 351.

[194] Exhibit A, IRC, page 299 (Final Audit Report). See also Exhibit A, IRC, page 3 (quoting this language in part).

[195] Exhibit A, IRC, page 299 (Final Audit Report).

> Animal food and supplies are stored in a freestanding shed. Other buildings located on site are the Public Works offices and warehouse.
>
> The Municipal Services Department is currently located in approximately 4000 square feet of office space at the Civic Center. This space will eventually be needed for expansion of the Police Department.
>
> **The Project**: The project will include design of a purpose built Animal Shelter Facility including office space. The proposed Animal Control Shelter will be designed to increase the hold time for potentially adoptable animals and improve customer service. Public education programs related to animal care and behavior modification will also be a priority.[196]

In addition, the RFQ/RFP reveals project requirements and considerations that appear to be more consistent with the priorities identified at the February 2007 special meeting (to build facilities with a twenty-year life that will provide for expansion for city services generally), than with the alleged need to comply with the increased holding period mandated by the test claim statutes. For example, the RFQ/RFP states the following:

> The Project will construct an Animal Control Shelter, with adequate office space for staff, reception area and animal intake/adoption rooms with adequate communication systems such as intercoms and paging capabilities; buildings to house indoor/outdoor kennels and runs for large dogs, indoor small dog/puppy kennels, intake cat cages, cat adoption room, get acquainted areas, outside runs, tortoise habitat, aviary, reptile cages, shaded corrals and a barn for keeping horses, goats, pigs, and other livestock. The facility should include wellness end exercise room, education/wildlife training room and conference room(s) including audio-visual capability, outdoor break and lunch area with windbreak and shade cover, separate outdoor area for work release inmate arrival, check-in and assignment, an examination room, grooming room/facility, quarantine room, isolation facilities for incoming animals (separate buildings for dogs and cats to minimize stress on the animals), veterinary office/surgery suite, sally port, secured parking for 100 vehicles including two horse trailers and paved public parking.
>
> This project should include the following considerations:
>
> - Identify office, kennel and storage space necessary to accommodate growth needs over the twenty (20) year planning horizon.
> - Identify a cleaning system and location of chemical room to reduce noise of these systems which tend to be very noisy.
> - The new building will include separate locker rooms and restrooms with showers for male and female employees and a break area for employees.
> - The new Animal Shelter Facility shall be designed and constructed in conformance with all State and local codes, and shall conform to the Town

[196] Exhibit A, IRC, pages 352-353, emphasis in original.

of Apple Valley Development Code and Americans with Disabilities Act requirements, latest addition.

- The new facility will utilize skylights and other design elements to provide natural lighting to all possible areas, air conditioning in office spaces, evaporative cooling and air conditioning capability in kennel areas, heating, alarm and sprinkler systems. Additionally, green technology, such as alternative heating, ice-cooling, solar and/or photovoltaic power generation capabilities shall be considered and addressed.
- The ventilation system should be designed to filter airborne diseases and minimize the cross contamination of animals.
- The installation of parking lot light standards, security gate and lighting and landscaping shall be provided in conformance with the Town of Apple Valley Development Code. Future water supply, sewer service, irrigation, telephone, internet, radio communication, and electrical conduit stubs shall be provided for future phased areas, including installation of purple irrigation pipe for future conversion to reclaimed water uses.[197]

The RFQ/RFP also indicates that the plan should be designed for a 20 year timeframe and account for growth in staff as follows: "Preliminary Design - Provide supporting materials that outline proposed conceptual design of the Animal Shelter Facility and Offices. Services shall include forecasting required growth in staffing for facilities for a twenty (20) year timeframe . . ."[198]

Thus, the RFQ/RFP to design new animal shelter facility, issued April 2, 2007, does not reflect a determination by the governing board or any specific findings required by the Parameters and Guidelines to show that existing animal shelter facilities were inadequate to hold the animals, and that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with the increased holding period mandated by the test claim statutes.

e. Proposed Agenda Item for the Redevelopment Agency Meeting (May 8, 2007 Council Meeting) and Proposed Resolution No. 2007-02 to Issue Tax Allocation Bonds to Fund Projects, Including an Animal Care/Control Shelter.

The summary statement for the proposed agenda item states as follows:

> [T]he tax increment generated by the Town's portion of the Redevelopment Agency of the Town of Apple Valley Project Area No. 2 is sufficient to provide funding for the improvements as outlined by the Deputy Town Manager at the February 16th Town Council Meeting. The proposed bonding is for a total not to exceed $43,500,000 to be repaid by the aforementioned tax increment. Projects to be funded with the bond proceeds include an animal care/control shelter and a public works facility.[199]

---

[197] Exhibit A, IRC, pages 352-353.

[198] Exhibit A, IRC, page 354.

[199] Exhibit A, IRC, page 440.

The recommended action is to adopt Resolution No. 2007- 02, authorizing the issuance, sale, and delivery of the Agency's Tax Allocation Bonds, and approving bond documents.[200] The text of the proposed Resolution No. 2007- 02,[201] states that the Agency proposes to issue tax allocation bonds "the proceeds of which, among other things, will be used to finance certain redevelopment activities benefiting the Project Area, including the furtherance of the Agency's low and moderate income housing program…" The proposed resolution does not mention the construction of an animal shelter.

These documents simply provide that in order to fund the claimant's expansion program consisting of construction projects outlined at the February 16th Town Council Meeting discussed earlier, the town plans to issue and sell bonds which will be authorized for a total principal amount not to exceed $33,500,000. These documents do not provide evidence that the Town Council determined that the construction of an animal shelter is necessary for the increased holding period mandated by the test claim statutes.

Accordingly, the proposed agenda item for the redevelopment agency meeting (May 8, 2007 Council Meeting) and the proposed resolution No. 2007-02 to issue tax allocation bonds do not reflect a determination by the governing board or any specific findings required by the Parameters and Guidelines to show that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with the increased holding period mandated by the test claim statutes.

f. Proposed Agenda Item for July 10, 2007: Council Meeting to Award Contract to WR&D Architects in the Amount of $670,000 to Design the Animal Shelter Facility.

The summary statement for this proposed agenda item recaps that (1) at the 2007 edition of the Council/Staff strategic planning and goal-setting workshop, the Council received a presentation from staff regarding the Town's *future space needs* and, after extensive discussion, authorized staff to develop and issue an RFP/RFQ for the design of a Town Hall Expansion Facility, Public Works/Corporate Yard and new Animal Shelter Facility and to commence the process of issuing redevelopment tax allocation bonds; (2) on May 8, 2007, the Town Council/Agency Board approved issuance of redevelopment tax allocation bonds, including $13,500,000 for the public works and animal shelter facilities, which had to be used in three years; (3) staff received a number of responses to the RFP/RFQ issued on April 2, 2007, including eight responses proposing design services for the animal shelter facility; (4) and that a Review Panel consisting of the Deputy Town Manager, the Director of Public Services, the Director of Finance, the Director of Municipal Services, and the Director of Economic and Community Development reviewed and evaluated each proposal, and conducted interviews and negotiation sessions with selected firms.[202]

The action recommended for the Town Council in the proposed agenda item is to award professional services agreements for design services to selected firms, including WR&D

[200] Exhibit A, IRC, page 440.

[201] Exhibit A, IRC, pages 441-444.

[202] Exhibit A, IRC, pages 446-447.

Architects LLC[203] for design of the Animal Shelter Facility in the amount of $670,000, and authorize execution of the contracts.[204]

The proposed agenda item does not contain any facts or indication that the governing board determined that the construction of an animal shelter was necessary to comply with the mandate.

Accordingly, the proposed agenda item for July 10, 2007 Council meeting to award the contract to an architectural firm to design the animal shelter facility does not reflect a determination by the governing board or any specific findings required by the Parameters and Guidelines to show that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility was necessary for increased holding period mandated by the test claim statutes.

g. Proposed Agreement with WR&D Architects to Design the Animal Shelter Facility, Including Exhibit A –WR&D Architects Proposal Dated April 26, 2007, Exhibit B –Cost Estimate, Exhibit C –Insurance Requirements.

The preliminary recitals in the proposed agreement describe the purpose of the WR&D Architects' engagement with the claimant as twofold: (1) to design a new animal shelter facility pursuant to the RFP/RFQ; and (2) design an expansion of the shelter facility to provide outside sheltering services, based on potential contracts with other governmental agencies. The text of the agreement states as follows:

> WHEREAS, Town, desires to retain Consultant for the purpose of the design of a new purpose built Municipal Services Animal Shelter pursuant to a Request for Proposals/Request for Qualifications (RFP/RFQ) defined in the request for Proposals/Request for Qualifications issued by Town; and
>
> WHEREAS, in addition, the Town desires to retain Consultant for the design of an expansion of the Municipal Services Animal Shelter Facility based on potential contracts with outside government agencies as part of this Agreement.[205]

Exhibit A describes the project as "[t]he planning and design of a new animal shelter of approximately 20,000 square feet located in Apple Valley, CA." [206] Exhibit B provides a detailed explanation of costs, including the "Needs Assessment" service, described as "Forecasting facility needs for 5, 10 and 20 year planning horizons." [207] A note to the cost estimate for the project clarifies that "[c]urrent cost is based on 20,000 square feet but will include up to 23,000 square feet shelter size" and "Shelter In Excess of 23,000 square feet" is "NOT INCLUDED IN THE COST ESTIMATE."[208]

---

[203] The proposed agreement with WR&D Architects is discussed below.

[204] Exhibit A, IRC, pages 446-447.

[205] Exhibit A, IRC, page 495.

[206] Exhibit A, IRC, page 505.

[207] Exhibit A, IRC, page 510.

[208] Exhibit A, IRC, page 512.

Neither the text of the agreement nor the exhibits identify the increased holding period mandated by the state as a reason for construction or as a consideration for the design criteria. In fact, the task of "[d]eveloping a clear definition of the program, design criteria, program objectives"[209] is left up to WR&D Architects. The only consideration for the needs assessment spelled out in the agreement includes forecasting "[f]acility needs for 5, 10 and 20 year planning horizons."

Thus, the agreement anticipates a 20,000 to 23,000 square feet shelter facility, which is a 15,000 square feet increase from previous 8,000 square feet facility. The increase in size includes an increase in new office space [based on the RFP/RFQ requirement] and accounting for growth needs over the twenty (20) year planning horizon.

In addition, the agreement anticipates further expansion of the new facility to accommodate "potential contracts with outside government agencies."[210] It could be inferred that these expansion plans were in fact realized, based on information obtained by the Controller on the claimant's website,[211] announcing new state-of-the art 36,000 square feet animal shelter facility,[212] instead of the 20,000 to 23,000 square feet facility originally anticipated under the contract with WR&D Architects pursuant to the RFP/RFQ issued on April 2, 2007. The claimant's calculation of reimbursable state-mandated costs claimed for the construction of the new shelter is also based on the costs for the entire 36,000 square foot facility.[213]

Yet, the claimant's demonstrated determination to build a new state-of-the art shelter facility that would increase available office space, accommodate growth needs over the twenty-year planning horizon, and allow for expansion to accommodate "potential contracts with outside government agencies," does not show that the old facility was inadequate to accommodate the increased holding period mandated by the state, or that the new construction was the only feasible alternative to comply with the mandate.

Accordingly, neither the agreement or WR&D Architects' proposal reflect a determination by the governing board or any specific findings required by the Parameters and Guidelines to show that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with the increased holding period mandated by the test claim statutes.

h. Minutes of July 10, 2007 Council Meeting Awarding Contract to WR&D Architects in the Amount of $670,000 to Design the Animal Shelter Facility.

The July 10, 2007 Council meeting minutes reflect that the Council considered agenda Item #15 concerning an award of professional services agreements to design the Town Hall expansion, public works facility, and animal shelter facility, and awarded the contract to design the animal

[209] Exhibit A, IRC, page 510.

[210] Exhibit A, IRC, pages 495.

[211] Exhibit B, Controller's Comments on the IRC, pages 2, 13, 121-123.

[212] Exhibit B, Controller's Comments on the IRC, pages 121-122.

[213] See several documents submitted by the claimant titled "State Formula", showing calculation of eligible percentage of acquisition/construction costs for 36,000 square feet facility. Exhibit A, IRC, pages 349-350, 671.

shelter facility to WR&D Architects.[214] The minutes do not reflect any determination by the governing board that the existing facilities were inadequate to comply with the increased holding period mandated by the state; or the alternatives to building the new shelter. The only brief mention of the "immediate need" for the new animal shelter along with the public works facility appeared in the context of a discussion on a motion to continue the item until the next Council meeting, which focused on the need of meeting the construction timeframe in order to avoid a negative financial impact if the proceeds of bonds were not spent within three years.[215]

Accordingly, the minutes of the July 10, 2007 meeting do not reflect a determination by the governing board or any specific findings required by the Parameters and Guidelines to show that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with the increased holding period mandated by the test claim statutes.

i. July 10, 2007 Council Meeting Audio Recording[216]

The claimant argues that the minutes of July 10, 2007 Town Council meeting, discussed above, do not reflect the entire conversation of the Town Council and that "there was clearly discussion regarding the lack of space and need to expand the facility" during "the discussion that led to the approval of the Notice to Proceed with Design of the Shelter," which is captured in the audio recording of the meeting.[217] Specifically, the claimant refers to the statement made by Councilman Jasper during that discussion as follows:

> [T]he July 10, 2007 Council meeting audio recording (at 1:32:37 of the recording) contains Councilman Jasper's statement that the need to build a new animal shelter is because it is "Mandated by the State to take care of our animals."[218]

The Controller notes that:

> A review of that recording confirms that Mr. Jasper made that statement, although there was no discussion at that meeting concerning shelter overcrowding due to the increased holding period or any other topics related to the requirements of the mandated program.[219]

The claimant did not submit a transcript of this audio recording with the IRC; instead, it simply identified a web address for the electronic audio recording of the July 10, 2007 Council

---

[214] Exhibit B, Controller's Comments on the IRC, pages 116-118.

[215] Exhibit B, Controller's Comments on the IRC, page 117.

[216] Exhibit A, IRC, page 347 (Claimant's Response to Draft Audit Report) (providing the following links to the July 10, 2007 Town Council meeting audio recording: http://www.applevalley.org/government/view-meetings-online; http://applevalley.granicus.com/MediaPlayer.php?view_id=19&clip_id=471).

[217] Exhibit A, IRC, pages 298 (Final Audit Report) and 347 (Claimant's Response to Draft Audit Report).

[218] Exhibit A, IRC, page 3; see also Exhibit A, IRC, pages 298-299 (Final Audit Report).

[219] Exhibit B, Controller's Comments on the IRC, page 14.

meeting.[220] This does not comply with the Commission's regulations. Section 1185.1(h) of the Commission's regulations require that all accompanying documents be filed with the Commission in accordance with section 1181.3 of the regulations, which instructs that all electronic documents be in legible and searchable PDF format that allows Commission staff to append additional pages for posting on the Commission's website with proof of service. Here, the contents of the audio recording at issue were not submitted in PDF format and, therefore, were not included in the IRC record posted on the website or properly served. In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations requires that any assertion of fact by the parties to an IRC must be supported by documentary evidence.

Nevertheless, the assertion about the statement made by Councilman Jasper "that the need to build a new animal shelter is because it is "Mandated by the State to take care of our animals,'" is not disputed by the Controller. However, even if this statement was supported by evidence, it would not in any way help to establish that the claimant's governing board made a requisite determination that the existing facilities did not reasonably accommodate the increased holding period for impounded stray or abandoned animals that are ultimately euthanized, and that constructing new facilities was necessary to comply with the mandate. As correctly noted by the Controller, Councilman Jasper's statement, as quoted by the claimant, is not on point because it does not address any specific requirements of the mandated program; it merely refers to the preexisting obligation to take care of animals, which in itself "is not a new requirement resulting from the test claim legislation."[221] In addition, a statement made by an individual board member is only an expression of his or her individual opinion, and is not a determination made by the governing board as a body.[222] The Parameters and Guidelines require that requisite determination and findings be made by the governing board.[223] However, there is no evidence that the Town Council analyzed the issue and made the required determination.

