



November 16, 2016

Ms. Claudette Dain
Citrus Community College District
Finance and Administrative Services
1000 West Foothill Boulevard
Glendora, CA 91741-1899

Ms. Jill Kanemasu
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Integrated Waste Management, 14-0007-I-03
Public Resources Code Sections 40148, 40196.3, 42920-42928;
Public Contract Code Sections 12167 and 12167.1;
Statutes 1999, Chapter 764 (AB 75); Statutes 1992, Chapter 1116 (AB 3521);
State Agency Model Integrated Waste Management Plan (February 2000)
Fiscal Years 1999-2000, 2000-2001, 2003-2004, 2004-2005, 2005-2006, 2006-2007,
2007-2008, 2008-2009, 2009-2010, and 2010-2011
Citrus Community College District, Claimant

Dear Ms. Dain and Ms. Kanemasu:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision by **December 7, 2016**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.)

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, January 27, 2017**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about January 13, 2017. Please let us know in advance if you or a representative of your agency

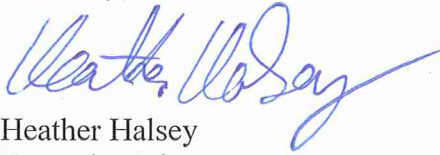
Ms. Dain and Ms. Kanemasu

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will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey", with a long, sweeping flourish extending to the right.

Heather Halsey
Executive Director

ITEM _
INCORRECT REDUCTION CLAIM
DRAFT PROPOSED DECISION

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

Integrated Waste Management

Fiscal Years 1999-2000, 2000-2001, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011.

14-0007-I-03

Citrus Community College District, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) addresses reductions made by the State Controller’s Office (Controller) to reimbursement claims of the Citrus Community College District (claimant) for fiscal years 1999-2000, 2000-2001, and 2003-2004 through 2010-2011 under the *Integrated Waste Management* program, 00-TC-07. The reductions were made on the ground that the claimant did not identify and deduct from its reimbursement claims offsetting savings resulting from the claimant’s diversion of solid waste and the associated reduction or avoidance of costs incurred in landfill deposit fees.

Staff finds that the Controller’s reduction of costs is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. Staff recommends that the Commission deny this IRC.

The *Integrated Waste Management* Program

The test claim statutes require each community college district¹ to adopt and implement, in consultation with the California Integrated Waste Management Board (CIWMB, now known as CalRecycle), an integrated waste management (IWM) plan to govern the district’s efforts to reduce solid waste, reuse materials, recycle recyclable materials and procure products with recycled content in all agency offices and facilities. To implement their plans, community college districts must divert from landfill disposal at least 25 percent of generated solid waste by January 1, 2002, and at least 50 percent by January 1, 2004. Public Resources Code section 42925, as added by the test claim statutes, further provides that “[a]ny cost savings realized as a

¹ The test claim statutes apply to “state agencies” but defines them to include “the California Community Colleges” (Pub. Res. Code, § 40196.3.) Community college districts are the only local government to which the test claim statutes apply.

result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency's integrated waste management plan to fund plan implementation and administration costs, in accordance with Sections 12167 and 12167.1 of the Public Contract Code.”

On March 24, 2004, the Commission adopted the Test Claim Statement of Decision and determined that the test claim statutes impose a reimbursable mandate on community colleges, and that cost savings under Public Resources Code section 42925 did not result in a denial of the Test Claim because there was no evidence of offsetting savings that would result in no net costs to a community college district. The Parameters and Guidelines were adopted on March 30, 2005, to provide reimbursement for the activities approved in the Statement of Decision, and did not include a requirement for claimants to identify and deduct cost savings.

After adoption of the Parameters and Guidelines, the Department of Finance (Finance) and the California Integrated Waste Management Board (CIWMB) challenged the Statement of Decision and Parameters and Guidelines, arguing that the Commission did not properly account for all the offsetting cost savings from avoided disposal costs, or offsetting revenues from the sale of recyclable materials in the Statement of Decision or Parameters and Guidelines. On May 29, 2008, the Sacramento County Superior Court partially agreed with the petitioners and directed the Commission to amend the Parameters and Guidelines to:

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

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

Procedural History

The claimant signed its 1999-2000, 2000-2001, 2003-2004, and 2004-2005 reimbursement claims on September 26, 2005.³ The claimant signed its 2005-2006 reimbursement claim on December 1, 2006,⁴ its 2006-2007 reimbursement claim on January 18, 2008,⁵ its 2007-2008

² Exhibit X, *State of California v. Commission on State Mandates*, (Super. Ct., Sacramento County, 2008, No. 07CS00355, Peremptory Writ of Mandate).

³ Exhibit A, IRC, pages 223, 230, 236, and 241.

⁴ Exhibit A, IRC, page 247.

⁵ Exhibit A, IRC, page 253.

reimbursement claim on December 15, 2008,⁶ its 2008-2009 reimbursement claim on January 13, 2010,⁷ its 2009-2010 reimbursement claim on January 10, 2011,⁸ and its 2010-2011 reimbursement claim on January 20, 2012.⁹ The Controller issued the final audit report on September 11, 2013.¹⁰ The claimant filed this IRC on July 14, 2014.¹¹ The Controller filed late comments on the IRC on January 16, 2015.¹² Commission staff issued the Draft Proposed Decision on November 16, 2016.¹³

Commission Responsibilities

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

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

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁴ 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 of the California Constitution and not

⁶ Exhibit A, IRC, page 258.

⁷ Exhibit A, IRC, page 264.

⁸ Exhibit A, IRC, page 270.

⁹ Exhibit A, IRC, page 276 (this claim states it is for 7/1/10 to 10/7/10).

¹⁰ Exhibit A, IRC, page 25 (Final Audit Report).

¹¹ Exhibit A, IRC.

¹² Exhibit B, Controller's Late Comments on the IRC. Note that Government Code section 17553(d) states: "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and Proposed Decision.

¹³ Exhibit C, Draft Proposed Decision.

¹⁴ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁵

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.¹⁶

The Commission must also review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.¹⁷ In addition, section 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.¹⁸

Claims

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

| Issue | Description | Staff Recommendation |
|--|---|---|
| The Controller’s reduction of costs claimed based on understated cost savings resulting from implementation of the IWM plan. | Pursuant to the ruling and writ issued by the Sacramento Superior Court in <i>State of California v. Commission on State Mandates</i> , (Super. Ct., Sacramento County, 2008, No. 07CS00355), the amended Parameters and Guidelines require claimants to identify and offset from their claims, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans, and | <i>Correct</i> – Based on the claimant’s annual reports to the CIWMB showing that the claimant diverted solid waste in amounts that exceed the state mandate, the Controller correctly presumed, consistent with the presumption in the test claim statutes and the court’s interpretation of those statutes and without any evidence to the contrary, that the allocated percentage of waste required to be diverted |

¹⁵ *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.