Accordingly, while it is not disputed that Councilman Jasper made a statement that it is "Mandated by the State to take care of our animals," this statement does not constitute a determination by the governing board that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with the increased holding period mandated by the test claim statutes.

---

[220] Exhibit A, IRC, page 347.

[221] Exhibit B, Controller's Comments on the IRC, page 14. See also Exhibit B, Controller's Comments on the IRC, page 46 (Statement of Decision, *Animal Adoption*, 98-TC-11, adopted January 25, 2001, page 11, stating that "Since 1991, Penal Code section 597.1 has required peace officers and animal control officers employed by local agencies to take possession of any stray or abandoned animal, and provide care and treatment for the animal.").

[222] *Citizens for Responsible Open Space v. San Mateo County Local Agency Formation Com.* (2008) 159 Cal.App.4th 717, 729; 45 Cal.Jur.3d (2016) Municipalities, section 326 (stating that "legislative body must function as a body, and not by its members separately").

[223] Exhibit A, IRC, page 262 (2006 Parameters and Guidelines Amendment).

j. January 06, 2009 Email Stating that the Town Council Approved the Purchase of Land for Animal Shelter for $865,000 during May 13, 2008 Closed Session and June 17, 2008 Escrow Closing Statement for the Purchase of Land for $865,000.

These two items reflect that about a year after the design of the new shelter facility began, the claimant acquired a plot of land for the new shelter for $865,000, which was approved by the Town Council during closed session a month earlier.[224] No transcripts, agenda items, or minutes from the closed session that would reflect any findings or determination by the board were submitted by the claimant.

Thus, nothing in these documents suggests that the claimant's governing board made a determination or any specific findings required by the Parameters and Guidelines that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with the increased holding period mandated by the test claim statutes.

k. Proposed Agenda Item for September 9, 2008 Town Council Meeting to Review and Approve Construction Plans for the New Animal Shelter Facility.

The claimant alleges that discussion and planning began to construct a new Shelter Facility in September 2008, and refers to the proposed agenda item for the September 9, 2008 Town Council meeting to show that planning included "specific consideration for increased kennel capacity, quarantine rooms, isolation facilities for sick/injured animals, increased holding times and a ventilation system to filter airborne diseases and minimize cross contamination of animals," which were necessary, according to the claimant's narrative, because "soon it became evident that this facility [the renovated facility where the shelter was relocated in 2005] was inadequate because the building was not purpose built and did not provide necessary, isolation, quarantine or kennel space for an increasing number of impounded animals or adequate rooms to provide necessary medical treatment."[225]

The document, referred to by the claimant, is a half-page proposed agenda item for the September 2008 Council meeting, taking place a year and a half after the initial decision to build the shelter was made, after the bonds to fund the construction were issued, and after the contract to design the shelter was awarded.

The summary statement of the proposed agenda item briefly lists a number of features of the facility, and further states that: "The design of the purpose built shelter will increase holding time for animals to increase adoption rates, create holding areas to isolate animals at intake, and provide a ventilation system designed to filter airborne diseases and minimize cross contamination of animals."[226] The document further states that the plans are available in the Town Council's office for review by the Council.[227] The recommended action for this item was to"[r]eview and approve the construction plans for Apple Valley Animal Shelter Facility and

[224] Exhibit A, IRC, pages 437-439.

[225] Exhibit A, IRC, page 3.

[226] Exhibit A, IRC, page 209, handwritten underline in original.

[227] Exhibit A, IRC, page 209.

direct staff to proceed with the project."[228] This proposed agenda item was not accompanied by any other documents showing that the Town Council in fact considered and acted on this item.

While there is a general statement in the staff proposed agenda item that "the design . . . will increase holding time,"[229] the agenda item does not refer to the mandate and does not reflect any relevant findings by the governing board indicating that the existing facility is inadequate to comply with the increased holding period mandated by the state and that constructing the new facility is the only feasible or the most cost effective option for complying with the required increased holding period.

Finally, despite the claimant's mischaracterization of the timing of this item as the beginning of the discussion and planning to construct a new shelter facility, this agenda item was prepared well after the initial decisions to build the facility were already made. However, no documents were provided by the claimant in relation to those earlier decisions to reflect a determination by the governing board that existing facilities were inadequate to comply with the increased holding period and that the construction was necessary to comply with the mandate.

Accordingly, the proposed agenda item for the September 9, 2008 Town Council meeting does not reflect a determination by the governing board or any specific findings required by the Parameters and Guidelines to show that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with the increased holding period mandated by the test claim statutes.

3. The Controller's Reduction of Costs in Finding 1 Is Correct as a Matter of Law.

The documents discussed above indicate that the claimant acquired additional space by purchasing land and constructing a new facility because of the availability of redevelopment agency funds; an overall population increase in the Town of Apple Valley; the need for additional office space; its plan to accommodate growth needs over the twenty-year planning horizon; its plan to expand the shelter facility to accommodate potential contracts with outside government agencies; and the temporary nature of the existing animal shelter where the animals were housed because long-term contracting arrangements with other shelters were terminated by the claimant for reasons unrelated to the mandate. The claimant has provided none of the evidence required by the Parameters and Guidelines that the governing board determined that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with increased holding period mandated by the state; that the existing facilities were not appropriately configured or equipped to comply with the increased holding period mandated by the state; that remodeling existing facilities was not feasible or was more expensive than acquiring additional space by purchasing land and constructing a new facility to comply with the increased holding period; and that contracting with existing private or public shelters in the area to house the increase of impounded stray or abandoned dogs, cats, or other animals specified in Statutes 1998, chapter 752 was not feasible or was more expensive than acquiring additional space by purchasing land and constructing a new facility to comply with the increased holding period.

[228] Exhibit A, IRC, page 209.

[229] Exhibit A, IRC, page 209, emphasis omitted.

Based on the foregoing, the Commission finds that the Controller's reduction of costs claimed for acquisition of additional space and construction of a new facility is correct as a matter of law.

Since the Controller's finding reduced the claims for acquiring additional space and construction of a new facility to zero, the Commission makes no findings on the other conclusions made by the Controller in Finding 1; namely, that the claimant failed to provide detailed calculations for determining the reimbursable portion of costs due to the mandate, and that some construction expenses were incurred outside of the audit period.[230]

C. The Controller's Disallowance of Care and Maintenance Costs as Claimed (Finding 2), Is Correct as a Matter of Law. However, the Controller's Recalculation of Annual Labor Costs to Determine Reimbursable Costs for Care and Maintenance Is Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Parameters and Guidelines authorize reimbursement for the care and maintenance costs of impounded stray or abandoned animals that die during the increased holding period or are ultimately euthanized after the increased holding period, which can be claimed either by an actual cost method or by performing a time study.[231] The actual cost method is a specified formula in the Parameters and Guidelines designed to reimburse a proportion of total costs incurred specifically for care and maintenance activities based on the incremental increase in service (the increased holding period) and the animals for which no fees can be collected (animals that are not adopted, redeemed, or released to a nonprofit animal rescue organization; but instead die during the increased holding period or are ultimately euthanized). Under this formula the costs for the care and maintenance of dogs and cats must be calculated as follows:

> Actual Cost Method – Under the actual cost method, actual reimbursable care and maintenance costs per animal per day are computed for an annual claim period.
>
> a) Determine the total annual cost of care and maintenance for all dogs and cats impounded at a facility. Total cost of care and maintenance includes labor, materials, supplies, indirect costs, and contract services.
>
> b) Determine the average daily census of dogs and cats.
>
> c) Multiply the average daily census of dogs and cats by 365 = yearly census of dogs and cats.
>
> d) Divide the total annual cost of care by the yearly census of dogs and cats = cost per animal per day.
>
> e) Multiply the cost per animal per day, by the number of impounded stray or abandoned dogs and cats that die during the increased holding period or are ultimately euthanized, by each reimbursable day (the difference between three days from the day of capture, and four or six business days from the day after impoundment).[232]

---

[230] Exhibit A, IRC, pages 295-301 (Final Audit Report).

[231] Exhibit A, IRC, pages 265-269 (2006 Parameters and Guidelines Amendment).

[232] Exhibit A, IRC, pages 266-267 (2006 Parameters and Guidelines Amendment).

For "other animals," the actual cost formula is essentially the same, except that the number of reimbursable days is not counted as "the difference between three days…and four or six business days." Because there was no holding period required under prior law for "other animals," the "reimbursable days" multiplier is simply "four or six business days."[233]

In addition, the costs must be traceable and supported by contemporaneous source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.[234]

The claimant elected to use the actual cost method to claim its care and maintenance costs.[235] The claimant, however, did not identify the costs allowable under the first step of the actual cost method formula, such as labor costs, which were incurred specifically for the care and maintenance component during each year of the audit period.[236] Instead, the claimant used a different formula to calculate total annual care and maintenance costs by taking a total unsegregated amount of all shelter expenditures (with the exclusion of the Spay/Neuter Program expenditures) and adding a 40 percent overhead factor for the Municipal Services Director, instead of adding up only those categories of expenditures that are specified in the Parameters and Guidelines formula that directly relate to the care and maintenance of animals.[237] The claimant then applied the rest of the steps of care and maintenance formula to this unsegregated amount of total shelter costs to arrive at the amount that it claimed as its actual care and maintenance costs.[238]

The Controller concluded that the claimant's methodology did not comply with the Parameters and Guidelines for a number of reasons and recalculated the costs for care and maintenance, reducing the claims for care and maintenance during the audit period from $153,233 to $33,584.[239]

The claimant challenges *only* the Controller's recalculation of annual labor costs, which is part of the first step in the formula required by the Parameters and Guidelines for calculating care and maintenance costs.

Based on the analysis herein, the Commission finds that the Controller's disallowance of care and maintenance costs as claimed is correct as a matter of law because the claimant did not comply with the Parameters and Guidelines. However, the Controller's recalculation of annual labor costs is arbitrary, capricious, and entirely lacking in evidentiary support.

---

[233] Exhibit A, IRC, pages 268-269 (2006 Parameters and Guidelines Amendment).

[234] Exhibit A, IRC, page 259 (2006 Parameters and Guidelines Amendment).

[235] Exhibit A, IRC, page 302 (Final Audit Report).

[236] Exhibit A, IRC, pages 405-406 (2007-2008 Amended Reimbursement Claim), 643-644 (2008-2009 Amended Reimbursement Claim).

[237] Exhibit A, IRC, page 303 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, pages 27-28.

[238] Exhibit A, IRC, pages 303-304 (Final Audit Report).

[239] Exhibit A, IRC, pages 294, 301 (Final Audit Report).

1. The Controller's Disallowance of Care and Maintenance Costs as Claimed Is Correct as a Matter of Law and Supported by Evidence in the Record Because the Claimant Did Not Comply with the Parameters and Guidelines.

The Controller found that the claimant's methodology used to claim care and maintenance was incorrect and did not comply with the Parameters and Guidelines for the following reasons:

> The methodology is incorrect for a number of reasons. First, using the total of costs incurred within the animal shelter less costs for the spay and neuter program assumes that all of the remaining costs were 100% related to the care and maintenance of animals. This is an incorrect assumption, as certain non-reimbursable activities take place within the animal shelter, such as animal licensing and adoption. In addition, certain activities take place that are not related to care and maintenance, such as employee education and training, meetings and conferences, office-related expenditures, and costs for veterinary medical services. Allowable costs for these activities are claimable under a different cost component. There is no language in the parameters and guidelines permitting claimants the option to claim costs for multiple cost components using the Actual Cost Method option prescribed for care and maintenance activities. In addition, the factors unique to claiming costs for care and maintenance are not found within the other cost components.[240]

The Commission finds that the Controller's disallowance of care and maintenance costs as claimed, is correct as a matter of law and supported by evidence in the record since the claimant did not comply with the Parameters and Guidelines.

The Parameters and Guidelines are regulatory in nature and, once adopted and issued are final and binding on the parties.[241] The Parameters and Guidelines require the application of a specific formula in order to detail the care and maintenance costs under the actual cost method. The formula first requires a claimant to calculate the total annual costs incurred to provide care and maintenance for all animals housed in its shelter(s) by adding up pertinent labor, materials, supplies, indirect costs, and contract services costs. While the Parameters and Guidelines use inclusive language to describe costs for this component ("total cost of care and maintenance includes labor, materials, supplies…") the care and maintenance costs cannot be interpreted beyond the reasonable scope of the approved activity, to include labor, materials, supplies, indirect costs, and contract services costs incurred for all other activities conducted by the shelter beyond *care and maintenance.*

Here, the claimant, by its own admission, used total unsegregated shelter division expenditures to arrive at its total care and maintenance costs. While the claimant excluded from the total shelter costs non-reimbursable expenditures for the Spay/Neuter Program, the Controller found that remaining total shelter division costs included expenditures for activities not related to care and maintenance (licensing and adoption; activities that are not eligible for reimbursement), and

---

[240] Exhibit A, IRC, page 304 (Final Audit Report).

[241] *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

activities that could be reimbursable under other program components (such as activities related to employee training, office-related expenditures, providing veterinary medical services).[242]

Accordingly, the Commission finds that the Controller's disallowance of costs for care and maintenance as claimed is correct as a matter of law and supported by evidence in the record.

2. The Controller's Recalculation of Annual Labor Costs to Determine Reimbursable Costs for Care and Maintenance Is Arbitrary, Capricious, and Entirely Lacking in Evidentiary Support.

The Controller recalculated care and maintenance costs, allowing reimbursement of $33,584 for the audit period (reduced from $153,233).[243]

The recalculation involved many steps.[244] However, the claimant challenges *only* the Controller's recalculation of annual labor costs, which is part of the first step in the formula required by the Parameters and Guidelines for calculating care and maintenance costs.[245] The claimant contends that the Controller's reduction of actual time for various employees for the care and maintenance calculation was "illogical, incorrect, and arbitrary," and that it results in a reduction of actual costs incurred, does not allow the *actual time* for employees to perform the care and maintenance calculation and erroneously concluded that staff time between all positions had to total 100 percent.[246] The underlying facts as described in the documentation provided by the parties are as follows.

During the audit, the Controller "noted that a significant portion (around 75%) of annual costs incurred by the animal shelter were for employee salaries and benefits."[247] However, the claimant did not identify any salaries and benefits for the audit period for the care and maintenance component on the reimbursement claim forms.[248] Thus, the Controller worked with the claimant to determine annual labor costs for care and maintenance.

An email dated November 10, 2015, from the Controller's auditor to the claimant asks the claimant to assign a percentage to the five employee classifications involved in the care and maintenance activity and to provide a brief description explaining the percentage as follows:

> During my visit, you provided duty statements (job descriptions) for the various employee classifications that comprised the shelter staff during the audit period . . . .

[242] Exhibit A, IRC, pages 302-304 (Final Audit Report).

[243] Exhibit A, IRC, pages 294, 301 (Final Audit Report).

[244] Exhibit A, IRC, pages 301-314 (Final Audit Report).

[245] Exhibit A, IRC, pages 9-10; Exhibit C, Claimant's Rebuttal Comments, pages 8-12.

[246] Exhibit A, IRC, pages 9-10.

[247] Exhibit B, Controller's Comments on the IRC, page 86 (March 15, 2016 email from Jim Venneman of the State Controller's Office to the claimant).

[248] Exhibit A, IRC, page 304 (Final Audit Report).