¹⁶ *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

¹⁷ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁸ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

| | | |
|--|---|---|
| | <p>apply the cost savings to fund plan implementation and administration costs.</p> <p>The test claim statutes, presume that by complying with the mandate to reduce and divert solid waste through the IWM program, landfill fees are reduced or avoided and cost savings are realized. As indicated in the court’s ruling, the amount or value of the cost savings may be determined from the calculations of annual solid waste disposal reduction or diversion, which community colleges are required to annually report to the CIWMB. There is a rebuttable statutory presumption of cost savings. However, the claimant has not filed any evidence to rebut the presumption and show that cost savings were not, in fact, realized. The claimant has the burden of proof on this issue.</p> | <p>by the state results in offsetting savings in an amount equal to the avoided landfill fee per ton of waste diverted. The Controller did not use the actual percentage of waste diverted by the claimant, which exceeded the amount mandated by the state, so that the claimant would not be penalized. The avoided landfill disposal fee was based on the statewide average disposal fee provided by the CIWMB for each fiscal year in the audit period. The claimant has not filed any evidence to rebut the statutory presumption of cost savings. Thus, the Controller’s reduction of costs is correct as a matter of law.</p> <p>Moreover, there is no evidence that the Controller’s calculations of cost savings are incorrect as a matter of law, or are arbitrary, capricious, or without evidentiary support.</p> |
|--|---|---|

Staff Analysis

The IWM program requires community college districts to reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content in all agency offices and facilities. To implement their plans, community college districts must divert from landfill disposal at least 25 percent of generated solid waste by January 1, 2002, and at least 50 percent by January 1, 2004. Public Resources Code section 42925 as added by the test claim statutes further provide that “[a]ny cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency’s integrated waste management plan to fund plan implementation and administration costs, in accordance with Sections 12167 and 12167.1 of the Public Contract Code.”

The Test Claim Statement of Decision and Parameters and Guidelines were challenged by Finance and CIWMB on the ground that the Commission failed to identify cost savings from the

program from reduced or avoided landfill disposal fees.¹⁹ The court granted the petition for writ of mandate, finding that offsetting savings are, by statutory definition, likely to occur as a result of implementing the mandated activities. Reduced or avoided costs “are a direct result and an integral part of the IWM plan mandated under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste and associated landfill disposal costs are reduced or avoided.” As the court held, “landfill fees resulting from solid waste diversion activities under § 42920 et seq. represent savings *which must be offset* against the costs of the diversion activities to determine the reimbursable costs. . . .”²⁰ The writ directed the Commission to amend the Parameters and Guidelines to require claimants to “identify and offset from their claims, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans,” and apply the cost savings to fund plan implementation and administration costs.²¹

The test claim statutes, therefore, presume that by complying with the mandate to reduce and divert solid waste through the IWM program, landfill fees are reduced or avoided and cost savings are realized. As indicated in the court’s ruling, the amount or value of the cost savings may be determined from the calculations of annual solid waste disposal reduction or diversion, which community colleges are required to annually report to the CIWMB.²² The statutory presumption of cost savings controls unless the claimant files evidence to rebut the presumption and shows that cost savings were not, in fact, realized. The claimant has the burden of proof on this issue. Under the mandates statutes and regulations, the claimant is required to show that it has incurred increased costs mandated by the state when submitting a reimbursement claim to the Controller’s Office, and the burden to show that any reduction made by the Controller is incorrect.²³

In this case, the claimant argues that no cost savings were realized.²⁴ However, based on the claimant’s annual reports to the CIWMB showing that the claimant diverted solid waste in amounts that exceed the state mandate,²⁵ the Controller correctly presumed, consistent with the presumption in the test claim statutes and the court’s interpretation of those statutes and without any evidence to the contrary, that the allocated percentage of waste required to be diverted by the state results in offsetting savings in an amount equal to the avoided landfill fee per ton of waste diverted. The Controller did not use the actual percentage of waste diverted by the claimant, which exceeded the amount mandated by the state, so that the claimant would not be penalized.²⁶ The avoided landfill disposal fee was based on the statewide average disposal fee provided by

¹⁹ Exhibit B, Controller’s Late Comments on the IRC, pages 103-114.

²⁰ Exhibit B, Controller’s Late Comments on the IRC, page 109.

²¹ Exhibit X, *State of California v. Commission on State Mandates* (Super. Ct., Sacramento County, 2008, No. 07CS00355, Peremptory Writ of Mandate).

²² Exhibit B, Controller’s Late Comments on the IRC, page 109.

²³ Evidence Code section 500; Government Code sections 17514, 17551, 17558.7, 17560.

²⁴ Exhibit A, IRC, page 9.

²⁵ Exhibit B, Controller’s Late Comments on the IRC, pages 34-72.

²⁶ Exhibit B, Controller’s Late Comments on the IRC, page 19.

the CIWMB for each fiscal year in the audit period, and the claimant has not filed any evidence to support a finding that the statewide average disposal fee is incorrect, or arbitrary, or capricious. Nor has the claimant filed any evidence to rebut the statutory presumption of cost savings. Thus, the Controller's reduction of costs is correct as a matter of law.

Moreover, there is no evidence that the Controller's calculations of cost savings are incorrect as a matter of law, or are arbitrary, capricious, or without evidentiary support.

Accordingly, the Controller's reduction of costs is correct as a matter of law and not arbitrary, capricious, or lacking in evidentiary support.

Conclusion

Staff finds that the Controller's reductions are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to deny the IRC.

Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes to Proposed Decision following the hearing.

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM
 ON:**

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

Fiscal Years 1999-2000, 2000-2001, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011

Citrus Community College District, Claimant

Case No.: 14-0007-I-03

Integrated Waste Management

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

(Adopted January 27, 2017)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on January 27, 2017. [Witness list will be included in the adopted Decision.]

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

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

| Member | Vote |
|---|-------------|
| Ken Alex, Director of the Office of Planning and Research | |
| Richard Chivaro, Representative of the State Controller | |
| Mark Hariri, Representative of the State Treasurer, Vice Chairperson | |
| Sarah Olsen, Public Member | |
| Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson | |
| Carmen Ramirez, City Council Member | |
| Don Saylor, County Supervisor | |

Summary of the Findings

This IRC addresses reductions made by the State Controller's Office (Controller) to reimbursement claims of the Citrus Community College District (claimant) for fiscal years 1999-2000, 2000-2001,²⁷ and 2003-2004 through 2010-2011 under the *Integrated Waste Management* program, 00-TC-07. The reductions were made on the ground that the claimant did not identify and deduct from its claims offsetting savings from the claimant's diversion of solid waste and the associated reduction or avoidance of costs incurred in landfill deposit fees.

The IWM program requires community college districts to reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content in all agency offices and facilities. To implement their plans, community college districts must divert from landfill disposal at least 25 percent of generated solid waste by January 1, 2002, and at least 50 percent by January 1, 2004. Public Resources Code section 42925, as added by the test claim statutes, further provides that "[a]ny cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency's integrated waste management plan to fund plan implementation and administration costs, in accordance with Sections 12167 and 12167.1 of the Public Contract Code."