Classifications in which care and maintenance activities are mentioned in the Class Characteristics or elsewhere in the duty statement:

1. ANIMAL SHELTER SUPERVISOR
2. REGISTERED VETERINARY TECHNICIAN
3. ANIMAL CONTROL TECHNICIAN
4. ANIMAL SHELTER ATTENDANT
5. ANIMAL SHELTER ASSISTANT

Classifications in which care and maintenance activities are NOT mentioned in the Class Characteristics or elsewhere in the duty statement:

6. ANIMAL CONTROL SUPERVISOR
7. ANIMAL CONTROL OFFICER I
8. ANIMAL CONTROL OFFICER II

From this analysis, it appears that five out of eight classifications were involved in care and maintenance activities to varying degrees. For these five classifications, please assign a percentage of care and maintenance involvement and provide a brief description as to why you assigned that percentage. If you believe that the remaining three classifications were also involved in care and maintenance activities to a certain extent, please explain their involvement that is not currently reflected in the duty statement and also provide a percentage of involvement.[249]

The Controller's auditor explained the purpose of requesting the duty statements as follows:

> The purpose of requesting duty statements is to assist us in determining the percentage of the daily workload that each classification devoted to caring for and maintaining the animals (cleaning, feeding and grooming). The goal is to assign a pro-rata percentage to those classifications involved in care and maintenance activities, where the sum of all percentages equal to 100%.[250]

An email from the Controller's auditor to the claimant with an attachment describing the status of the audit, dated March 15, 2016,[251] indicates that the claimant provided duty statements for the animal shelter supervisor, registered veterinary technician, animal control technician, animal shelter attendant, and animal shelter assistant, which "indicate that shelter staff perform certain activities that are outside the scope of animal care and maintenance activities."[252] The email

[249] Exhibit A, pages 366-367 (Claimant's Response to Draft Audit Report); Exhibit C, Claimant's Rebuttal Comments, page 21.

[250] Exhibit A, page 366 (Claimant's Response to Draft Audit Report); Exhibit C, Claimant's Rebuttal Comments, page 21.

[251] Exhibit B, Controller's Comments on the IRC, pages 84-89 (March 15, 2016 email from Jim Venneman of the State Controller's Office to the claimant).

[252] Exhibit B, Controller's Comments on the IRC, page 86 (March 15, 2016 email from Jim Venneman of the State Controller's Office to the claimant).

again requests the claimant to provide the "percentage involvement of the various employee classifications within the animal shelter in animal care and maintenance activities," and salary information.[253]

On April 12, 2016, the claimant provided by email the "percent of care and maintenance per employee classification," with the following percentages:

> Classifications in which care and maintenance activities are mentioned in the Class Characteristics or elsewhere in the duty statement:
>
> Animal Shelter Supervisor = 10% time spent on providing care to impounded animals . . .
>
> Registered Veterinary Technician = 85% time spent caring/maintaining animals . . .
>
> Animal Control Technician = 25% time spent maintaining shelter disinfecting kennels . . .
>
> Animal Shelter Attendant = 80% time spent caring/maintaining the animals and 5% overseeing volunteer and work releases (who provide care and maintenance) . . .
>
> Animal Shelter Assistant = 80% time spent caring/maintaining the animals and 5% overseeing volunteer and work releases (who provide care and maintenance) . . .
>
> Classifications in which care and maintenance activities are NOT mentioned in the Class Characteristics or elsewhere in the duty statement:
>
> Animal Control Supervisor = 5% Shelter (morning cleaning/feeding dogs) . . .
>
> Animal Control Officer 1 = 10% Shelter (morning cleaning/feeding dogs) . . .
>
> Animal Control Officer II = 10% Shelter (morning cleaning/feeding dogs) . . .[254]

After the April 12, 2016 email was sent, the claimant alleges that the Controller "made several phone calls to Town staff and emails requesting that now ALL employee percentage allocations above be reduced so all their time allocations between them all added together totaled to not exceed 100[%]."[255] The claimant provides an email from the Controller dated April 13, 2016, which states the following:

> For the Animal Shelter Supervisor, I see you have 5% administering medications, first aid, etc. highlighted rather than the 10% providing care to impounded animals. If we correctly use the 10% providing care to impounded animals, that

[253] Exhibit B, Controller's Comments on the IRC, pages 86-87 (March 15, 2016 email from Jim Venneman of the State Controller's Office to the claimant).

[254] Exhibit C, Claimant's Rebuttal Comments, pages 8-9, 20 (April 12, 2016 email from the claimant to the Controller).

[255] Exhibit C, Claimant's Rebuttal Comments, page 9.

will make the grand total 105%. Could you revise the numbers one last time so that the grand total is 100%?[256]

The audit report reduces the percentages of the employee classifications performing care and maintenance activities to 100 percent, and includes the following "table [which] details the percent of animal care and maintenance per employee classification for the town's animal shelter *as determined by shelter management*:"[257]

FY 2007-2008 and FY 2008-2009

Employee Classification:	
Animal Shelter Attendant/Assistant	60%
Animal Control/Customer Service Technician	5%
Animal Control Officer	5%
Animal Control Supervisor	5%
Registered Veterinary Technician	20%
Animal Shelter Supervisor	5%
	100%[258]

The audit report further states as follows:

Calculation

Based on our inquiries, we concurred with the above percentages of employee classification involvement as determined by the town. Once we determined the employee classifications involved in the care and maintenance of animals and *the extent of their involvement*, we calculated allowable costs for labor, including the applicable percentages of actual salaries and benefits costs incurred by the town for this cost component.[259]

The Controller's recalculation of annual labor costs for care and maintenance of animals totaled $210,000 for fiscal year 2007-2008 and $155,101 for fiscal year 2008-2009.[260]

Since receiving the Draft Audit Report, the claimant has contended that the Controller's "demands" to reduce percentages of care and maintenance time for several employee classifications were incorrect and resulted in a reduction that does not reflect "actual

[256] Exhibit C, Claimant's Rebuttal Comments, page 19 (April 13, 2016 email from Amy Arghestani of the State Controller's Office to the claimant).

[257] Exhibit A, IRC, page 305 (Final Audit Report, emphasis added).

[258] Exhibit A, IRC, page 305 (Final Audit Report).

[259] Exhibit A, IRC, page 306 (Final Audit Report), emphasis added.

[260] Exhibit A, IRC, page 306 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, page 29.

reimbursable time and cost spent on Care and Maintenance activities."[261] First, the claimant contends that the animal shelter attendant's time devoted to care and maintenance should be 85 percent, rather than 60 percent; and that the animal shelter supervisor's time devoted to care and maintenance should be 10 percent, rather than 5 percent, as originally provided by the claimant.[262] The claimant states as follows:

> ***SCO did not allow <u>actual</u> time allotment for various employees for Care and Maintenance calculation and erroneously concluded that staff time between all positions had to total 100%. This is incorrect and actual staff time should be allowed as originally requested by the Town and not reduced arbitrarily as required by the auditor:***
>
> **Animal Shelter Attendant's time** should be classified as 85%[[263]] directly related to care and maintenance activities as originally identified by the Shelter representative before the SCO auditor required that the Town reduce their time spend on care and maintenance activities to 60%.
>
> **Animal Shelter Supervisor's time** should be classified as 10% directly related to care and maintenance instead of the 5% allowed. The original allocation of 10% had to be arbitrarily cut back to satisfy the SCO auditors demand to reduce allocations.[264]

While the claimant agrees with the Controller that only a portion of salaries and benefits for certain shelter employee classifications should be counted towards care and maintenance costs,[265] the claimant argues that

> We question how the SCO auditor can determine, just by looking at the Job Descriptions, how much time is spent on each job duty. There is no indication of how much employee time is required to be spent on each activity on the Job Description documents. Clearly some job duties take much more employee time than others. For example, activity bullet point #10 in the Job Description statement for the Animal Shelter Attendant . . . states, "Assists in evacuation of animals during local emergencies or disasters." This may never occur, however, bullet #1, "Maintains animal facilities, including cleaning and disinfecting kennels", and Bullet point 2, "Provides care to impounded animals," may take

[261] Exhibit A, IRC, pages 9-10, 313 (Final Audit Report).

[262] Exhibit A, IRC, pages 10, 312-313 (Final Audit Report).

[263] Although this quote states that the Animal Shelter Attendant's time attributable to care and maintenance was originally reported as 85 percent, the percentage originally reported by the claimant to the Controller's Office, in its April 12, 2016 email, was 80 percent. (see Exhibit C, Claimant's Rebuttal Comments, pages 8-9, 20 [April 12, 2016 email from the claimant to the Controller].)

[264] Exhibit A, IRC, page 9, emphasis in original.

[265] Exhibit C, Claimant's Rebuttal Comments, page 8.

> most of their time. Reviewing job descriptions alone cannot provide allocation of time per activity as the SCO suggests.[266]

Second, the claimant alleges that the Controller erroneously concluded that staff time between all positions had to total 100 percent.[267] The claimant states that "[w]hile it is logical that the total time allotted for each individual on various activities must total to 100% - there is no reason why the total time spent by a GROUP of different individuals on a mandated activity must add to 100% between all of them. We asked the SCO to examine this finding and to explain their reasoning, but the SCO did not respond either formally or informally and provided no explanation."[268]

The claimant further alleges that "[t]he Audit Report falsely implies that the percentage allocations shown in the Final Audit report were determined by the town shelter management staff."[269] The claimant asserts that

> This statement and the percentages are false and misleading because those were NOT the percentages of daily workload devoted to caring for and maintaining animals as determined by town staff, but rates that were artificially created to satisfy the demands of the SCO auditor. Twice the auditor came back to Town staff and asked them to reduce their allocation of time between all the employee classifications to balance to 100%.[270]

Finally, the claimant points to the audits of other animal shelters stating that:

> Upon examining other State Audits of the same Animal Adoption program we discovered inconsistent computational methodologies used by the auditor. In most audits, the SCO did NOT require that all staff time spent on care and maintenance be limited to 100%. The SCO did not require arbitrary reduction of staff time for almost all of the other Audits conducted. Therefore, the statement that "we view the activity as a whole where the responsibilities are divided among various employee classifications, and the sum of the responsibilities performed by the employees equals 100%" is not the common methodology used.[271]

In response to the IRC, the Controller contends that its methodology is not arbitrary and that the "60% allocation for the Animal Shelter Attendant classification and the 5% allocation for the Animal Shelter Supervisor classification are reasonable determinations of the actual time spent by these employees performing care and maintenance activities" as follows:

> For the Animal Shelter Attendant classification, the town states that employees in this position spend 85% of their total time on animal care and maintenance. However, it did not provide any analysis to support this conclusion. We analyzed

---

[266] Exhibit C, Claimant's Rebuttal Comments, page 10.

[267] Exhibit A, IRC, page 9, 313 (Final Audit Report).

[268] Exhibit A, IRC, page 10; see also, Exhibit C, Claimant's Rebuttal Comments, page 8.

[269] Exhibit C, Claimant's Rebuttal Comments, page 9, emphasis omitted.

[270] Exhibit C, Claimant's Rebuttal Comments, page 9.

[271] Exhibit C, Claimant's Rebuttal Comments, page 10.

the duty statement for Animal Shelter Attendants (Tab 10) and found that the 85% allocation preferred by the town is not supported. The duty statement lists a total of 11 bulleted "essential job functions." Only the second bullet qualifies as being mostly directly related to care the maintenance activities. That bullet states: "[p]rovides care to impounded animals by providing food, water, and comfort; observes animal behavior and health; isolates sick, quarantined, or injured animals; notifies supervisor or other staff members if an animal needs immediate veterinary care." The remaining bullets describe activities such as "cleans office areas, reviews adoption applications, assists in screening calls and visitors, takes photographs of the animals, maintains shelter and office supplies, updates and modifies impound records, oversees volunteers and work release orders, assists Registered Veterinary Technician and other staff with medical exams," etc. Based on these descriptions, this classification is also performing many other activities, some of which are reimbursable under other components of this mandated program (e.g., necessary and prompt veterinary care, maintaining non-medical records, lost and found lists), as well as various administrative activities and non-mandated activities. We believe the 60% allocation to care and maintenance [sic] activities is more representative of this classification's daily duties. In fact, it is possible that the allocation is actually lower than 60%.

For the Animal Shelter Supervisor classification, the town states that the employee in this position spends 10% of their total time on animal care and maintenance. However, it did not provide an analysis to support this conclusion. We also analyzed this position's duty statement (Tab 11) and found that a 5% allocation is reasonable. The "Class Characteristics" section of the duty statement says, "[w]hile the incumbents may respond to calls for service or become involved with animal care activities, the primary responsibilities are supervisory and administrative, including the coordination of activities with those of other Town departments." The duty statement lists a total of 21 bulleted "essential job functions," one of which includes care and maintenance activities. Most of the remaining activities are supervisorial in nature while others are reimbursable under other components of this mandated program. Therefore, we believe that the 5% allocation of care and maintenance activities is more representative of this classification's duties.

We believe the 60% allocation for the Animal Shelter Attendant classification and the 5% allocation for the Animal Shelter Supervisor classification are reasonable determinations of the actual time spent by these employees performing care and maintenance activities. Further, the allocations were not assigned or determined arbitrarily, but rather are based on information detailed in the town's own duty statements.[272]

With respect to the 100 percent allocation of time allocated across the employee classifications performing care and maintenance, the Controller simply states that "[w]hen considering care and maintenance, we view the activity as a whole, where the responsibilities are divided among

[272] Exhibit B, Controller's Comments on the IRC, page 29.

various employee classifications, and the sum of the responsibilities performed by the employees equals 100%."[273]

Based on this record, the Commission finds that the Controller's recalculation of annual labor costs is arbitrary, capricious, and entirely lacking in evidentiary support.

With respect to the Controller's audit decisions, the Commission's review is limited to determining 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.[274] Under this standard, the Commission may not reweigh the evidence or substitute its judgment for that of the Controller. The Commission's review is limited to "ensur[ing] that [the Controller] 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."[275]

Here, neither the Final Audit Report nor the Controller's comments on the IRC fully explain the methodology used to adjust and reduce the percentages allocated to the classifications performing care and maintenance services. On the one hand, the Controller asserts that the percentages were reduced based on its review of the duty statements.[276] On the other hand, it appears from the record that the Controller's allocation of percentages, including those for the animal shelter attendant and the animal shelter supervisor, were reduced in order for the allocation of percentages to simply add up to 100 percent.[277]

However, if the methodology used by the Controller estimates percentages of *time* spent by the claimant's employees on care and maintenance, then adding these percentages across all employee classifications to a limit of 100 percent does not make sense and is arbitrary, capricious, and entirely lacking in evidentiary support. For example, employees in five different classifications could each spend 60 percent of their time on care and maintenance, which clearly exceeds 100 percent if added together. And, in this case, the claimant's April 12, 2016 email suggests that the time spent by the classifications identified to provide care and maintenance services clearly exceeds 100 percent when added together.

Moreover, if the Controller used a factor or methodology *other than time* to calculate annual labor costs, then the record provides no explanation of that methodology. The Final Audit Report refers to "*the extent of*" and "*percentages of employee classification involvement*" and "*applicable percentages of actual salaries and benefits costs*," but does not explain how the extent of involvement and the applicable percentages were determined and applied with respect

---

[273] Exhibit B, Controller's Comments on the IRC, page 28.

[274] *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (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.

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

[276] Exhibit A, IRC, page 314 (Final Audit Report).

[277] Exhibit A, IRC, pages 305 (Final Audit Report), 363-366 (Claimant's Response to Draft Audit Report).

to individual employee classifications and balanced across classifications to 100 percent.[278] The Controller simply states that "[w]hen considering care and maintenance, we view the activity as a whole, where the responsibilities are divided among various employee classifications, and the sum of the responsibilities performed by the employees equals 100%."[279] This statement does not explain what is being calculated, or how the Controller came up with annual labor costs of $210,000 for fiscal year 2007-2008 and $155,101 for fiscal year 2008-2009 for all care and maintenance activities of the shelter (prior to segregating out the reimbursable portion of all annual care and maintenance costs for the increased holding period which was only found to be $33,584 for the entire audit period).[280] As the claimant states, "[w]e asked the SCO to examine this finding and to explain their reasoning, but the SCO did not respond either formally or informally and provided no explanation."[281]

In response to the Draft Proposed Decision, the Controller supports the finding that "our recalculation of allowable care and maintenance costs, in which we adjusted the percentages allocated to the classifications performing annual care and maintenance services is incorrect," and states it will reinstate $13,559 to the claimant as allowable costs, using the percentages determined by the claimant as follows:

> We re-calculated allowable care and maintenance costs using the staff participation percentages determined by the town and identified additional allowable costs of $13,559 ($12,562 for salaries and benefits and $997 for related indirect costs). We will re-issue the final audit report and recognize the additional allowable costs, pending the Commission's decision on this incorrect reduction claim.[282]

The claimant, in response, states that allowable costs should total $30,262, and not $13,559 as identified by the Controller, based on the "staff participation percentages determined by the town."[283] The claimant contacted the Controller's Office about the discrepancy in the re-calculation, and submitted an email from the Controller's Office, dated April 15, 2020, for the record.[284] The Controller's April 15, 2020 email states that the Controller adjusted only the Animal Shelter Attendants' time from 60 percent to 85 percent, and the Animal Shelter Supervisor's time from five percent to ten percent, and that $9,486 and not $13,559 as originally stated, should be reinstated to the claimant as follows:

> I spent some time reviewing your spreadsheet and comparing it with our calculations and figured out our differences are due to the percentages of time.

---

[278] Exhibit A, IRC, page 306 (Final Audit Report), emphasis added.

[279] Exhibit B, Controller's Comments on the IRC, page 28.

[280] Exhibit A, IRC, page 306 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, page 29.

[281] Exhibit A, IRC, page 10; see also, Exhibit C, Claimant's Rebuttal Comments, page 8.

[282] Exhibit E, Controller's Comments on the Draft Proposed Decision, pages 1-2.

[283] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 1.

[284] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 1-2, 5, 14.

> We are only adjusting the Animal Shelter Attendants time from 60% to 85%, and the Animal Shelter Supervisor's time from 5% to 10%. We took these percentages directly from the Commission's Draft Proposed Decision and the Town of Apple Valley's Response to the Audit Report (see attached PDF).
>
> I updated your Post IRC spreadsheet to clearly show the SCO's calculation for the audit (pre IRC), and SCO's calculation post IRC. I color-coordinated the different categories, which I think makes things clearer to view.
>
> With that being said, during this review, we found a formula error with our initial calculations, and confirmed that **the amount to be reinstated is $9,486 ($8,860 in salaries and benefits and $626 in indirect costs)** and not $13,559 - which is what I had included in the April 7, 2020 letter to the Commission.[285]

The claimant contends that the Controller's recalculation is wrong and that the Draft Proposed Decision "intended that ALL actual "staff participation percentages determined by the town," . . . be used to determine allowable care and maintenance costs."[286] The claimant further states the following:

> It is clear from the record that more than two positions were involved in performing eligible care and maintenance services and therefore re-computations should include ALL actual positions and percentages. The State Controller auditors themselves determined in their Audit Report that all seven classifications provided eligible care and maintenance services . . .

The claimant is correct. As indicated above, the Controller's Final Audit Report finds that all of the classifications identified by the claimant's April 12, 2016 email performed care and maintenance activities during the audit period. These classifications include the Animal Shelter Attendant/Assistant, Animal Control/Customer Service Technician, Animal Control Officer, Animal Control Supervisor, and Registered Veterinary Technician.[287] The percentages originally reported by the claimant, and the percentages allowed in the Controller's Final Audit Report to equal 100 percent are as follows:

Classifications That Provide Care and Maintenance	Percentages Originally Reported by Claimant[288]	Percentages Allowed in the Final Audit Report to Equal 100%[289]
Animal Shelter Attendant/Assistant	80%	60%

[285] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 14 (emphasis in original).

[286] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 1.

[287] Exhibit A, IRC, pages 305-306 (Final Audit Report).

[288] Exhibit C, Claimant's Rebuttal Comments, pages 8-9, 20 (April 12, 2016 email from the claimant to the Controller).

[289] Exhibit A, IRC, pages 305-306 (Final Audit Report).

Animal Control/Customer Service Technician	25%	5%
Animal Control Officer	10%	5%
Animal Control Supervisor	5%	5%
Registered Veterinary Technician	85%	20%
Animal Shelter Supervisor	10%	5%

The Controller accepted the percentage allocated to the Animal Control Supervisor for care and maintenance activities. However, the Controller has not explained the methodology used to adjust and reduce the percentages allocated to following the classifications identified by the claimant as performing care and maintenance services; Animal Shelter Attendant/Assistant, Animal Control/Customer Service Technician, Animal Control Officer, Registered Veterinary Technician, and Animal Shelter Supervisor.

Accordingly, the Commission finds that to the extent that the Controller's reduction to the percentages allocated to the classifications performing annual care and maintenance services during the audit period results in a reduction of care and maintenance costs, that reduction is arbitrary, capricious, and entirely lacking in evidentiary support.

D. The Controller's Disallowance of the Indirect Costs Included in the Claimant's Calculation of Care and Maintenance Costs, the Controller's Refusal to Consider the Indirect Cost Rate Proposal (ICRP) Submitted by the Claimant in 2016 to Support Indirect Costs for Fiscal Years 2007-2008 and 2008-2009, and the Recalculation of Indirect Costs at the Ten Percent Default Rate Provided in the Parameters and Guidelines (Finding 7), Are Correct as a Matter of Law.

The Parameters and Guidelines authorize reimbursement for indirect costs, and provide claimants the option of using ten percent of direct labor costs, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) pursuant to the Office of Management and Budget (OMB) Circular A-87 to support higher rate. When preparing an ICRP, the distribution base may be total direct costs for the mandated program (excluding capital expenditures), direct salaries and wages, or another base that results in equitable distribution.[290]

The claimant did not claim indirect costs as a separate item, but incorporated overhead costs into the care and maintenance cost component by adding in a 40 percent overhead factor for the Municipal Services Director when computing total annual shelter costs incurred for care and maintenance activities.[291] The Controller found this approach to be incorrect and not in accordance with the Parameters and Guidelines.[292] The Controller recalculated indirect costs for all program components using the ten percent default rate applied to all allowable direct labor

[290] Exhibit A, IRC, pages 274-275 (2006 Parameters and Guidelines Amendment).

[291] Exhibit A, IRC, page 328 (Final Audit Report).

[292] Exhibit A, IRC, page 328 (Final Audit Report).

costs, excluding fringe benefits, and found that $12,708 is reimbursable.[293] While the claimant first agreed with the Controller's use of the ten percent rate to recalculate indirect costs during the audit,[294] in response to the Draft Audit Report on June 17, 2016, the claimant for the first time submitted an ICRP for a higher rate (between 67% and 78.9%, based on salaries and wages)[295] for both fiscal years of the audit period.[296]

The Controller did not consider this proposal.[297] The Final Audit Report states the following:

> With its response to the draft audit report, the town submitted calculations for an ICRP for both fiscal years of the audit period. Submitting an ICRP at this time would require us to re-open the audit and conduct further fieldwork to analyze and verify the indirect cost rates that the town is now proposing. However, the indirect costs that are allowable for the audit period were calculated using an acceptable methodology as prescribed in the parameters and guidelines. Further, the town agreed with this method as being the best option, in discussions that took place on April 12, 2016. Therefore, we are not considering the additional information provided for indirect cost rate calculations.[298]

In the IRC, the claimant asserts that the Controller's refusal to consider the claimant's ICRP "was an unfair decision since 'actual costs' are allowable for reimbursement and the request to provide that additional support material was made during the required audit response period."[299] The claimant asserts that it did not separately claim indirect costs because it used a different methodology to claim care and maintenance costs, which incorporated all indirect costs:

> Town calculated cost of care and maintenance by taking all of the actual Shelter Division expenditures, and dividing it by total animal days of service to derive a cost per animal per day. Because this method took into account all departmental costs, it was inappropriate to include additional departmental overhead (other than other Town wide administrative overhead).[300]

---

[293] Exhibit A, IRC, page 328-329 (Final Audit Report).

[294] Exhibit A, IRC, pages 328-329 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, pages 30 and 111 (Tab 6 - Phone Log, stating that during the April 12, 2016 telephone call discussion of regarding indirect costs, the claimant's Assistant Director of Finance "Kofi decided that due to the town's record retention issues and unavailability of supporting documentation, that using the flat 10% would be the best option.").

[295] Exhibit A, IRC, page 370 ("ICRP Input Screen", provided with the Claimant's Response to the Draft Audit Report).

[296] Exhibit A, IRC, pages 331 (Final Audit Report); Exhibit A, IRC, pages 369-399 (Claimant's Response to the Draft Audit Report).

[297] Exhibit A, IRC, pages 331 (Final Audit Report).

[298] Exhibit A, IRC, page 331 (Final Audit Report).

[299] Exhibit A, IRC, page 11.

[300] Exhibit A, IRC, page 11.

The claimant also states that it was not required to file an ICRP with its reimbursement claims because its original calculation of care and maintenance costs "was based on aggregate costs which did not require preparation of an ICRP."[301]

The claimant argues that because the claimant's methodology was not accepted by the Controller, the claimant should be given an opportunity to recalculate its indirect costs using an ICRP rate,[302] and requests that the Commission "have the SCO consider the actual ICRPs that were prepared and submitted."[303]

The Commission finds that the Controller's disallowance of indirect costs included in the claimant's calculation of care and maintenance costs, the Controller's refusal to consider the ICRP submitted in 2016 in support of indirect costs for fiscal year 2007-2008 and 2008-2009, and the recalculation of indirect costs at the ten percent default rate are correct as a matter of law.

Government Code section 17564(b) provides that "[c]laims for direct and indirect costs pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines . . . and claiming instructions." As indicated above, the claimant incorporated indirect costs into the care and maintenance cost component by adding a 40 percent overhead factor for the Municipal Services Director.[304] This does not comply with the Parameters and Guidelines. The Parameters and Guidelines provide only two options for calculating indirect costs: (1) using ten percent of direct labor costs, excluding fringe benefits, or (2) if indirect costs exceed ten percent, then preparing an ICRP for approval by the Controller.[305] The claiming instructions applicable to the claimant's 2007-2008 and 2008-2009 reimbursement claims specify that if the claimant's indirect cost rate is greater than ten percent of direct salaries, the claimant is required to prepare an ICRP and include it with the reimbursement claim.[306] Without preparing an ICRP proposal, indirect costs may only be computed as ten percent of direct labor costs, excluding fringe benefits.[307]

---

[301] Exhibit A, IRC, pages 330 (Final Audit Report).

[302] Exhibit A, IRC, pages 330 (Final Audit Report).

[303] Exhibit A, IRC, page 12.

[304] Exhibit A, IRC, page 328 (Final Audit Report).

[305] Exhibit A, IRC, page 274 (2006 Parameters and Guidelines Amendment).

[306] Exhibit G, Excerpt of 2007-2008 State Mandated Cost Claiming Instructions No. 2006-11, revised February 6, 2009, page 1 ("In order for a claim to be considered properly filed, it must include the Indirect Cost Rate Proposal (ICRP) if the indirect cost rate exceeds 10%."), page 27 ("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."); Exhibit A, IRC, page 280 (2008-2009 State Mandated Cost Claiming Instructions No. 2006-11, revised October 26, 2009, "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.").

[307] Exhibit A, IRC, page 274 (2006 Parameters and Guidelines Amendment); Exhibit G, Excerpt of 2007-2008 State Mandated Cost Claiming Instructions No. 2006-11, revised

The claimant's argument that it used a different methodology to claim indirect costs, which did not require submission of an ICRP,[308] is unpersuasive. The Parameters and Guidelines do not provide for any alternative methodology that does not require an ICRP for indirect costs exceeding ten percent of direct labor costs. While Section IV. of the Parameters and Guidelines contains a formula for calculating care and maintenance costs, and requires an initial determination of total annual costs including indirect costs for that component, that section neither provides for a separate method for calculating indirect costs, nor is it controlling when claiming indirect costs for the entire mandated program. Section V of the Parameters and Guidelines is controlling and clearly states that indirect costs must be calculated at either ten percent of direct labor costs, or if indirect costs exceed the ten percent rate, then at an ICRP rate approved by the Controller. Thus, the Controller's disallowance of any indirect costs in excess of ten percent of direct labor costs that were not supported by an ICRP, including the 40 percent overhead factor for the Municipal Services Director incorporated in care and maintenance cost component, is correct as a matter of law.

The Commission further finds that the Controller's refusal to consider the claimant's ICRP submitted in 2016 in response to the Draft Audit Report, is correct as a matter of law. The claimant never submitted an ICRP with its annual reimbursement claims to support those costs. The claimant's submittal of an ICRP in 2016 for fiscal years 2007-2008 and 2008-2009 is too late. Although the claimant alleges that it was not appropriate to claim indirect costs separately because its method for claiming care and maintenance costs took into account all departmental costs, including indirect costs, the claimant had the responsibility to identify all actual costs with specificity, including indirect costs when filing the reimbursement claims and to follow the directions in the Parameters and Guidelines and the claiming instructions. Government Code section 17560 permits a claimant by February 15 following a fiscal year, to "file an annual reimbursement claim *that details the costs actually incurred* for that fiscal year." Thus, the claimant has the burden to timely establish its actual costs, both direct and indirect, and, as discussed above, is required by the Government Code section 17564(b) to claim these costs in accordance with the Parameters and Guidelines and claiming instructions. Accordingly, if claimant's indirect costs allegedly incorporated into the care and maintenance component amounted to more than ten percent of direct labor costs, the claimant was required, but failed to submit ICRPs with its reimbursement claims for fiscal years 2007-2008 and 2008-2009. The deadlines for filing amended claims for these years have expired in February 2010 and 2011, respectively.[309] Accordingly, the claimant's request for recalculating indirect costs for fiscal

---

February 6, 2009, pages 1, 27; Exhibit A, IRC, page 280 (Claiming Instructions No. 2006-11, revised October 26, 2009).

[308] Exhibit A, IRC, page 330 (Final Audit Report).

[309] Government Code section 17568. See also Exhibit G, Excerpt of 2007-2008 State Mandated Cost Claiming Instructions No. 2006-11, revised February 6, 2009, page 1 ("An actual claim may be filed by February 15 following the fiscal year in which costs were incurred. . . Since the 15th falls on a weekend in 2009 claims for fiscal year 2007-08 will be accepted without penalty if postmarked or delivered on or before February 17, 2009. . . A claim filed more than one year after the deadline cannot be accepted for reimbursement."); Exhibit A, IRC, page 254 (2008-2009 State Mandated Cost Claiming Instructions No. 2006-11, revised October 26, 2009, "An actual claim may be filed by February 15 following the fiscal year in which costs were incurred.

year 2007-2008 and 2008-2009 costs based on an ICRP submitted in 2016 is untimely, and the Controller's refusal to consider the 2016 ICRP is correct as a matter of law.

Finally, the Controller's allowance of indirect costs at the ten percent default rate is correct as a matter of law. Since the claimant did not prepare and submit ICRPs with its reimbursement claims, it was only entitled to the ten percent default rate under the Parameters and Guidelines and claiming instructions.

Accordingly, the Commission finds that the Controller's reduction and recalculation of indirect costs is correct as a matter of law.