The Controller's audit findings are based on the court's ruling in *State of California v. Commission on State Mandates*, (Super. Ct., Sacramento County, 2008, No. 07CS00355, Peremptory Write of Mandate) and the resulting amendment to the Parameters and Guidelines. The court found that offsetting savings are, by statutory definition, likely to occur as a result of implementing the mandated activities. Reduced or avoided costs "are a direct result and an integral part of the IWM plan mandated under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste and associated landfill disposal costs are reduced or avoided." As the court held, "landfill fees resulting from solid waste diversion activities under § 42920 et seq. represent savings *which must be offset* against the costs of the diversion activities to determine the reimbursable costs. . . ." ²⁸

The test claim statutes, therefore, presume that by complying with the mandate to reduce and divert solid waste through the IWM program, landfill fees are reduced or avoided and cost savings are realized. As indicated in the court's ruling, the amount or value of the cost savings may be determined from the calculations of annual solid waste disposal reduction or diversion, which community colleges are required to annually report to the California Integrated Waste Management Board (CIWMB).²⁹ The statutory presumption of cost savings controls unless the claimant files evidence to rebut the presumption and shows that cost savings were not, in fact, realized. The claimant has the burden of proof on this issue. Under the mandates statutes and

²⁷ In the cover letter to the audit report, the Controller stated: "We did not include the costs claimed for the period of July 1, 2001, through June 30, 2003, in the review period because the statute of limitations to initiate the review had expired before we began the review." See Exhibit A, IRC, page 25 (Final Audit Report). Note that for the remaining fiscal years, at the time the IRC was filed, no payment had been made to claimant so that the statute of limitations on initiating an audit had not yet begun to run.

²⁸ Exhibit B, Controller's Late Comments on the IRC, page 109.

²⁹ Exhibit B, Controller's Late Comments on the IRC, page 109.

regulations, the claimant is required to show that it has incurred increased costs mandated by the state when submitting a reimbursement claim to the Controller's Office, and the burden to show that any reduction made by the Controller is incorrect.

Based on the claimant's annual reports to the CIWMB, showing that the claimant diverted solid waste in amounts that exceed the state mandate, the Controller correctly presumed, consistent with the presumption in the test claim statutes and the court's interpretation of those statutes and without any evidence to the contrary, that the allocated percentage of waste required to be diverted by the state results in offsetting savings in an amount equal to the avoided landfill fee per ton of waste diverted. The Controller did not use the actual percentage of waste diverted by the claimant, which exceeded the amount mandated by the state, so that the claimant would not be penalized.³⁰ The avoided landfill disposal fee was based on the statewide average disposal fee provided by the CIWMB for each fiscal year in the audit period, and the claimant has not filed any evidence to support a finding that the statewide average disposal fee is incorrect, or arbitrary or capricious. The claimant has not filed any evidence to rebut the statutory presumption of cost savings. Thus, the Controller's reduction of costs is correct as a matter of law.

Moreover, there is no evidence that the Controller's calculations of cost savings are incorrect as a matter of law, or are arbitrary, capricious, or without evidentiary support.

Accordingly, the Controller's reduction of costs is correct as a matter of law and not arbitrary, capricious, or lacking in evidentiary support. The Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

- 09/26/2005 Claimant signed its 1999-2000, 2000-2001, 2003-2004, and 2004-2005 reimbursement claims.³¹
- 12/01/2006 Claimant signed its 2005-2006 reimbursement claim.³²
- 01/18/2008 Claimant signed its 2006-2007 reimbursement claim.³³
- 12/15/2008 Claimant signed its 2007-2008 reimbursement claim.³⁴
- 01/13/2010 Claimant signed its 2008-2009 reimbursement claim.³⁵
- 01/10/2011 Claimant signed its 2009-2010 reimbursement claim.³⁶

³⁰ Exhibit B, Controller's Late Comments on the IRC, page 19.

³¹ Exhibit A, IRC, pages 223, 230, 236, and 241.

³² Exhibit A, IRC, page 247.

³³ Exhibit A, IRC, page 253.

³⁴ Exhibit A, IRC, page 258.

³⁵ Exhibit A, IRC, page 264.

³⁶ Exhibit A, IRC, page 270.

- 01/30/2012 Claimant signed its 2010-2011 reimbursement claim.³⁷
- 09/11/2013 Controller issued the Final Audit Report.³⁸
- 07/14/2014 Claimant filed this IRC.³⁹
- 01/16/2015 Controller filed late comments on the IRC.⁴⁰
- 11/16/2016 Commission staff issued the Draft Proposed Decision.⁴¹

II. Background

A. The *Integrated Waste Management Program*

The test claim statutes require each community college district⁴² to adopt and implement, in consultation with the California Integrated Waste Management Board (CIWMB, now the California Department of Resources Recycling and Recovery, or CalRecycle) an IWM plan to govern the district’s efforts to reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content in all agency offices and facilities.⁴³ To implement their plans, districts must divert from landfill disposal at least 25 percent of generated solid waste by January 1, 2002, and at least 50 percent by January 1, 2004. To divert means to “reduce or eliminate the amount of solid waste from solid waste disposal...”⁴⁴

CIWMB developed and adopted a model IWM plan on February 15, 2000, and the test claim statutes provide that if a district does not adopt an IWM plan, the CIWMB model plan governs the community college.⁴⁵ Each district is also required to report annually to CIWMB on its progress in reducing solid waste; and the reports’ minimum contents are specified in statute.⁴⁶

³⁷ Exhibit A, IRC, page 276 (This claim states it is for 7/1/10 to 10/7/10).

³⁸ Exhibit A, IRC, page 25 (Final Audit Report).

³⁹ Exhibit A, IRC.

⁴⁰ Exhibit B, Controller’s Late Comments on the IRC. Note that Government Code section 17553(d) states: “the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission.” However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and Proposed Decision.

⁴¹ Exhibit C, Draft Proposed Decision.

⁴² The test claim statutes apply to “state agencies” and define them to include “the California Community Colleges” (Pub. Res. Code, § 40196.3).

⁴³ Public Resources Code section 42920(b).

⁴⁴ Public Resources Code section 40124.

⁴⁵ Public Resources Code section 42920(b)(3).

⁴⁶ Public Resources Code section 42926.

The test claim statutes also required, when entering into or renewing a lease, a community college to ensure that adequate areas are provided for and adequate personnel are available to oversee collection, storage, and loading of recyclable materials in compliance with CIWMB's requirements.⁴⁷ Additionally, the test claim statutes added Public Resources Code section 42925(a), which addressed cost savings from IWM plan implementation:

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

The Public Contract Code sections referenced in section 42925 require that revenue received as a result of the community college's IWM plan be deposited in CIWMB's Integrated Waste Management Account. After July 1, 1994, CIWMB was authorized to spend the revenue upon appropriation by the Legislature to offset recycling program costs. Annual revenue under \$2,000 is to be continuously appropriated for expenditure by the community colleges, whereas annual revenue over \$2,000 is available for expenditures upon appropriation by the Legislature.⁴⁸

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

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

- A. One-Time Activities (Reimbursable starting January 1, 2000)
 1. Develop the necessary district policies and procedures for the

⁴⁷ Public Resources Code section 42924(b).

⁴⁸ Public Contract Code sections 12167 and 12167.1 are part of the State Assistance for Recycling Markets Act, which was originally enacted in 1989 to foster the procurement and use of recycled paper products and other recycled resources in daily state operations (See Pub. Contract Code, §§ 12153, 12160; Stats. 1989, ch. 1094). The Act, including sections 12167 and 12167.1, apply to California Community Colleges only to the limited extent that these sections are referenced in Public Resources Code section 42925. California Community Colleges are not defined as state agencies or otherwise subject to the Act's provisions for the procurement and use of recycled products in daily state operations. See Exhibit B, Controller's Late Comments on the IRC, page 105 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355)).

implementation of the integrated waste management plan.

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

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

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

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

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

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

1. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2002 deadline to divert 25

percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42923 subds. (a) & (c).)