E. The Commission Does Not Have Jurisdiction to Determine Whether the Claimant Is Entitled to Reimbursement for Necessary and Prompt Veterinary Costs Because There Has Been No Reduction of Necessary and Prompt Veterinary Costs.

The Parameters and Guidelines permit reimbursement for necessary and prompt veterinary care for stray or abandoned animals, other than injured cats and dogs given emergency treatment, that die during the increased holding period or are ultimately euthanized.[310] Necessary and prompt veterinary care means all reasonably necessary medical procedures performed by a veterinarian or someone under the supervision of a veterinarian to make stray or abandoned animals adoptable," including an initial physical examination; a wellness vaccine administered to adoptable or treatable animals; care to stabilize or relieve the suffering of a treatable animal; and veterinary care intended to remedy an injury or disease of a treatable animal.[311] However, the Parameters and Guidelines provide for a number of exclusions. Eligible claimants are *not* entitled to reimbursement for providing "necessary and prompt veterinary care" to the following population of animals:

- Animals that are irremediably suffering from a serious illness or severe injury (Food & Agr. Code, § 17006);
- Newborn animals that need maternal care and have been impounded without their mothers (Food & Agr. Code, § 17006);
- Animals too severely injured to move or where a veterinarian is not available and it would be more humane to dispose of the animal. (Pen. Code, §§ 597.1(e), 597f(d));
- Owner relinquished animals; and
- Stray or abandoned animals that are ultimately redeemed, adopted, or released to a nonprofit animal rescue or adoption organization.[312]

Claims for fiscal year 2008-09 will be accepted without penalty if postmarked or delivered on or before February 16, 2010. A claim filed more than one year after the deadline cannot be accepted for reimbursement.").

[310] Exhibit A, IRC, page 271 (2006 Parameters and Guidelines Amendment).

[311] Exhibit A, IRC, page 271 (2006 Parameters and Guidelines Amendment).

[312] Exhibit A, IRC, pages 271-272 (2006 Parameters and Guidelines Amendment).

In addition, eligible claimants are *not* entitled to reimbursement for providing the following veterinary procedures:

- Emergency treatment given to injured cats and dogs (Pen. Code, § 597f(b));
- Administration of rabies vaccination to dogs (Health & Saf. Code, § 121690);
- Implantation of microchip identification;
- Spay or neuter surgery and treatment;
- Euthanasia.[313]

The reimbursement claims filed by the claimant do not identify any costs for necessary and prompt veterinary care. The amended reimbursement claims filed for fiscal years 2007-2008 and 2008-2009 request reimbursement for "acquiring space/facilities", "care of dogs and cats", "care of other animals", and "holding period."[314] The line item for "veterinary care" was left blank in both reimbursement claims.[315]

In its June 17, 2016 response to the Draft Audit Report, however, the claimant "questioned why the SCO did not allow any reimbursement for the Necessary and Prompt Veterinary Care component as these costs are eligible for reimbursement."[316] The claimant's response to the Draft Audit Report requests reimbursement for necessary and prompt veterinary costs of $10,608 for fiscal year 2007-2008 and $10,298 for fiscal year 2008-2009, consisting of wellness vaccine costs and employee salary and benefit costs for the time to conduct the initial physical exam to determine the animal's baseline health and to administer the wellness vaccine.[317] The claimant's IRC states that veterinary care costs were included as part of the care and maintenance component, and argues that the Controller incorrectly refused to accept supporting documents for veterinary costs, including time study results, after the exit conference.[318]

The Final Audit Report reiterates that the claimant did not claim any costs for this component.[319] The Final Audit Report further states that the Controller could not fully examine the time study submitted by the claimant after the exit conference because it would have to reopen the audit and conduct additional fieldwork, and that the claimant never provided supporting documentation for the cost of the wellness vaccines, as follows:

---

[313] Exhibit A, IRC, page 272 (2006 Parameters and Guidelines Amendment).

[314] Exhibit A, IRC, pages 401-407 (2007-2008 Amended Reimbursement Claim), 640-645 (2008-2009 Amended Reimbursement Claim).

[315] Exhibit A, IRC, pages 403 and 641 (Claim Summaries for Amended Reimbursement Claims for Fiscal Years 2007-2008 and 2008-2009).

[316] Exhibit A, IRC, pages 337-338 (Claimant's Response to Draft Audit Report).

[317] Exhibit A, IRC, pages 334 (Final Audit Report); 337-338 (Claimant's Response to Draft Audit Report).

[318] Exhibit A, IRC, pages 5-7.

[319] Exhibit A, IRC, pages 334-335 (Final Audit Report).

> . . . The salary and benefit costs that the town is requesting reimbursement for are based on a two-day time study that the town conducted from May 18, 2016, to May 20, 2016.
>
> The town did not claim any costs for this component for the audit period. We informed the town on numerous occasions (via email on July 13, 2015, October 14, 2015, February 29, 2016, and March 15, 2016, and by telephone on October 26, 2015, and October 29, 2015) that in order to determine allowable salary and benefit costs for the audit period, it would need to conduct a time study for this cost component. In addition, the results of a two-day time study that the town conducted post-exit conference do not appear adequate to determine allowable costs for the audit period. Similar to our comments above for the indirect cost rate information provided, examining the town's time study at this time would require us to re-open the audit and conduct additional fieldwork to analyze and verify the accuracy of the information provided.
>
> Lastly, during fieldwork, we informed the town that in order to determine allowable materials and supplies costs for the purchase of wellness vaccines, the town would need to provide supporting documentation in the form of invoices in order to determine a unit cost per vaccine. Such information was not provided during the course of the audit or in the response to the draft audit report.[320]

The claimant's IRC alleges that the Controller incorrectly refused to consider the claimant's supporting documentation, including time studies, for the necessary and prompt veterinary care costs which "[a]fter seeing the Preliminary Audit Finding, the Town decided that they wished to pursue,"[321] and argues that the Controller should have re-opened the audit to consider the time studies submitted by the claimant in response to the Draft Audit Report.[322] The claimant asserts that "this denial of opportunity to have their additional documentation supporting allowable costs considered was arbitrary and capricious."[323] In addition, the claimant argues that in the absence of actual invoices documenting the purchase of wellness vaccines, the Controller should have allowed the claimant some other alternatives to support these costs, because in some cases the Controller offered and allowed such alternatives to other agencies.[324] The claimant requests that the costs for the necessary and prompt veterinary care be restored, that its time studies and any additional material necessary to support the costs be reviewed, that its documentation of costs for vaccine purchases should be reexamined, and that allowable costs be computed in a similar method allowed for other agencies be reimbursed.[325]

---

[320] Exhibit A, IRC, page 335 (Final Audit Report).

[321] Exhibit A, IRC, page 6.

[322] Exhibit A, IRC, pages 5-7; Exhibit C, Claimant's Rebuttal Comments, pages 4-6.

[323] Exhibit A, IRC, page 7.

[324] Exhibit A, IRC, pages 8-9.

[325] Exhibit A, IRC, pages 5-7.

The parties go to great lengths disputing the factual allegations, including whether the Controller was willing to work with the claimant on a time study and the timeline of events.[326] The Commission, however, does not need to resolve those factual issues. Pursuant to Government Code section 17551(d), the Commission only has jurisdiction over *reductions* taken in the context of an audit, and there has been no reduction of necessary and prompt veterinary care costs in this case. Despite the claimant's argument that it claimed necessary and prompt veterinary care costs by including all unsegregated costs for veterinary care in its formula for calculating care and maintenance, necessary and prompt veterinary care costs were not identified or claimed on the reimbursement claims for the audit period. Thus, there were no costs to reduce.

To receive reimbursement for state-mandated costs, local agencies are required to file reimbursement claims "*in the manner prescribed in the parameters and guidelines*,"[327] and must *detail the costs* actually incurred for each fiscal year.[328] The plain language of the Parameters and Guidelines for this program authorizes reimbursement of the costs incurred for necessary and prompt veterinary care and care and maintenance under *separate* program components, and require separate claiming for each activity, different cost computation methods, and different supporting documents. For example, the costs eligible for reimbursement for necessary and prompt veterinary care must be computed as specified to properly account for the activities and costs that are *not* reimbursable. Activities and costs that are expressly excluded from reimbursement include veterinary care procedures involving emergency treatment, rabies vaccination for dogs, implantation of microchips, and euthanasia.[329] In addition, reimbursement for care and maintenance is based on a specific formula to determine the care and maintenance costs for the increased holding period mandated by the test claim statutes and that formula does not apply to necessary and prompt veterinary care. Thus, the alleged inclusion of all unsegregated and unidentified veterinary costs in the computation of the care and maintenance component, would not have resulted in a correct claim amount for the care and maintenance component and does not in indicate that a claim is being made for necessary and prompt veterinary care.

The reimbursement claims filed by the claimant do not identify *any* costs for necessary and prompt veterinary care. The line item for "veterinary care" was left blank on both reimbursement claims.[330] Therefore, there was no claim for reimbursement of necessary and prompt veterinary care for the Controller to reduce and thus there is no reduction for this activity.

---

[326] Exhibit B, Controller's Comments on the IRC, pages 20-27.

[327] Government Code section 17564(b), emphasis added.

[328] Government Code section 17560(a), emphasis added.

[329] In this respect, the Controller found that it would be "impossible" to segregate potentially reimbursable necessary and prompt veterinary care costs from the claimed care and maintenance costs. (Exhibit B, Controller's Comments on the IRC, page 21).

[330] Exhibit A, IRC, pages 403 and 641 (Claim Summaries for Amended Reimbursement Claims for Fiscal Years 2007-2008 and 2008-2009).

Accordingly, since there were no costs claimed or reduced, the Commission does not have jurisdiction over the alleged reduction of prompt and necessary veterinary care.

V. Conclusion

Based on the foregoing analysis, the Commission partially approves this IRC, and requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission regulations, that the Controller reinstate the following costs which were incorrectly reduced:

- To the extent the Controller's recalculation of care and maintenance costs in Finding 2, which adjusted the percentages allocated to the classifications performing annual care and maintenance services during the audit period, results in a reduction of care and maintenance costs.

All other reductions made by the Controller are correct as a matter of law.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Government Code Sections 3502.5 and 3508.5; Statutes 2000, Chapter 901 (SB 739) California Code of Regulations, Title 8, Sections 32132, 32135, 32140, 32149, 32150, 32160, 32168, 32170, 32175, 32176, 32180, 32190, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, 60070, Register 2001, Number 49 Fiscal Year 2010-2011 Filed on August 15, 2017 City of Monrovia, Claimant	Case No.: 17-0130-I-01 *Local Government Employee Relations* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted September 25, 2020)* (*Served September 29, 2020*)

INCORRECT REDUCTION CLAIM

The Commission on State Mandates adopted the attached Decision on September 25, 2020.

Heather Halsey, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Government Code Sections 3502.5 and 3508.5; Statutes 2000, Chapter 901 (SB 739) California Code of Regulations, Title 8, Sections 32132, 32135, 32140, 32149, 32150, 32160, 32168, 32170, 32175, 32176, 32180, 32190, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, 60070, Register 2001, Number 49 Fiscal Year 2010-2011 Filed on August 15, 2017 City of Monrovia, Claimant	Case No.: 17-0130-I-01 *Local Government Employee Relations* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted September 25, 2020)* (*Served September 29, 2020*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on September 25, 2020. Annette Chinn and Buffy Bullis appeared on behalf of the City of Monrovia (claimant). Gwendolyn Carlos appeared on behalf of the State Controller's Office (Controller).

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

The Commission adopted the Proposed Decision to deny the IRC by a vote of 7-0, as follows:

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

Summary of the Findings

This IRC challenges the Controller's reduction of costs claimed for fiscal year 2010-2011, but incurred in fiscal year 2009-2010, by the City of Monrovia (claimant) for the *Local Government Employee Relations* program. In January 2012, the claimant filed a reimbursement claim requesting reimbursement for contracted legal services related to the *Local Government Employee Relations* program, totaling $229,627. The cover sheet and each page of the claim form (FAM-27) indicate that the claim was filed for fiscal year 2010-2011. However, attached to the reimbursement claim are invoices for legal services incurred in fiscal years 2009-2010, 2010-2011, and 2011-2012, totaling $229,627. The Controller reduced the costs incurred in fiscal years 2009-2010 and 2011-2012 from the 2010-2011 claim, and notified the claimant of the reduction on September 29, 2014, after the statutory deadline to submit a reimbursement claim for fiscal year 2009-2010 had passed.

This IRC challenges only the reduction of $50,459 (less an undisputed late penalty) incurred in fiscal year 2009-2010.[1] Although the claimant never filed a 2009-2010 reimbursement claim, the claimant requests that the Commission find that the Controller incorrectly denied its request to accept the 2010-2011 reimbursement claim, which contained documentation supporting costs actually incurred in fiscal year 2009-2010, as a late 2009-2010 reimbursement claim under Government Code section 17568, because of an alleged "clerical error" by filing a multi-year claim.

The Commission finds that the IRC was timely filed within three years of the date the Controller notified the claimant of the reduction.

The Commission further finds that the Controller's reduction to the fiscal year 2010-2011 claim (for costs incurred in 2009-2010) is correct as a matter of law. The Government Code does not allow filing multi-year annual reimbursement claims, and has always placed the burden on the claimant to file annual reimbursement claims by the statutory deadline for costs incurred in a single fiscal year.[2] In addition, the Parameters and Guidelines for the *Local Government Employee Relations* mandate state that "[a]ctual costs for *one fiscal year* shall be included in each claim," and that "[a]ctual 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."[3] Parameters and guidelines are regulatory in nature and are binding on

---

[1] Exhibit A, IRC, pages 4, 45 (September 8, 2016 letter from the claimant to the Controller acknowledging that the late penalty would apply to the claimed costs for fiscal year 2009-2010).

[2] Government Code sections 17560 and 17568 (that were originally added by Stats. 1986, ch. 879). Government Code section 17560(a) states that "[a] local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year. Government Code section 17568 allows a valid reimbursement claim to be submitted after that deadline, and in such cases, the Controller is required to reduce the claim by ten percent. Section 17568 further states, however, that "*in no case* shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560." Emphasis added.

[3] Exhibit A, IRC, page 29 (Parameters and Guidelines).

the claimant.[4] Here, the claimant's 2010-2011 reimbursement claim includes costs totaling $50,459, which are supported by invoices showing that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.[5] The claimant admits that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.[6] Thus, the $50,459 are not "actual costs" for the 2010-2011 claim year.

In addition, the Commission finds that the Controller's decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. Although 2009-2010 invoices were attached to the 2010-2011 reimbursement claim, there is no evidence that the Controller had notice or was aware of the 2009-2010 costs until the desk review of the 2010-2011 claim in September 2014.[7] The 2010-2011 reimbursement claim was filed on January 27, 2012.[8] The evidence shows that the Controller receives several thousand claims during the annual claim submission period, which are simply receipted and logged.[9] Page one of the reimbursement claim form submitted by the claimant (the FAM-27) states that the claim is for fiscal year 2010-2011 costs and the form is signed under penalty of perjury certifying that the claim is true and correct.[10] Thus, the claim was logged as a fiscal year 2010-2011 claim.[11] Pursuant to Government Code section 17558.5, the Controller had three years after the reimbursement claim was filed to initiate an audit, which was timely initiated here in September 2014 when the alleged mistake was discovered by the Controller. Thus, there is no evidence, as suggested by the claimant, that the Controller was arbitrary or capricious "in waiting three years" to notify the claimant of the claimant's alleged mistake. The evidence shows that the Controller's actions complied with the law and the Controller's usual procedures for accepting annual reimbursement claims.

---

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

[5] Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling $50,459).

[6] Exhibit A, IRC, pages 43-44 (September 29, 2014 email from the claimant to the Controller); Exhibit B, Controller's Comments on the IRC, page 31 (email from the claimant to the Controller). See also Exhibit D, Claimant's Comments on the Draft Proposed Decision, pages 1-2.

[7] Exhibit B, Controller's Comments on the IRC, page 7.

[8] The claimant states that the filing date is January 30, 2012, (Exhibit A, IRC, pages 5, 50), but the Controller states that the filing date is January 27, 2012 (Exhibit B, Controller's Comments on the IRC, page 8). The record indicates that the claim was signed on January 19, 2012, and shows an "LRS Input" date from the Controller on January 30, 2012 (Exhibit B, Controller's Comments on the IRC, page 12).

[9] Exhibit B, Controller's Comments on the IRC, page 7.

[10] Exhibit A, IRC, page 50.

[11] Exhibit B, Controller's Comments on the IRC, page 7.

Moreover, neither the Commission nor the Controller have the authority to now allow the filing of a 2009-2010 reimbursement claim since the deadline in Government Code sections 17560 and 17568 has lapsed. Government Code section 17561(d)(3) plainly states that "*in no case* may a reimbursement claim be paid if submitted more than one year after the filing deadline specified in the Controller's claiming instructions on funded mandates."[12] Similarly, Government Code section 17568 states that "*in no case* shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560." The deadline in this case to file a 2009-2010 reimbursement claim under sections 17560 and 17568, certified and signed under penalty of perjury, expired on February 15, 2012, one month after the 2010-2011 reimbursement claim was filed.

Therefore, the Commission denies this IRC and finds that the Controller's reduction of costs from the fiscal year 2010-2011 reimbursement claim for costs incurred in 2009-2010 and the Controller's decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim, are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

COMMISSION FINDINGS

I. Chronology

01/27/2012	The claimant filed its fiscal year 2010-2011 reimbursement claim that included costs and documentation for fiscal years 2009-2010 and 2011-2012.[13]
01/30/2013	The claimant filed its fiscal year 2011-2012 reimbursement claim.[14]
09/29/2014	The Controller notified the claimant via email of the reduction of costs incurred for fiscal years 2009-2010 and 2011-2012 that were included on the fiscal year 2010-2011 form.[15]
09/29/2014	The claimant emailed the Controller to request that the claimant's costs of $50,459 incurred in fiscal year 2009-2010 not be disallowed due to its "simple accounting/clerical error."[16]

[12] Emphasis added.

[13] The claimant states that the filing date is January 30, 2012, (Exhibit A, IRC, pages 5, 50), but the Controller states that the filing date is January 27, 2012 (Exhibit B, Controller's Comments on the IRC, page 8). The record indicates that the claim was signed on January 19, 2012, and shows an "LRS Input" date from the Controller on January 30, 2012 (Exhibit B, Controller's Comments on the IRC, page 12).

[14] Exhibit B, Controller's Comments on the IRC, page 16 (fiscal year 2011-2012 reimbursement claim).

[15] Exhibit A, IRC, page 44 (email from the Controller). The original reduction was for costs incurred in fiscal years 2009-2010 and 2011-2012, but because the claimant refiled its 2011-2012 claim, only the reduction for costs incurred in fiscal year 2009-2010 is in dispute.

[16] Exhibit A, IRC, pages 43-44; Exhibit B, Controller's Comments on the IRC, page 31 (email from the claimant to the Controller). In its comments on the IRC, the Controller said the amount in dispute is $50,489 (see Exhibit B, Controller's Comments on the IRC, page 7). However, the

09/30/2014	The Controller emailed the claimant stating that it was bound by the claiming requirements in the Parameters and Guidelines, and that the claimant did not file a reimbursement claim for fiscal year 2009-2010, and that the deadline to do so had passed.[17]
10/31/2014	The Controller formally notified the claimant of the reduction for costs incurred in fiscal year 2009-2010 via an adjustment letter.[18]
09/08/2016	The date of the claimant's letter asking the Controller to reconsider its reduction for fiscal year 2009-2010 costs.[19]
10/20/2016	The Controller denied the claimant's request to reconsider the reduction.[20]
08/15/2017	The claimant filed the IRC.[21]
12/22/2017	The Controller filed comments on the IRC.[22]
06/30/2020	Commission staff issued the Draft Proposed Decision.[23]
07/21/2020	The claimant filed comments on the Draft Proposed Decision.[24]

II. Background

A. The *Local Government Employee Relations* Program

The test claim statute and regulations in *Local Government Employee Relations* amended the Meyers-Milias-Brown Act (MMBA) regarding relations between local public agencies and their employees, by adding a method for creating an agency shop arrangement, and expanding the jurisdiction of the Public Employment Relations Board (PERB) to include resolving disputes and enforcing the statutory duties and rights of those public employers and employees subject to the MMBA. The Commission partially approved the Test Claim on December 4, 2006, for the following reimbursable activities:

---

documentation the Controller attached to its comments comports with the documentation of the claimant that the amount is $50,459 (see Exhibit B, Controller's Comments on the IRC, page 22 (summary of invoices) and page 30 (email from the Controller to the claimant)).

[17] Exhibit A, IRC, page 43. Exhibit B, Controller's Comments on the IRC, page 32 (email from the Controller to the claimant).

[18] Exhibit B, Controller's Comments on the IRC, page 37.

[19] Exhibit A, IRC, pages 45-46 (letter from the claimant to the Controller).

[20] Exhibit B, Controller's Comments on the IRC, page 33 (email from the Controller to the claimant).

[21] Exhibit A, IRC.

[22] Exhibit B, Controller's Comments on the IRC, page 1.

[23] Exhibit C, Draft Proposed Decision.

[24] Exhibit D, Claimant's Comments on the Draft Proposed Decision.

1. Deduct from employees' wages the payment of dues or service fees required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5, and transmit such fees to the employee organization. (Gov. Code § 3508.5, subd. (b).)
2. Receive from the employee any proof of in lieu fee payments made to charitable organizations required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5. (Gov. Code § 3502.5, subd. (c).).
3. Follow PERB procedures in responding to charges filed with PERB, by an entity *other than* the local public agency employer, concerning an unfair labor practice, a unit determination, representation by an employee organization, recognition of an employee organization, or an election. Mandated activities are:
    a. procedures for filing documents or extensions for filing documents with PERB (Cal. Code Regs., tit.8, §§ 32132, 32135 (Register 2001, No. 49));
    b. proof of service (Cal. Code Regs., tit. 8, § 32140 (Register 2001, No. 49));
    c. responding to subpoenas and investigative subpoenas (Cal. Code Regs., tit. 8, §§ 32149, 32150 (Register 2001, No. 49));
    d. conducting depositions (Cal. Code Regs., tit. 8, § 32160 (Register 2001, No. 49));
    e. participating in hearings and responding as required by PERB agent, PERB Administrative Law Judge, or the five-member PERB (Cal. Code Regs., tit. 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, and 60070 (Register 2001, No. 49)); and
    f. filing and responding to written motions in the course of the hearing (Cal. Code Regs., tit. 8, § 32190 (Register 2001, No. 49)).

The Commission adopted the Parameters and Guidelines for this program on May 29, 2009, authorizing reimbursement, beginning July 1, 2001, for the above activities and certain one-time activities. The Parameters and Guidelines were corrected on June 16, 2009.[25] According to the Parameters and Guidelines: "Actual costs for one fiscal year shall be included in each claim."[26] The Parameters and Guidelines further state:

> To be eligible for mandated cost reimbursement for any given fiscal year, only actual costs may be claimed …. 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.[27]

[25] Exhibit A, IRC, pages 28, 31 (Parameters and Guidelines). The correction is not relevant to this IRC because the provisions regarding filing annual costs and actual costs were not corrected.

[26] Exhibit A, IRC, page 29 (Parameters and Guidelines).

[27] Exhibit A, IRC, page 29 (Parameters and Guidelines).

B. Summary of the Controller's Audit

In January 2012, the claimant filed a reimbursement claim requesting reimbursement for the claimant's payments for contracted legal services related to the *Local Government Employee Relations* program.[28] The cover sheet and each page of the claim form (FAM-27) indicates that the claim is for fiscal year 2010-2011.[29] The reimbursement claim form states that "Liebert Cassidy Whitmore (Contract Attorney) Responded to several PERB matters," and $229,627 was claimed for those costs.[30] The reimbursement claim form was signed under penalty of perjury by the claimant's Finance Division Manager, and identified "Annette S. Chinn (CRS)" as the contact person for the claim.[31] Attached to the reimbursement claim are invoices from Liebert Cassidy Whitmore showing costs incurred for legal services in fiscal years 2009-2010, 2010-2011, and 2011-2012, totaling $229,627.[32]

In September 2014, the Controller initiated a desk review of the 2010-2011 reimbursement claim.[33] In an email dated September 29, 2014, the Controller notified the claimant that $147,355.29 was allowable as costs incurred in fiscal year 2010-2011, but the costs incurred in fiscal years 2009-2010 and 2011-2012 would be denied because "the city can only claim for costs incurred during 2010-2011."[34] The email states:

> Please be informed that the City of Monrovia submitted a claim for fiscal year 2010-11 for the Local Government Employee Relations program. The city claimed $229,627 for contract services. During our desk review it was discovered that the city included $82,272 of contract costs from fiscal years 2009-10 and 2011-12 with the claim. The city can only claim costs incurred during 2010-11. The table below lists the costs claimed by fiscal year:

---

[28] Exhibit A, IRC, pages 50-120 (2010-2011 reimbursement claim). The claimant states that the filing date is January 30, 2012, (Exhibit A, IRC, pages 5, 50), but the Controller states that the filing date is January 27, 2012 (Exhibit B, Controller's Comments on the IRC, pages 8, 12). The claim was signed on January 19, 2012, and shows an "LRS Input" date from the Controller on January 30, 2012 (Exhibit B, Controller's Comments on the IRC, page 12).

[29] Exhibit A, IRC, pages 50-52 (2010-2011 reimbursement claim).

[30] Exhibit A, IRC, pages 50, 52 (2010-2011 reimbursement claim).

[31] Exhibit A, IRC, page 50 (2010-2011 reimbursement claim). Annette S. Chinn of Cost Recovery Systems, Inc., is the claimant's representative for this IRC. (Exhibit A, IRC, page 1.)

[32] Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling $50,459); pages 71-111 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2010-2011, totaling $147,355.29); and pages 112-120 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2011-2012, totaling $31,812.65). Exhibit B, Controller's Comments on the IRC, pages 22-24 (Controller's Summary of Invoices Included in FY 2010-11 Claim).

[33] Exhibit B, Controller's Comments on the IRC, page 7.

[34] Exhibit A, IRC, page 44; Exhibit B, Controller's Comments on the IRC, page 30 (email from the Controller to the claimant).

Fiscal Year	Costs Incurred	Note
2009-10	$50,459	Non-Reimbursable
2010-11	$147,355.29	
2011-12	$31,812.65	Non-Reimbursable

The claim will be adjusted to exclude the non-reimbursable contract costs.[35]

In a reply email dated September 29, 2014, the claimant's Finance Division Manager requested that the $50,459 incurred in fiscal year 2009-2010 not be disallowed due to a "simple accounting/clerical error" of claiming those costs on the wrong fiscal year claim, as follows:

> Thank you for your email. In reviewing the documentation submitted, I believe that the costs claimed are reimbursable under the parameters of the mandate and were submitted on time; however, I see that some costs were not filed on the correct paperwork. We respectfully request that you do not disallow our eligible FY 09-10 costs of $50,459, but pay them from the correct fiscal year. It was a simple accounting/clerical error on the City's part. I understand that late claim penalties would apply to some of the FY 09-10 costs included in the wrong fiscal year claim.
>
> Please accept my apologies for the inconvenience and I thank you for your assistance. Please feel free to contact me if you have any questions or if you need additional information.[36]

In an email dated September 30, 2012, the Controller replied that it was bound by the Parameters and Guidelines and could not accept a claim outside of the reimbursable fiscal years, and that the claimant did not file a claim for fiscal year 2009-2010, as follows:

> We are bound by the legal authority of the parameters and guidelines and cannot accept costs that are outside of reimbursable fiscal years. As per the P's and G's, "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."
>
> The city did not file a claim for fiscal year 2009-10 and the deadline to file a late claim for 2009-10 or 2011-12 has already passed. I reviewed the 2011-12 claim filed by the city and discovered that some of the costs incurred during 2011-12 have been correctly included with the 2011-12 claim but were also claimed in 2010-11. Please note, the actual costs incurred during fiscal year 2010-11 will be allowed and processed for payment upon availability of appropriation.[37]

---

[35] Exhibit A, IRC, page 44 (email from the Controller).

[36] Exhibit A, IRC, pages 43-44; Exhibit B, Controller's Comments on the IRC, page 31 (email from the claimant to the Controller).

[37] Exhibit A, IRC, page 43. Exhibit B, Controller's Comments on the IRC, page 32 (email from the Controller to the claimant).

The claimant filed its fiscal year 2011-2012 reimbursement claim on January 30, 2013,[38] and the costs claimed for 2011-2012 are not in dispute.

In an adjustment letter dated October 31, 2014, the Controller formally notified the claimant of the reduction of costs "claimed outside of reimbursable F.Y.," which include the costs incurred in fiscal year 2009-2010.[39]

In a September 8, 2016 letter, the claimant's Finance Division Manager asked the Controller to reconsider the reduction of costs incurred in fiscal year 2009-2010 because "the City had accidentally filed a claim for FY 2009-10, FY 2010-11, and FY 2011-12 in one submission (under the FY 2010-11 period), rather than filing separate claims for each fiscal year."[40] The claimant continued in relevant part as follows:

> At the time the claim was filed, the costs for FY 2009-10 were still eligible for filing and the City properly filed the claim on time. Had we known of the clerical error sooner, we would have immediately corrected the paperwork by submitting a separate late claim for FY 2009-10 in the amount of $50,459 and attached a proper coversheet (FAM-27), understanding that a 10% late penalty would have been applied to the FY 2009-10 costs.
>
> As soon as we were notified of the reductions, we promptly contacted your office and explained that the reduction was simply due to a clerical error. We also reassured your office that all costs included in the claim were actual eligible costs that were properly documented and submitted by the deadline. Your office responded that the cut would not be restored because the deadline to file FY 2009-10 claims had passed and that "Actual costs must be traceable and be supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities," as noted in the attached email correspondence. However, we believe that these requirements were, in fact, satisfied and that the City filed the claim in good faith.
>
> We kindly ask that you not preclude the City from reimbursement due to a minor clerical error. Aside from the minor error of combining multiple years into one claim, the costs were properly submitted by the due date, were actual, traceable, and supported by source documents that were included in the claim. Additionally, we believe that the recent decision by the Commission on State Mandates regarding the Incorrect Reduction Claim (IRC) filed by the City of Los Angeles for their "FY 2003-04 Firefighter Cancer Presumption" claim is similar to our situation in that the claimant, the City, made a clerical error when transferring costs from a summary page to the total (FAM-27) page. The Commission ruled in favor of the City and said the Controller's decision to deny $516,132 in disability benefit costs as "unclaimed" was incorrect as a matter of law and was

[38] Exhibit B, Controller's Comments on the IRC, page 16 (fiscal year 2011-2012 reimbursement claim).

[39] Exhibit B, Controller's Comments on the IRC, page 37.