- a. Notify the Board in writing, detailing the reasons for its inability to comply.
 - b. Request of the Board an alternative to the January 1, 2002 deadline.
 - c. Provide evidence to the Board that the college is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan.
 - d. Provide information that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college.
 - e. Submit a plan of correction that demonstrates that the college will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.
2. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2004 deadline to divert 50 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42922, subds. (a) & (b).)
- a. Notify the Board in writing, detailing the reasons for its inability to comply.
 - b. Request of the Board an alternative to the 50-percent requirement.
 - c. Participate in a public hearing on its alternative requirement.
 - d. Provide the Board with information as to:
 - (i) the community college's good faith efforts to implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and demonstration of its progress toward meeting the alternative requirement as described in its annual reports to the Board;
 - (ii) the community college's inability to meet the 50 percent diversion requirement despite implementing the measures in its plan;

- (iii) how the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve; and,
- (iv) the circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.⁴⁹

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

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

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

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

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

⁴⁹ These alternative compliance and time extension provisions in part C were sunset on January 1, 2006, but were included in the adopted Parameters and Guidelines.

reduction, recycling, and composting requirement by the Board pursuant to section 42922, it shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

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

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

The Parameters and Guidelines further require that each claimed reimbursable cost be supported by contemporaneous source documentation.⁵⁰

And as originally adopted, the Parameters and Guidelines required community college districts to identify and deduct from their reimbursement claims all of the offsetting revenues received from the sale of recyclable materials, limited by the provisions of Public Resources Code section 42925 and Public Contract Code section 12167.1. The Parameters and Guidelines did not contain any provisions requiring community colleges to identify and deduct from their claims offsetting cost savings resulting from the solid waste diversion activities required by the test claim statutes.⁵¹

B. Superior Court Decision Regarding Cost Savings and Offsets Under the Program

After the Parameters and Guidelines were adopted, Finance and the CIWMB filed a petition for a writ of mandate pursuant to Government Code section 17559, requesting the court to direct the Commission to set aside the test claim Statement of Decision and Parameters and Guidelines and to issue a new Decision and Parameters and Guidelines that give full consideration to the cost savings and offsetting revenues community college districts will achieve by complying with the test claim statute, including all cost savings achieved through avoided landfill disposal fees and revenues received from the collection and sale of recyclable materials. The petition further argued that Public Contract Code sections 12167 and 12167.1 do not require community college districts to deposit revenues received from the collection and sale of recyclable materials into the Integrated Waste Management Account, as determined by the Commission, but instead allow community college districts to retain all revenues received. The petition contended that such revenues must be identified as offsetting revenues and applied to the costs of the program, without the community college district obtaining the approval of the Legislature or the CIWMB.

On May 29, 2008, the Sacramento County Superior Court entered judgment granting the petition for writ of mandate, and found that the Commission's treatment of cost savings and revenues in the Parameters and Guidelines was erroneous and required that the Parameters and Guidelines be amended. The court found "no indication in the administrative record or in the legal authorities provided to the court that, as respondent [Commission] argues, a California Community College might not receive the full reimbursement of its actual increased costs required by section 6 if its claims for reimbursement of IWM plan costs were offset by realized cost savings and all

⁵⁰ Exhibit A, IRC, pages 41-44 (Parameters and Guidelines, adopted March 30, 2005).

⁵¹ Exhibit A, IRC, page 46 (Parameters and Guidelines, adopted March 30, 2005).

revenues received from the plan activities.”⁵² Instead, the court recognized that community colleges are “likely to experience costs savings in the form of reduced or avoided costs of landfill disposal” as a result of the mandated activities in Public Resources Code section 42921 because reduced or avoided costs “are a direct result and an integral part of the IWM plan mandated under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste and associated landfill disposal costs are reduced or avoided.” The court noted that “diversion is defined in terms of landfill disposal for purposes of the IWM plan mandates” and cited the statutory definition of diversion: “activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division [i.e., division 30, including § 42920 et seq.]” as well as the statutory definition of disposal: “the management of solid waste through landfill disposal or transformation at a permitted solid waste facility.”⁵³

The court explained that:

[R]eduction or avoidance of landfill fees resulting from solid waste diversion activities under § 42920 et seq. represent savings *which must be offset* against the costs of the diversion activities to determine the reimbursable costs of the IWM plan implementation . . . The amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(1) of Public Resources Code section 42926.⁵⁴

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

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

⁵² Exhibit B, Controller’s Late Comments on the IRC, page 108 (Ruling on Submitted Matter).

⁵³ Exhibit B, Controller’s Late Comments on the IRC, page 108 (Ruling on Submitted Matter).

⁵⁴ Exhibit B, Controller’s Late Comments on the IRC, page 109 (Ruling on Submitted Matter).

in excess of \$2000 annually are available for such expenditure by the agencies and colleges when appropriated by the Legislature.⁵⁵

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

1. Identify and offset from their claims, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans; and
2. Identify and offset from their claims all of the revenue generated as a result of implementing their plans, without regard to the limitations or conditions described in sections 12167 and 12167.1 of the Public Contract Code.⁵⁶

C. Parameters and Guidelines Amendment Pursuant to the Writ

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

Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1. Pursuant to these statutes, community college districts are required to deposit cost savings resulting from their Integrated Waste Management plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the California Integrated Waste Management Board for the purpose of offsetting Integrated Waste Management plan costs. Subject to the approval of the California Integrated Waste Management Board, cost savings by a community college that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting Integrated Waste Management program costs. Cost savings exceeding two thousand dollars (\$2,000) annually may be available for expenditure by the community college only when appropriated by the Legislature. To the extent so approved or appropriated and applied to the college, these amounts shall be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan.⁵⁷

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

⁵⁵ Exhibit B, Controller's Late Comments on the IRC, page 110-111 (Ruling on Submitted Matter).

⁵⁶ Exhibit X, *State of California v. Commission on State Mandates* (Super. Ct., Sacramento County, 2008, No. 07CS00355, Peremptory Writ of Mandate).

⁵⁷ Exhibit A, IRC page 59 (Amended Parameters and Guidelines, adopted Sept. 26, 2008).

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

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

In addition, revenue from a building-operating fee imposed pursuant to Education Code section 76375, subdivision (a) if received by a claimant and the revenue is applied to this program, shall be deducted from the costs claimed.⁵⁸

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

The CIWMB also requested additional amendments to the Parameters and Guidelines for this hearing, which were denied by the Commission. CIWMB requested that the offsetting savings language be changed to require community college districts to provide offsetting savings information *whether or not* the offsetting savings generated in a fiscal year exceeded the \$2,000 continuous appropriation required by Public Contract Code sections 12167 and 12167.1. The Commission denied the request because the proposed language went beyond the scope of the court's judgment and writ.⁵⁹ As the Court's Ruling finds:

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

⁵⁸ Exhibit A, IRC, pages 58-59.

⁵⁹ Exhibit X, Excerpt from the Minutes, for the September 26, 2008 Meeting of the Commission on State Mandates.

Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the Integrated Waste Management Board for the purpose of offsetting IWM plan costs. In accordance with section 12167.1 and notwithstanding section 12167, cost savings from the IWM plans of the agencies and colleges that do not exceed \$2000 annually are continuously appropriated for expenditure by the agencies and colleges for the purpose of offsetting IWM plan implementation and administration costs; cost savings resulting from IWM plans in excess of \$2000 annually are available for such expenditure by the agencies and colleges when appropriated by the Legislature.⁶⁰

The CIWMB also requested additional language to require community college districts to analyze specified categories of potential cost savings when filing their reimbursement claims. The Commission found that the court determined that the amount or value of cost savings is already available from the annual report the community college districts provide to the CIWMB pursuant to Public Resources Code section 42926(b). This report is required to include the district's "calculations of annual disposal reduction" and "information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors." Thus, the Commission denied the request and adopted the staff analysis finding that the request went beyond the scope of the court's writ and judgment. The Commission also noted that the request was the subject of separate pending request filed by CIWMB to amend the Parameters and Guidelines and, thus, would be further analyzed for that matter.

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

The CIWMB filed a request to amend the Parameters and Guidelines to include a requirement for community college districts to submit a separate worksheet and report with their reimbursement claims analyzing the costs incurred and avoided and any fees received relating to staffing, overhead, materials, storage, transportation, equipment, the sale of commodities, avoided disposal fees, and any other revenue received relating to the mandated program as specified by the CIWMB. The Commission rejected the request for the following reasons: there is no requirement in statute or regulation that community college districts perform the analysis specified by the CIWMB; the Commission has no authority to impose additional requirements on community college districts regarding this program; the offsetting cost savings paragraph in the Parameters and Guidelines already identifies the offsetting savings consistent with the language of Public Resources Code section 42925(a), Public Contract Code sections 12167 and 12167.1, and the court's judgment and writ; and information on cost savings is already available in the community colleges' annual reports submitted to CIWMB, as required by Public Resources Code section 42926(b)(1).⁶¹

⁶⁰ Exhibit B, Controller's Late Comments on the IRC, page 110-111 (Ruling on Submitted Matter).

⁶¹ Exhibit X, Item 9, Final Staff Analysis of Proposed Amendments to the Parameters and Guidelines for *Integrated Waste Management*, 05-PGA-16, January 30, 2009, pages 2-3.

E. The Controller’s Audit

The Controller audited claimant’s reimbursement claims for the 1999-2000, 2000- 2001, and 2003-2004 through 2010-2011 fiscal years (the audit period). The claims for 2001-2002 and 2002-2003 were not audited because, according to the Controller, the statute of limitations to initiate the review had expired before the Controller began the review.⁶²

Of the \$378,779 claimed for the audit period, the Controller found that \$371,120 was unallowable and \$7,659 was allowable for fiscal year 1999-2000 only, because the claimant underreported cost savings, by identifying savings of only \$571,⁶³ during the audit period. The Controller’s audit finding is based on the court’s ruling and the resulting amendment to the Parameters and Guidelines, which state that “the amount or value of the cost savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(l) of Public Resources Code section 42926.”

The Controller used the solid waste diversion percentages to calculate offsetting savings with the following formula:

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

This formula divides the percentage of solid waste required to be diverted (25 percent for 1999-2001 and 50 percent for 2003-2011) by the actual percentage of solid waste diverted (as reported by the claimant to CIWMB). The resulting quotient is then multiplied by the tons of solid waste diverted (as annually reported by the claimant to the CIWMB), multiplied by the avoided landfill disposal fee (based on the statewide average fee). The Controller state’s that “[t]his calculation determines the cost that the district did not incur for solid waste disposal as a result of implementing its IWM plan.”⁶⁴

The Controller provides an example of how this formula works. In calendar year 2007, the claimant reported that it diverted 3,099.2 tons of solid waste and disposed of 802.6 tons, which totals 3,901.8 tons of solid waste generated for that year. Diverting 3,099.2 tons out of the 3,901.8 tons of total waste generated, results in a diversion percentage of 79.43 percent (more

⁶² Exhibit A, IRC, page 25 (Final Audit Report).

⁶³ The claimant asserts that the \$571 was offsetting revenues, and that it realized no cost savings. (Exhibit A, IRC, pages 16-18.)

⁶⁴ Exhibit A, IRC, pages 34 and 35 (Final Audit Report).

than the 50 percent required).⁶⁵ The Controller did not want to penalize the claimant for diverting more solid waste than what was mandated⁶⁶ and, thus, allocated the diversion percentage by dividing the mandated diversion percentage (50 percent) by the actual diversion percentage (79.43 percent), which equals 62.95 percent. The allocated diversion percentage of 62.95 percent is then multiplied by the 3,099.2 tons diverted that year, which equals 1,950.9 tons of diverted solid waste, instead of the 3,099.2 tons actually diverted. The allocated 1,950.9 tons of diverted waste is then multiplied by the statewide average disposal fee per ton, which in calendar year 2007 was \$48, for “offsetting cost savings” for calendar year 2007 of \$93,646.⁶⁷ The audit report states that the claimant did not provide documentation supporting a different disposal fee.⁶⁸

In 2008, the CIWMB stopped requiring community college districts to report the actual amount of tonnage diverted (CIWMB changed focus to "per-capita disposal" instead of a "diversion percentage"). Consequently, the Controller used the claimant’s reported 2007 diversion percentage to calculate the offsetting savings for the last half of fiscal year 2007-2008, as well as for fiscal years 2008-2009, 2009-2010, and 2010-2011. According to the Controller, the claimant did not provide documentation supporting a different diversion percentage.

The Controller calculated total offsetting savings for the audit period at \$575,277, which adjusted for the \$571 in cost savings reported, amounts to cost savings of \$574,706.⁶⁹

III. Positions of the Parties

A. Citrus Community College District

The claimant contends that the audit reductions are incorrect and requests the reinstatement of the full amount reduced, \$371,120. The claimant alleges that it did not realize any cost savings as a result of the mandate and quotes the superior court decision (as discussed in the background above) that cost savings will “most likely” occur as a result of reduced or avoided costs of landfill disposal. Claimant argues that:

The court presupposes a previous legal requirement for districts to incur landfill disposal fees to divert solid waste. Thus, potentially relieved of the need to incur new or additional landfill fees for increased waste diversion, a cost savings would occur. There is no finding of fact or law in the court decision or from the

⁶⁵ Exhibit B, Controller’s Late Comments on the IRC, pages 19-20, 116 (Controller’s calculations of offsetting savings for the audit period).

⁶⁶ Exhibit B, Controller’s Late Comments on the IRC, page 19.

⁶⁷ Exhibit B, Controller’s Late Comments on the IRC, pages 19, 116 (Controller’s calculations of offsetting savings for the audit period).

⁶⁸ Exhibit A, IRC, page 35 (Final Audit Report).

⁶⁹ Exhibit A, IRC, pages 34-36 (Final Audit Report); Exhibit B, Controller’s Late Comments on the IRC, page 22.