[40] Exhibit A, IRC, pages 45-46 (letter from the claimant to the Controller).

lacking evidentiary support because the details had all been submitted in the original claim, though not correctly transferred to the FAM-27. . . .[41]

In a letter dated October 20, 2016, the Controller denied the claimant's request to reconsider and stated that it cannot apply costs to a prior fiscal year claim that was never filed. The Controller also noted that it was past the deadline to file a claim for fiscal year 2009-2010.[42]

III. Positions of the Parties

A. City of Monrovia

The claimant states that it filed the IRC, solely "to reverse the FY 2009-10 $50,459 reduction made to the city's claim."[43] The claimant argues that the Controller's reduction of costs incurred in fiscal year 2009-2010 is unfair because the Controller "waited almost three years to audit the City's claim to determine that the claim would be reduced by $50,459 due to clerical errors."[44] The claimant asserts that had it been notified earlier of the error, it would have submitted a fiscal year 2009-2010 claim and amended its 2010-2011 claim,[45] but by the time it was notified of the error on September 29, 2014, the claiming deadline for 2009-2010 had passed.[46] The claimant believes that its claim should not be denied due to a clerical error, and that it should be allowed to amend a claim that contains actual, eligible, state-mandated costs. The claimant argues: (1) it claimed costs that were eligible, documented, and incurred to comply with a state-mandated program; (2) its costs were not found to be excessive, improper or unreasonable; (3) its costs were submitted to the State by the deadline; and (4) although its FAM-27 form was not filled out properly, its actual submission and its attached support means the claim was properly documented, not just the coversheet. The claimant argues "clerical errors should not be grounds for denial of constitutionally guaranteed mandated costs reimbursement."[47]

The claimant further argues that the Commission should decide this IRC similarly to the Draft Proposed Decision issued on March 18, 2016 for the IRC *Firefighter's Cancer Presumption*, 09-4081-I-01. In that IRC, the City of Los Angeles had attached documented costs to its claim, but had made a clerical error in transferring the cost information to the FAM-27 coversheet. In the

---

[41] Exhibit A, IRC, pages 45-46 (letter from the claimant to the Controller).

[42] Exhibit B, Controller's Comments on the IRC, page 33 (email from the Controller to the claimant).

[43] Exhibit A, IRC, page 5. In its comments on the IRC, the Controller said the amount in dispute is $50,489 (see Exhibit B, Controller's Comments on the IRC, page 7). However, the documentation the Controller attached to its comments comports with the documentation of the claimant that the amount is $50,459 (see Exhibit B, Controller's Comments on the IRC, page 22 (summary of invoices) and page 30 (email from the Controller to the claimant)).

[44] Exhibit A, IRC, page 4.

[45] Exhibit A, IRC, page 45 (letter from the claimant to the Controller).

[46] Exhibit A, IRC, page 44; Exhibit B, Controller's Comments on the IRC, page 30 (email from the Controller to the claimant). Exhibit A, IRC, page 43 (email from the Controller to the claimant).

[47] Exhibit A, IRC, page 7.

Draft Proposed Decision, Commission staff found that the Controller should have allowed for the correction of a "mere arithmetic error."[48]

In comments on the Draft Proposed Decision for this IRC, the claimant argues that its error was not due to its incorrect interpretation of the law or rules regarding submission of multiple years of costs in one claim. According to the claimant:

> Both the City and consultant have been preparing and submitting these State Mandate Reimbursement claims for many years and we were aware that only one fiscal year of costs should have been submitted per claim. However, the mistake was an inadvertent one. The consultant believed that the data provided to them by the City was only for FY 2010-11 and not for 3 years of costs. Thus, the consultant believed all invoices and costs were for the current year (FY 2010-11) and inadvertently included them all into one claim, and not two separate submissions, as should have been done (one for FY 2009-10 and one for 2010-11). . . . We knew that separate forms should have been filed by fiscal year of costs. It was our error that invoices were from multiple fiscal years. . . . The only error we made was that we did not separate the invoices by fiscal year into two separate claim forms.[49]

The claimant also argues that the court in the *Nathanson* case[50] would "perhaps find differently in our case," because the costs submitted were "timely filed, eligible and properly documented."[51] Thus, the claimant says its submission was "not a mere notice, but fully complete with the exception of having a separate FAM-27 claim cover form for FY 2009-10 invoices."[52]

B. State Controller's Office

The Controller filed comments on the IRC on December 22, 2017, maintaining that its desk review is correct and that the IRC should be denied.[53]

The Controller argues that it timely reviewed the City's claim and correctly reduced the amount at issue. As to timeliness, the claimant filed its fiscal year 2010-2011 claim on January 27, 2012, and a late claim for fiscal year 2009-2010 would have been due on February 15, 2012. During the reimbursement claim submission period each February, the Controller receives, logs, and sends a claims transmittal letter acknowledging receipt of the claim for several thousand claims in the local reimbursement system prior to producing a mandated report to the Legislature by April 30th, after which comprehensive desk reviews begin. So even if the Controller had reviewed the claim immediately in May 2012, the February 15, 2012 deadline to file a fiscal year

---

[48] Exhibit A, IRC, page 7. Exhibit E, Commission on State Mandates, Proposed Decision, *Firefighter's Cancer Presumption*, 09-4081-I-01, issued May 11, 2016.

[49] Exhibit D, Claimant's Comments on the Draft Proposed Decision, pages 1-2.

[50] *Nathanson v. Superior Court* (1974) 12 Cal.3d 355.

[51] Exhibit D, Claimant's Comments on the Draft Proposed Decision, page 2.

[52] Exhibit D, Claimant's Comments on the Draft Proposed Decision, page 2.

[53] Exhibit B, Controller's Comments on the IRC, page 1.

2009-2010 reimbursement claim would have already passed. The claimant never filed a fiscal year 2009-2010 claim, and the Controller had two years to complete its review, once the audit was initiated.[54]

The Controller also states that according to Government Code section 17558.5, an audit must be initiated within three years of when the claim was filed or last amended, but if no payment is made to the claimant, the date to initiate the audit does not begin until the claimant is paid. The Controller notes that no appropriation or payment to the claimant has been made for the fiscal year 2010-2011 claim. And because the desk review began in September 2014, the Controller states that it had until August 2016 to complete its review. The Controller further argues that by including costs for multiple years in its 2010-2011 reimbursement claim, the claimant did not comply with the Parameters and Guidelines. Finally, the Controller alleges that the claimant's reliance on the *Firefighter's Cancer Presumption*, 09-4081-I-01 IRC is misplaced because filing for multiple years in a single claim is not a "mere arithmetic error." Rather, it is a violation of the Parameters and Guidelines.[55]

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[56] 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."[57]

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

---

[54] Exhibit B, Controller's Comments on the IRC, page 8.

[55] Exhibit B, Controller's Comments on the IRC, pages 8-9.

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

[57] *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.[58] 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.]' "[59]

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.[60] 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.[61]

A. The claimant timely filed this IRC within three years from the date the claimant first received from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim.

The Controller notified the claimant of the reduction by email, addressed to the claimant's Financial Division Manager and dated September 29, 2014, stating:

> Please be informed that the City of Monrovia submitted a claim for fiscal year 2010-11 for the Local Government Employee Relations program. The city claimed $229,627 for contract services. During our desk review it was discovered that the city included $82,272 of contract costs from fiscal years 2009-10 and 2011-12 with the claim. The city can only claim costs incurred during 2010-11. The table below lists the costs claimed by fiscal year:

Fiscal Year	Costs Incurred	Note
2009-10	$50,459	Non-Reimbursable
2010-11	$147,355.29	
2011-12	$31,812.65	Non-Reimbursable

[58] *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.

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

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

[61] 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

The claim will be adjusted to exclude the non-reimbursable contract costs.[62]

The Controller's email, dated September 29, 2014, specifies the claim component (contract services) and amount ($82,272) adjusted, and the reasons for the adjustments (costs claimed in the wrong fiscal year). Thus, the email complies with the notice requirements in Government Code section 17558.5(c).

At the time the Controller notified the claimant of the reduction, section 1185.1 of the Commission's regulations required that an IRC be timely filed "no later than three years following the date of the Office of State Controller's final audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim" in order to be complete.[63]

The claimant filed the IRC on August 15, 2017, less than three years from the date of the Controller's emailed notice of September 29, 2014. Therefore, the Commission finds that the IRC was timely filed.

B. The Controller's reduction of costs incurred in 2009-2010 from the fiscal year 2010-2011 reimbursement claim and the Controller's decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim, are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

As indicated above, the claimant filed an annual reimbursement claim, with the face sheet and each page of the claim form (FAM-27) showing that the claim, totaling $229,627, was for 2010-2011 fiscal year costs.[64] The claim, however, includes costs incurred in fiscal years 2009-2010 through 2011-2012.[65] The Controller approved reimbursement for the 2010-2011 costs, and reduced the costs for 2009-2010 and 2011-2012 because reimbursement claims for those fiscal years had not been filed and the 2009-2010 and 2011-2012 documentation did not support that

---

[62] Exhibit A, IRC, page 44 (email from the Controller).

[63] Former California Code of Regulations, title 2, sections 1185.1(c), 1185.2(a) (Register 2014, No. 21). Section 1185.1(c) was amended, operative October 1, 2016, to clarify that: "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. The filing shall be returned to the claimant for lack of jurisdiction if this requirement is not met."

[64] Exhibit A, IRC, pages 50-52 (2010-2011 reimbursement claim).

[65] Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling $50,459); pages 71-111 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2010-2011, totaling $147,355.29); and pages 112-120 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2011-2012, totaling $31,812.65). Exhibit B, Controller's Comments on the IRC, pages 22-24 (Controller's Summary of Invoices Included in FY 2010-11 Claim).

costs were incurred in fiscal year 2010-2011.[66] The claimant disputes only the reduction of costs totaling $50,459, which were incurred in fiscal year 2009-2010.[67]

The Commission finds that the Controller's reduction of costs from the fiscal year 2010-2011 claim (for costs incurred in 2009-2010) and the Controller's decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

1. The Controller's reduction of 2009-2010 costs from the fiscal year 2010-2011 claim is correct as a matter of law.

Government Code 17560(a) provides that reimbursement for state-mandated costs may be claimed in an annual reimbursement claim "that details the costs actually incurred for that fiscal year" as follows:

> A local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim *that details the costs actually incurred for that fiscal year*.[68]

In addition, the Parameters and Guidelines for the *Local Government Employee Relations* mandate state: "Actual costs for *one fiscal year* shall be included in each claim"[69] and:

> To be eligible for mandated cost reimbursement for any given fiscal year, only actual costs may be claimed …. 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.[70]

Parameters and guidelines are regulatory in nature and are binding on the claimant.[71]

Here, the claimant's 2010-2011 reimbursement claim includes costs totaling $50,459, which are supported by invoices showing that the costs were incurred in fiscal year 2009-2010, and not in

---

[66] Exhibit A, IRC, page 44 (email from the Controller).

[67] Exhibit A, IRC, page 5

[68] Government Code section 17560, as last amended by Statutes 2007-2008, 3d Ex. Sess., chapter 6, effective February 16, 2008. Emphasis added.

[69] Exhibit A, IRC, page 29 (Parameters and Guidelines). Emphasis added.

[70] Exhibit A, IRC, page 29 (Parameters and Guidelines).

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

fiscal year 2010-2011.[72] The claimant admits that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.[73]

The claimant did not file a 2009-2010 reimbursement claim.[74] Instead,

> The City submitted an SB 90 Claim for the Local Government Employee Relations Program No. 298 for three fiscal years (FY 2009-10, FY 2010-11, and FY 2011-12) under one submittal (FY 2010-11 FAM-27). At the time, the City had inadvertently filed the multi-year claim and did not realize it would cause the claim to the ineligible.[75]

Thus, substantial evidence in the record supports the Controller's finding that the $50,459 claimed in fiscal year 2010-2011 were not actual costs incurred in fiscal year 2010-2011 and thus, the reduction of costs incurred in fiscal year 2009-2010 from the 2010-2011 claim is correct as a matter of law.

2. The Controller's decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The claimant believes that the Controller should have accepted the 2010-2011 reimbursement claim, which contained documentation supporting costs actually incurred in fiscal year 2009-2010, as a late 2009-2010 reimbursement claim subject to a 10 percent late filing penalty.[76] The claimant contends that the Controller incorrectly denied reimbursement for the $50,459 incurred in fiscal year 2009-2010 on the following grounds: (1) it claimed costs that were eligible, documented, and incurred to comply with a state-mandated program; (2) its costs were not found to be excessive, improper or unreasonable; (3) its fiscal year 2009-2010 costs were submitted to the State (in the 2010-2011 reimbursement claim) by the late claim deadline; and (4) although its FAM-27 form was not filled out properly, its actual submission and its attached support means the claim was properly documented.[77]

---

[72] Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling $50,459).

[73] Exhibit A, IRC, pages 43-44 (September 29, 2014 email from the claimant to Controller); Exhibit B, Controller's Comments on the IRC, page 31 (email from the claimant to the Controller).

[74] Exhibit B, Controller's Comments on the IRC, page 8.

[75] Exhibit A, IRC, page 5.

[76] Exhibit A, IRC, pages 43-46 (Claimant's September 29 and 30, 2014 emails and September 8, 2016 letter to Controller); Exhibit B, Controller's Comments on the IRC, page 31 (September 29, 2014 email from the claimant to the Controller) and page 33 (Controller's October 20, 2016 email to the claimant).

[77] Exhibit A, IRC, page 7.

The claimant further asserts that "clerical errors should not be grounds for denial of constitutionally guaranteed mandated costs reimbursement."[78] The claimant argues that the Commission should decide this IRC similarly to the Draft Proposed Decision issued March 18, 2016 on the *Firefighter's Cancer Presumption*, 09-4081-I-01 IRC, which found that the Controller should have allowed for the correction of a "mere arithmetic error."[79]

The claimant also argues that the Controller's decision is unfair and not justified because the Controller waited almost three years to audit the claim, which made it impossible for the claimant to file a timely 2009-2010 claim. The claimant states "had [it] known of the clerical error sooner (not three years later), the City would have immediately corrected and resubmitted the claim within the filing period."[80]

The Controller maintains that it timely reviewed the City's claim and correctly reduced the costs at issue, noting that the claimant filed its fiscal year 2010-2011 claim on January 27, 2012, and a late claim for 2009-2010 costs would have been due on February 15, 2012. The Controller states that during the claim submission period each February, it receipts, manages, and logs several thousand claims into the local reimbursement system to produce a mandatory report for the Legislature by April 30th. Comprehensive desk reviews begin after April 30th. Thus, even if the Controller had reviewed the claim in this case immediately in May 2012, the February 15, 2012 deadline for submitting the fiscal year 2009-2010 reimbursement claim had already passed. The claimant never filed a fiscal year 2009-2010 reimbursement claim.[81] In addition, the Controller states that it was within its statutory authority to initiate a desk review in September 2014 and had until September 2016 to complete the review pursuant to Government Code section 17558.5.[82] The Controller further contends that the claimant's reliance on the Proposed Decision in the *Firefighter's Cancer Presumption*, 09-4081-I-01 IRC is misplaced because "the inclusion of multiple fiscal years in a single claim is not a 'mere arithmetic error'; it is instead a matter of non-compliance with the Ps and Gs . . . ."[83]

The Commission finds that the Controller's decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Government Code places the burden on the claimant to file annual reimbursement claims by the statutory deadline for costs incurred in a single fiscal year. Government Code 17560(a) states that "[a] local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually

[78] Exhibit A, IRC, page 7.

[79] Exhibit A, IRC, page 7.

[80] Exhibit A, IRC, page 4.

[81] Exhibit B, Controller's Comments on the IRC, page 8.

[82] Exhibit B, Controller's Comments on the IRC, page 8.

[83] Exhibit B, Controller's Comments on the IRC, page 9.

incurred for that fiscal year.[84] Government Code section 17568 allows valid reimbursement claims to be submitted after that deadline, but "*in no case* shall a reimbursement claim be paid that is submitted more than one year after the [February 15th] deadline in Government Code section 17560," as follows:

> If a local agency or school district submits an otherwise valid reimbursement claim to the Controller after the [February 15th] deadline specified in Section 17560, the Controller shall reduce the reimbursement claim in an amount equal to 10 percent of the amount that would have been allowed had the reimbursement claim been timely filed, provided that the amount of this reduction shall not exceed ten thousand dollars ($10,000). *In no case shall a reimbursement claim be paid that is submitted more than one year after the deadline specified in Section 17560.*[85]

Consequently, in order for the claimant to timely request reimbursement for actual costs incurred in fiscal year 2009-2010 pursuant to Government Code sections 17560 and 17568, the claimant was required to file a fiscal year 2009-2010 reimbursement claim on or before February 15, 2011. If the claimant had filed the claim between February 16, 2011, and February 15, 2012, the Controller would have been required to accept the claim and reduce it by 10 percent up to a maximum reduction of $10,000. If the claimant had filed the claim on or after February 16, 2012, the Controller would have been required to deny the claim in its entirety. The claimant never filed a fiscal year 2009-2010 reimbursement claim.[86]

The claimant asserts that it simply made a "clerical error" by filing a multi-year claim and that the Controller should accept the 2010-2011 reimbursement claim, filed January 2012, which included documentation supporting the costs actually incurred in fiscal year 2009-2010, as a late-filed but timely 2009-2010 reimbursement claim. The claimant equates its "clerical error" with the City of Los Angeles' mathematical error in the *Firefighter's Cancer Presumption*, 09-4081-I-01 IRC.

However, the facts in this IRC are distinguishable from the facts in *Firefighter's Cancer Presumption*, 09-4081-I-01, and the claimant's reliance on that Proposed Decision is misplaced. In *Firefighter's Cancer Presumption*, 09-4081-I-01, the claimant timely filed a reimbursement claim for fiscal year 2003-2004, but erroneously failed to include $516,132 in costs on the FAM-27 claim form, even though that $516,132 was listed on the Form FCP-2.1 attached to the FAM-27. In adding the costs identified on the attached Form FCP-2.1, the claimant made a mathematical error and obtained a bottom-line total that was $516,132 less than the actual sum of all of the Total Benefit Payments. The claimant then transferred the error to the Direct Costs

---

[84] Government Code section 17560 was last amended by was last amended by Statutes 2007-2008, 3d Ex. Sess., chapter 6, effective February 16, 2008.

[85] Emphasis added. Government Code section 17568 was last amended by Statutes 2007-2008, 3d Ex. Sess., chapter 6, effective February 16, 2008. See also, Government Code section 17561(d)(3), which plainly states that "*in no case* may a reimbursement claim be paid if submitted more than one year after the filing deadline specified in the Controller's claiming instructions on funded mandates." Emphasis added.

[86] Exhibit B, Controller's Comments on the IRC, page 8.

schedule at the end of Form FCP-2.1 and to the reimbursement claim Form FAM-27.[87] While the audit report was still in draft form, the Controller declined the claimant's request to correct the mathematical error on the reimbursement claim form, even though the Controller agreed that the reimbursement amount requested on the face of the claim was inaccurate and incomplete due to the claimant's arithmetic error, and that the claimant had submitted correct and complete documentation appended to the claim.[88] A Draft Proposed Decision and Proposed Decision were issued finding that the Controller's actions were incorrect as a matter of law and were arbitrary, capricious, and entirely lacking in evidentiary support, but the claimant withdrew the IRC before the Commission hearing. Thus, there is no adopted decision in *Firefighter's Cancer Presumption*, 09-4081-I-01, but the Proposed Decision included the following proposed findings:

- The Controller did not dispute that the claimant timely filed its fiscal year 2003-2004 claim, and that, at the time of the filing, the claimant's Form FCP-2.1 contained a four-page listing of all of the relevant disability benefit costs used to calculate the claimant's reimbursement. The claimant did not attempt to add new or late-filed data. Consequently, the claim for reimbursement of 2003-2004 costs—which included the disputed $516,132 in disability benefit costs — was timely filed under Section 17560(b).[89]
- Government Code section 17558.5(a) expressly refers to a claimant's ability to "amend" a reimbursement claim. However, the Government Code does not address the specific question of when the Controller may lawfully deny leave to amend. And the Controller did not promulgate regulations on the topic.[90]
- Therefore, by analogy, the claimant's request to correct the mathematical error in a timely-filed reimbursement claim is the functional equivalent of a party to a civil action requesting leave to amend a pleading. Pursuant to Code of Civil Procedure section 473(a)(1), the court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading to correct an inadvertent mistake.[91]
- Based on evidence in the record and applying the standard in Code of Civil Procedure section 473(a)(1), the Proposed Decision found that the Controller's refusal to consider the evidence included in the original claim filing was incorrect as a matter of law and arbitrary, capricious, and entirely lacking in evidentiary support. The claimant's reimbursement claim contained the relevant evidence; the claimant was not adding to or

[87] Exhibit E, Commission on State Mandates, Proposed Decision, *Firefighter's Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, pages 15 and 16.

[88] Exhibit E, Commission on State Mandates, Proposed Decision, *Firefighter's Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, pages 16, 21, 24.

[89] Exhibit E, Commission on State Mandates, Proposed Decision, *Firefighter's Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, pages 21, 27.

[90] Exhibit E, Commission on State Mandates, Proposed Decision, *Firefighter's Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, page 23.

[91] Exhibit E, Commission on State Mandates, Proposed Decision, *Firefighter's Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, pages 22-23.

> increasing its claim, but was merely correcting a mathematical error; and the Controller was not mislead or prejudiced by the mistake. The proposed decision recommended that the Commission approve the IRC.[92]

Unlike the facts in *Firefighter's Cancer Presumption*, 09-4081-I-01, a reimbursement claim for fiscal year 2009-2010 costs was never filed in this case, so there is nothing to amend. The claimant filed a reimbursement claim for fiscal year 2010-2011 requesting reimbursement for the claimant's payment of contracted legal services related to the program.[93] The cover sheet and each page of the claim form (FAM-27) indicates that the claim is for fiscal year 2010-2011.[94] The reimbursement claim form states that "Liebert Cassidy Whitmore (Contract Attorney) Responded to several PERB matters," and $229,627 was claimed for those costs.[95] The reimbursement claim form for fiscal year 2010-2011 was signed under penalty of perjury by the claimant's Finance Division Manager, who certified that the claim was true and correct, and identified "Annette S. Chinn (CRS)" as the contact person for the claim.[96] Attached to the reimbursement claim are invoices from Liebert Cassidy Whitmore, with the invoice dates plainly stated, showing costs incurred for legal services in fiscal years 2009-2010, 2010-2011, and 2011-2012, totaling $229,627.[97] As stated above, the Government Code does not allow filing multi-year annual reimbursement claims, and has always placed the burden on the claimant to file annual reimbursement claims by the statutory deadline for costs incurred in a single fiscal year.[98] Thus, the only reimbursement claim filed was for fiscal year 2010-2011.

In comments on the Draft Proposed Decision, the claimant clarifies that its error was not due to an incorrect interpretation of the law regarding the submission of multiple years of costs in one claim, but was based on the consultant's belief that the invoices provided were only for fiscal year 2010-2011. According to the claimant:

> Both the City and consultant have been preparing and submitting these State Mandate Reimbursement claims for many years and we were aware that only one fiscal year of costs should have been submitted per claim. However, the mistake was an inadvertent one. The consultant believed that the data provided to them by the City was only for FY 2010-11 and not for 3 years of costs. Thus, the

---

[92] Exhibit E, Commission on State Mandates, Proposed Decision, *Firefighter's Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, pages 9, 23-25, 33.

[93] Exhibit A, IRC, pages 50-120 (2010-2011 reimbursement claim).

[94] Exhibit A, IRC, pages 50-52 (2010-2011 reimbursement claim).

[95] Exhibit A, IRC, pages 50, 52 (2010-2011 reimbursement claim).

[96] Exhibit A, IRC, page 50 (2010-2011 reimbursement claim).

[97] Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling $50,459); pages 71-111 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2010-2011, totaling $147,355.29); and pages 112-120 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2011-2012, totaling $31,812.65). Exhibit B, Controller's Comments on the IRC, pages 22-24 (Controller's Summary of Invoices Included in FY 2010-11 Claim).

[98] Government Code section 17560.

> consultant believed all invoices and costs were for the current year (FY 2010-11) and inadvertently included them all into one claim, and not two separate submissions, as should have been done (one for FY 2009-10 and one for 2010-11).
>
> We are not sure if these circumstances constitute a "clerical" error by legal definition- but it was an honest, inadvertent mistake. It was not due to failure to correctly interpret the law or understand the claiming instructions, as the Draft Decision suggests. We knew that separate forms should have been filed by fiscal year of costs. It was our error that invoices were from multiple fiscal years. We realize that this was a mistake on our part, but again, wish to emphasize that the costs submitted were timely filed, eligible, and properly supported actual costs. The only error we made was that we did not separate the invoices by fiscal year into two separate claim forms.[99]

Despite the error, the claimant argues that the costs submitted were nevertheless "timely filed, eligible and properly documented."[100] Thus, the claimant argues its submission was "fully complete with the exception of having a separate FAM-27 claim cover form for FY 2009-10 invoices."[101]

The claimant's request that the Commission require the Controller to accept its filing as a late 2009-2010 reimbursement claim is analogous to a request made under Code of Civil Procedure section 473, which gives the court discretion, absent a showing of prejudice to the adverse party, to allow a party to amend any pleading to correct a mistake.[102] The courts have held, however, that Code of Civil Procedure section 473 cannot be used to deem a claim as timely filed when it was not, even when notice is timely provided that a claim would be filed.

For example, in *Nathanson v. Superior Court* (1974) 12 Cal.3d 355, the California Supreme Court considered a case in probate where the petitioner (the former wife and daughter of the decedent) filed a creditor's claim against the estate two weeks *after* the expiration of the statutory period for presenting a claim. The creditor's claim requested $82,000 for child support and for the alleged failure by the decedent to maintain a life insurance policy. Beneath the description of the amount requested in the claim, the petitioner wrote: "For further particulars, reference is hereby made to the verified petition of Zita Nathanson for family allowance before inventory filed on or about October 3, 1972."[103] This quoted language referred to a petition previously filed in the probate proceedings on October 3, 1972, requesting a monthly family allowance from the date of the decedent's death until the filing of an inventory, which alleged that the creditor's claims "anticipated to be filed" against the estate consist of unpaid child support and a claim for the alleged failure of the decedent to maintain a life insurance policy in

---

[99] Exhibit D, Claimant's Comments on the Draft Proposed Decision, pages 1-2.

[100] Exhibit D, Claimant's Comments on the Draft Proposed Decision, page 2.

[101] Exhibit D, Claimant's Comments on the Draft Proposed Decision, page 2.

[102] *Board of Trustees of Leland Stanford Jr. University v. Superior Court* (2007) 149 Cal.App.4th 1154, 1163.

[103] *Nathanson v. Superior Court* (1974) 12 Cal.3d 355, 359.

the same amount as presented in the later-filed claim. After the creditor's claim was rejected as late, the petitioner filed a request for an order authorizing filing a late claim based on Code of Civil Procedure section 473, alleging that "through mistake and inadvertence petitioner's claim was not regularly filed with this court in proper form within the statutory four month period for presenting claims," but that notice of her claim had been given to the estate within the claim presentation period when she filed her petition on October 3, 1972. Petitioner therefore requested that the claim be deemed filed since the estate had actual notice of the claim sufficient to give the court jurisdiction. The court denied the request on the following grounds: (1) the probate statute stated that all claims must be filed within the time limited in the notice or be "barred forever"; (2) mere notice of the claim on the part of the estate does not constitute a sufficient filing of a claim; (3) the executor or administrator of the estate has a fiduciary relationship to all parties having an interest in the estate and is required to protect the estate against the collection of a claim that is not filed or presented as required by statute; (4) under Code of Civil Procedure section 473, a creditor's claim that has been properly filed can be amended or corrected after the expiration of the statutory deadline, but implicit in this rule is that the creditor's claim has been timely filed or presented in the first place; and (5) "mere notice to the estate, in the sense of imparting knowledge of the underlying debt to the representative, does not constitute a sufficient claim or demand which can be the basis of an amendment."[104]

This case is similar to *Nathanson*, except that there is no evidence in this case that the Controller had notice or was aware of the 2009-2010 costs until the desk review of the 2010-2011 claim in September 2014.[105] The 2010-2011 reimbursement claim was filed on January 27, 2012.[106] Although 2009-2010 invoices were attached to the 2010-2011 reimbursement claim, the evidence shows that the Controller receives several thousand claims during the annual claim submission period, which are simply receipted and logged.[107] Page one of the reimbursement claim form submitted by the claimant (the FAM-27) states that the claim is for fiscal year 2010-2011 costs and the form is signed under penalty of perjury certifying that the claim is true and correct.[108] Thus, the claim was logged as a fiscal year 2010-2011 claim.[109] Pursuant to Government Code section 17558.5, the Controller had three years after the reimbursement claim was filed to initiate an audit, which was timely initiated here in September 2014. Thus, there is no evidence, as suggested by the claimant, that the Controller was arbitrary or capricious "in waiting three years" to notify the claimant of the claimant's alleged mistake. The evidence

---

[104] *Nathanson v. Superior Court* (1974) 12 Cal.3d 355, 364-367, 369-370.

[105] Exhibit B, Controller's Comments on the IRC, page 7.

[106] The claimant states that the filing date is January 30, 2012, (Exhibit A, IRC, pages 5, 50), but the Controller states that the filing date is January 27, 2012 (Exhibit B, Controller's Comments on the IRC, page 8). The record indicates that the claim was signed on January 19, 2012, and shows an "LRS Input" date from the Controller on January 30, 2012 (Exhibit B, Controller's Comments on the IRC, page 12).

[107] Exhibit B, Controller's Comments on the IRC, page 7.

[108] Exhibit A, IRC, page 50.

[109] Exhibit B, Controller's Comments on the IRC, page 7.

shows that the Controller's actions complied with the law and the Controller's usual procedures for accepting annual reimbursement claims.

Moreover, the Commission does not have the authority to correct the type of mistake alleged in this case. The plain language of Government Code 17560 puts the burden on the claimant to file an annual reimbursement claim by the statutory deadline for costs incurred in a single fiscal year. The Controller's annual reimbursement claim form, FAM-27, requires the claimant to sign the claim under penalty of perjury certifying that the costs claimed are true and correct and that the person signing is authorized by the local agency to file a claim with the State. The claimant never filed a reimbursement claim for fiscal year 2009-2010 or a declaration signed under penalty of perjury for that fiscal year. Neither the Commission nor the Controller have the authority to now allow the filing of a 2009-2010 reimbursement claim since the deadline in Government Code sections 17560 and 17568 has lapsed. Government Code section 17561(d)(3) plainly states that "*in no case* may a reimbursement claim be paid if submitted more than one year after the filing deadline specified in the Controller's claiming instructions on funded mandates."[110] Similarly, Government Code section 17568 states that "*in no case* shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560." The deadline in this case to file a 2009-2010 reimbursement claim under sections 17560 and 17568, certified and signed under penalty of perjury, passed on February 15, 2012, one month after the 2010-2011 reimbursement claim was filed.[111]

Therefore, the Controller's decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

V. Conclusion

Based on the forgoing analysis, the Commission concludes that the Controller's reduction is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Commission denies this IRC.

[110] Emphasis added.

[111] Government Code section 17560(a) states that "[a] local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year. Government Code section 17568 allows a valid reimbursement claim to be submitted after that deadline, and in such cases, the Controller is required to reduce the claim by ten percent. Section 17568 further states, however, that "*in no case* shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560." Emphasis added.