Commission Statement of Decision for the test claim for this assumed duty to use landfills.⁷⁰

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

The cost savings must exist (avoided landfill costs); be converted to cash; amounts in excess of \$2,000 per year deposited in the state fund; and, these deposits by the districts appropriated by the Legislature to districts for purposes of mitigating the cost of implementing the plan. None of those prerequisite events occurred so no cost savings were "realized" by the District. Regardless, the adjustment cannot be applied to the District since no state appropriation of the cost savings was made to the District.⁷¹

The claimant also argues that the Parameters and Guidelines are silent as to how to calculate the avoided costs, but that the court provided two alternative methods, either disposal reduction or diversion reported by districts. The Controller used the diversion percentage, which assumes, without findings of fact, that all diversion tonnage is landfill disposal tonnage reduction. The claimant contends that the Controller's calculation of cost savings is wrong because: (1) the formula is a standard of general application that was not adopted pursuant to the Administrative Procedure Act and is therefore an unenforceable underground regulation; (2) the Controller's formula assumes facts not in evidence, such as applying the same percentage of waste diverted in 2007 to all subsequent years without evidence in the record, and assumes that all tonnage diverted would have been disposed in a landfill, although some waste may have been composted or may not apply to the mandate (e.g. paint); and (3) the landfill disposal fee, a statewide average calculated by the CIWMB, does not include the data used to generate the average fee amounts, so the average is unknown and unsupported by the audit findings.⁷²

Claimant also argues that application of the formula is incorrect. Since no landfill costs were claimed, none can be offset, so the offsets are not properly matched to relevant costs. Moreover, the Controller's calculation method prevents the claimant from receiving full reimbursement of its actual increased program costs. Claimant contends, using audit results for 23 other claimants under the *Integrated Waste Management* program, the application of the Controller's formula has arbitrary results because the percentages of allowed costs for those claimants ranges from zero to 83.4 percent.

The claimant further alleges that the audit report erroneously recognized only \$571 as the claimed offsetting recycling *revenues*, when in fact \$17,074 of offsetting revenue and other reimbursements were reported and offset by the claimant. The claimant concludes that it

⁷⁰ Exhibit A, IRC, page 11.

⁷¹ Exhibit A, IRC, page 13.

⁷² Exhibit A, IRC, pages 14-16.

properly reported the recycling income as a reduction of total claimed costs, which was not subject to state appropriation in the form of cost savings.⁷³

Finally, the claimant argues: (1) the Controller used the wrong standard of review in that the claimed costs were not found to be excessive or unreasonable, as required by Government Code section 17561(d)(2); and (2) the Controller has the burden of proof as to the propriety of its audit findings “because it bears the burden of going forward and because it is the party with the power to create, maintain, and provide evidence regarding its auditing methods and procedures, as well as the specific facts relied upon for its audit findings.”⁷⁴

B. State Controller’s Office

The Controller maintains that the audit findings are correct and that the offsetting savings were correctly reduced from the costs claimed. The Controller notes that the claimant does not provide an alternative for how undiverted solid waste would be disposed of if not at a landfill. In addition, the claimant does not state that it disposed of its solid waste at any location other than a landfill or used any other means to dispose of its waste rather than to contract with a commercial waste hauler.

The Controller concludes that the claimant’s comments relating to legal requirements regarding alternatives for the disposal of solid waste are irrelevant. The Controller cites the claimant’s annual reports of tonnage disposed for each year of the audit, and argues that the claimant “does not indicate in these annual reports that it used any other methodology to dispose of solid waste.”⁷⁵ The Controller also cites the claimant’s recycling program website, which indicates that it disposes of waste in a landfill, and concludes that the claimant “acknowledges its use of landfills for solid waste disposal” and that “it realized a reduction of solid waste disposal through implementation of its IWM plan.”⁷⁶ According to the Controller:

Unless the district had an undisclosed arrangement with its commercial waste hauler (Athens Services, Inc.), the district did not dispose of its solid waste at a landfill for no cost. For example, Citrus College is located in Glendora, CA. An internet search for landfill fees revealed that the Scholl Canyon Landfill in Glendale, California (19 miles from Citrus College), currently charges \$49.18 per ton to dispose of solid waste [citation omitted]. Therefore, the higher rate of diversion, the less trash that is disposed at a landfill, resulting in cost savings to the district.⁷⁷

The Controller also points to comments the claimant made in its August 2012 Sustainability Plan about how recycling programs can save money and create revenue streams.

As far as the claimant not remitting cost savings from the implementation of its IWM plan into the Integrated Waste Management Account in compliance with the Public Contract Code, the

⁷³ Exhibit A, IRC, pages 16-18.

⁷⁴ Exhibit A, IRC, page 21.

⁷⁵ Exhibit B, Controller’s Late Comments on the IRC, page 17.

⁷⁶ Exhibit B, Controller’s Late Comments on the IRC, pages 17 and 74.

⁷⁷ Exhibit B, Controller’s Late Comments on the IRC, page 17.

Controller asserts that the claimant is not precluded from the requirement to do so, as indicated in the Parameters and Guidelines and the court ruling. The Controller also points to the claimant's statement in its August 2012 Sustainability Plan of its "*very successful recycling program in place* resulting in an approximately 50 percent diversion rate"⁷⁸ The Controller says this evidence supports that the claimant realized cost savings that should have been remitted to the state and that must be used to fund IWM plan costs.

In response to the claimant's argument that the Controller's formula is a standard of general application that is an underground regulation, the Controller responds that the calculation is a "court approved methodology" to determine the "required offset." The Controller also states that the claimant did not amend any of its reimbursement claims after the Parameters and Guidelines were amended in September 2008. According to the Controller: "We believe that this "court identified" approach provides a reasonable methodology to identify the applicable offsets, especially when you consider the district's admission of savings through an efficiently designed program."⁷⁹

The Controller also contends that it "allocated" the offsetting savings to avoid penalizing the claimant for diverting amounts beyond the minimum percentage of diversion required. According to the Controller:

As there is no State mandate to exceed solid waste diversion greater than 25% for calendar years 2002 and 2003 or greater than 50% for calendar year 2004 and beyond, there is no basis for calculating offsetting savings realized for actual diversion percentages that exceeded the levels set by statute."⁸⁰

The Controller notes that after the passage of Statutes 2008, chapter 343, CIWMB no longer required districts to report their tonnage diverted, but they are still required to divert 50 percent of their solid waste. Defending its use of the claimant's 2007 reported diversion to calculate claimant's offsets for 2007-2008 through 2010-2011, the Controller calls the 2007 report a "fair representation" of 2008 -2010 "because the district's recycling processes have already been established and committed to." The Controller notes that the claimant's reported information on per-capita disposal is well below the target rate for 2008, 2009 and 2010, so "the district far surpassed its requirement to divert more than 50% of its solid waste." The Controller cites the claimant's 2008 report that says its recycling activities "mirror the previous years," as well as claimant's plans to add a "self-haul green waste program" and "electric hand dryers." Based on these claimant statements, the Controller asserts that its savings calculations for 2007-2008 through 2010-2011 may be understated.⁸¹

The Controller also responded to claimant's argument against the assumption that all tonnage diverted would have been disposed in a landfill, even though some waste may have been composted or may not apply to the mandate (e.g. paint). Noting that it was not until 2008 that claimant reported that its on-site composting/mulching program was planned/expanding, and that

⁷⁸ Exhibit B, Controller's Late Comments on the IRC, pages 18 and 92.

⁷⁹ Exhibit B, Controller's Late Comments on the IRC, page 19.

⁸⁰ Exhibit B, Controller's Late Comments on the IRC, page 19.

⁸¹ Exhibit B, Controller's Late Comments on the IRC, page 20.

no direct costs were claimed for 2008-2009 through 2010-2011 for time spent composting or mulching, the Controller concluded that composted material, if any, would not be a significant amount diverted. The Controller also states that claimant's reference to paint disposal is irrelevant because hazardous waste is not included in the diversion amounts that claimant reported, and therefore, are not included in the Controller's offsetting savings calculation.

Regarding the data for the statewide disposal fee, the Controller states the information was provided by CIWMB, is included in the record, and is based on private surveys of a large percentage of landfills across California. In addition, claimant "did not provide any information, such as its contract with or invoices received from its commercial waste hauler (Athens Services, Inc.) to support either the landfill fees actually incurred by the district or to confirm that the statewide average landfill fee was greater than landfill fees incurred by the district."⁸²

In response to the claimant's argument that it "did not claim landfill costs, so there are none to be offset," the Controller answers that the mandated program does not reimburse claimants for landfill costs incurred to dispose of solid waste, so none would be claimable. Rather, the mandated program reimburses claimants to divert solid waste from disposal, which according to the Controller, results in both a reduction of solid waste going to a landfill in compliance with its IWM plan, and the associated costs of having the waste hauled there, which are required to offset reimbursement claims.

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

The Controller disagrees with the claimant that it reported \$17,074 as offsetting recycling revenues. The report identifies \$16,504 of offsetting revenues and \$571 as offsetting savings reported by the district in the report's Finding and Recommendation. If the entire \$17,074 (\$16,054+\$571 minus \$1 rounding error) was related to recycling revenues, the Controller states that the claimant did not follow the claiming instructions for reporting offsetting savings and other reimbursements. The Controller also notes that there is no evidence supporting the amounts the claimant realized as recycling revenues, but that if the claimant is correct, then total offsets may be understated and total program costs may be overstated.

The Controller also disagrees with claimant's assertion that it used the wrong standard of review because it did conclude that the claims were excessive. As to the burden of proof, the Controller states that it used data from the claimant's annual reports from implementing its IWM program.

⁸² Exhibit B, Controller's Late Comments on the IRC, page 22.

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 that the Controller determines 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 6.⁸³ 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 of the California Constitution and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."⁸⁴

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.⁸⁵ 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 judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "⁸⁶

⁸³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁸⁴ *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.

⁸⁵ *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

⁸⁶ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

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.⁸⁷ In addition, sections 1185.1(f)(3) and 1185.2(c) 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.⁸⁸

The Controller's Reduction of Costs Is Correct as a Matter of Law and Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

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

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

In the court's Ruling on Submitted Matter, the court recognized that community colleges are "likely to experience costs savings in the form of reduced or avoided costs of landfill disposal" as a result of the mandated activities in Public Resources Code section 42921 because reduced or avoided costs "are a direct result and an integral part of the IWM plan mandated under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste and associated landfill disposal costs are reduced or avoided." The court noted that "diversion is defined in terms of landfill disposal for purposes of the IWM plan mandates." The statutory definition of diversion provides that "activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division." And the statutory definition of disposal is "the management of solid waste through landfill disposal or transformation at a permitted solid waste facility."⁸⁹ The court explained that:

[R]eduction or avoidance of landfill fees resulting from solid waste diversion activities under § 42920 et seq. represent savings *which must be offset* against the costs of the diversion activities to determine the reimbursable costs of the IWM plan implementation . . . The amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(l) of Public Resources Code section 42926.⁹⁰

⁸⁷ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁸⁸ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

⁸⁹ Exhibit B, Controller's Late Comments on the IRC, page 108 (Ruling on Submitted Matter).

⁹⁰ Exhibit B, Controller's Late Comments on the IRC, page 109 (Ruling on Submitted Matter).

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

By requiring the redirection of cost savings from state agency IWM plans to fund plan implementation and administration costs “in accordance with Sections 12167 and 12167.1 of the Public Contract Code,” section 42925 assures that cost savings realized from state agencies’ IWM plans are handled in a manner consistent with the handling of revenues received from state agencies’ recycling plans under the State Assistance for Recycling Markets Act. Thus, in accordance with section 12167, state agencies, along with California Community Colleges which are defined as state agencies for purposes of IWM plan requirements in Public Resources Code section 42920 et seq. [citations omitted], must deposit cost savings resulting from IWM plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the Integrated Waste Management Board for the purpose of offsetting IWM plan costs. In accordance with section 12167.1 and notwithstanding section 12167, cost savings from the IWM plans of the agencies and colleges that do not exceed \$2000 annually are continuously appropriated for expenditure by the agencies and colleges for the purpose of offsetting IWM plan implementation and administration costs; cost savings resulting from IWM plans in excess of \$2000 annually are available for such expenditure by the agencies and colleges when appropriated by the Legislature.⁹¹

Thus, the court found that offsetting savings are, by statutory definition, likely to occur as a result of implementing the mandated activities. Reduced or avoided costs “are a direct result and an integral part of the IWM plan mandated under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste and associated landfill disposal costs are reduced or avoided.”⁹² As the court held, “landfill fees resulting from solid waste diversion activities under § 42920 et seq. represent savings *which must be offset* against the costs of the diversion activities to determine the reimbursable costs. . . .”⁹³

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

⁹¹ Exhibit B, Controller’s Late Comments on the IRC, page 110-111 (Ruling on Submitted Matter).

⁹² Exhibit B, Controller’s Late Comments on the IRC, page 108 (Ruling on Submitted Matter).

⁹³ Exhibit B, Controller’s Late Comments on the IRC, page 109 (Ruling on Submitted Matter).

savings from reduction or diversion from landfill disposal, for a bottom line request for reimbursement of the net increased costs.

The Parameters and Guidelines are consistent with the court's ruling and require in Section IV. that "[t]he claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate." Section VIII. requires that "[r]educed or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1." The court's decision and the amended Parameters and Guidelines are binding.⁹⁴

B. The claimant exceeded the mandate to divert solid waste, but has filed no evidence to rebut the presumption that cost savings are realized. Therefore, the Controller's reduction of costs is correct as a matter of law.

In this case, the claimant reported no cost savings in its reimbursement claims and asserts that no cost savings were realized, but does not explain why.⁹⁵

The record shows that the claimant complied with the mandate and diverted more solid waste for calendar years 2000-2001 and 2003-2007 than what was mandated by the state. The mandate requires community colleges to divert at least 25 percent of all its solid waste from landfill disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities, and divert at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004.⁹⁶ The claimant's annual reports to the CIWMB for these years report overall diversion percentages that range from 47.2 percent to 79.4 percent of the total tonnage of waste generated.⁹⁷ In 2008, the CIWMB stopped requiring community college districts to report the actual amount and percentage of tonnage diverted, and instead required community colleges to report the "per-capita disposal" of waste. The claimant's 2008, 2009, and 2010 reports continue to show that the claimant had solid waste reduction programs in place, including programs for beverage containers, cardboard, newspaper, office paper, plastics, scrap metal, xeriscaping and grasscycling, food waste composting, other composting, and used a MRF (Material Recovery Facility).⁹⁸ The 2008 report also explains that the "economic down turn contributed to some changes in material diverted. As plastics/resins (mainly #2HDPE & #4LDPE) lost value they were not readily accepted by retailers. The situation is beginning to improve as prices begin to rebound." The report further states that "Citrus College remains diligent in its recycling efforts – 08's recycling activities mirror the previous years."⁹⁹ And the

⁹⁴ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

⁹⁵ Exhibit A, IRC, page 9.

⁹⁶ Exhibit A, IRC, page 59 (Parameters and Guidelines, section IV.(B)(5)); Public Resources Code sections 42921 and 42922(i).

⁹⁷ Exhibit B, Controller's Late Comments on the IRC, pages 34-58.

⁹⁸ Exhibit B, Controller's Late Comments on the IRC, pages 59-72.

⁹⁹ Exhibit B, Controller's Late Comments on the IRC, page 60.

2009 report does not identify any significant changes to the waste diversion programs implemented by the claimant.¹⁰⁰

The record also contains a copy of a page from the claimant's recycling program website, which summarized the mandated program, and states in relevant part the following:

Citrus generated almost 1,200 tons of waste in 2000. The two biggest components of our waste turns out to be green waste (240 tons) and paper products (70 tons). This shouldn't come as any surprise, if you think about it for a minute. After all, Citrus has about 30 acres of landscaping and athletic fields to maintain, and most of us handle and generate paper products, mail and files in various amounts on a daily basis.

Reducing Waste Makes Sense

When our trash goes to a landfill, along with the trash of millions of other people and thousands of other businesses, it does not go away just because we no longer see it. Californians sent more than 60 million tons of trash to various landfills last year. And, as our population expands and its hyper-consuming patterns continue, so too will the trash it generates.

[¶]

Recently, legislation titled AB75 [the test claim statute] was enacted. . . . AB75 similarly requires that all state and public agencies develop an "integrated waste management program" to reduce the amount of trash going into landfills by 50% by 2004. This requirement puts formally voluntary recycling programs, source reduction strategies and reuse programs into an entirely new light. They are now indispensable tools for waste management.

Over the years, Citrus has implemented several programs to help reduce the amount of waste going into our trash. We hope to start others soon. . . .¹⁰¹

In addition, the claimant's August 2012 Sustainability Plan states that:

Citrus College already has a very successful recycling program that reduces greenhouse gas emissions and landfill deposits. The measures identified in the Sustainability Plan are intended to improve this program and expand efforts into source-separated recycling and green waste/food waste composting. If designed effectively, minimizing solid waste can save the college money and create revenue streams that can be reinvested in the campus. . . .¹⁰²

The record also shows that the tonnage of solid waste that was not diverted was disposed at a landfill. The annual reports filed by the claimant with the CIWMB during the audit period identify the total tonnage of waste disposed, the use of a disposal waste hauler (Athens

¹⁰⁰ Exhibit B, Controller's Late Comments on the IRC, page 65.

¹⁰¹ Exhibit B, Controller's Late Comments on the IRC, page 74.

¹⁰² Exhibit B, Controller's Late Comments on the IRC, page 92.

Disposal), and statements in the 2005 and 2006 reports that demolition debris such as roof/plaster rubble, and wood required landfilling, rather than diversion.¹⁰³

Based on this documentation, the Controller correctly presumed, consistent with the presumption in the test claim statutes and the court’s interpretation of those statutes and without any evidence to the contrary, that the allocated percentage of waste required to be diverted by the state results in offsetting savings in an amount equal to the avoided landfill fee per ton of waste diverted. The Controller did not use the actual percentage of waste diverted by the claimant, which exceeded the amount mandated by the state, so that the claimant would not be penalized.¹⁰⁴ The avoided landfill disposal fee was based on the statewide average disposal fee provided by the CIWMB for each fiscal year in the audit period.¹⁰⁵

The statutory presumption of cost savings controls unless the claimant files evidence to rebut the presumption and shows that cost savings were not, in fact, realized.¹⁰⁶ The claimant has the burden of proof on this issue. Under the mandates statutes and regulations, the claimant is required to show that it has incurred increased costs mandated by the state when submitting a reimbursement claim to the Controller’s Office, and the burden to show that any reduction made by the Controller is incorrect.¹⁰⁷ The Parameters and Guidelines, as amended pursuant to the

¹⁰³ Exhibit B, Controller’s Late Comments on the IRC, pages 50 and 54.

¹⁰⁴ Exhibit B, Controller’s Late Comments on the IRC, page 19.

¹⁰⁵ Exhibit A, IRC, page 35.

¹⁰⁶ Government Code section 17559, which requires that the Commission’s decisions be supported by substantial evidence in the record. See also, *Coffy v. Shiimoto* (2015) 60 Cal.4th 1198, 1209, a case interpreting the rebuttable presumption in Vehicle Code section 23152 that if a person had 0.08 percent or more, by weight, of alcohol in the blood at the time of testing, then it is presumed by law that he or she had 0.08 percent or more, by weight, of alcohol in the blood at the time of driving, unless he or she files evidence to rebut the presumption. The court states that unless and until evidence is introduced that would support a finding that the presumption does not exist, the statutory presumption that the person was driving over the legal limit remains the finding of fact.

¹⁰⁷ Evidence Code section 500, which states the following: “Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” See also, *Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 24, where the court recognized that “the general principle of Evidence Code 500 is that a party who seeks a court’s action in his favor bears the burden of persuasion thereon.” This burden of proof is recognized throughout the architecture of the mandates statutes and regulations. Government Code section 17551(a) requires the Commission to hear and decide a claim filed by a local agency or school district that it is entitled to reimbursement under article XIII B, section 6. Section 17551(d) requires the Commission to hear and decide a claim by a local agency or school district that the Controller has incorrectly reduced payments to the local agency or school district. In these claims, the claimant must show that it has incurred increased costs mandated by the state. (Gov. Code, §§ 17514 [defining “costs mandated by the state”], 17560(a) [“A local agency or school district may . . . file an annual reimbursement claim that details the costs actually incurred for that fiscal year.”]; 17561

court's writ also require claimants to show the costs incurred to divert solid waste and to perform the administrative activities, and *to report and identify* the costs saved or avoided by diverting solid waste: "Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans *shall be* identified and offset from this claim as cost savings".¹⁰⁸ Thus, the claimant has the burden to rebut the statutory presumption and to show, with substantial evidence in the record, that the costs of complying with the mandate exceed any cost savings realized by diverting solid waste.

One possible example of when cost savings may not have been realized is with the costs to dispose and to divert waste through a MRF. The record shows that beginning in 2001, the claimant reported that "our waste hauler, Athens, has opened a MRF ["Material Recovery Facility"] and now recycles 34% of Citrus College Trash as indicated on this year's report."¹⁰⁹ A MRF is a "permitted solid waste facility where solid wastes or recyclable materials are sorted or separated, by hand or by use of machinery, for the purposes of recycling or composting."¹¹⁰ Information in a CalRecycle report on landfill tipping fees indicates a *higher cost* to dispose of waste at a MRF (\$61 statewide average per ton) than in a landfill (\$45 per ton), probably due to higher costs to process and transport waste at a MRF.¹¹¹ However, the claimant did not identify

[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.)

¹⁰⁸ Exhibit A, IRC, page 59.

¹⁰⁹ Exhibit B, Controller's Late Comments on the IRC, page 38 (2001 Annual Report). See also Exhibit B, Controller's Late Comments on the IRC, pages 39, 44, 48, 52, 55, 58, 61, 67, 72 (Annual Reports).

¹¹⁰ California Code of Regulations, title 14, section 18720(a)(36). Another definition of MRF (in and limited to Pub. Res. Code, § 50000(a)(4)) is "a transfer station that is designed to, and, as a condition of its permit, shall, recover for reuse or recycling at least 15 percent of the total volume of material received by the facility." MRF is also defined as "An intermediate processing facility that accepts source-separated recyclables from an initial collector and processes them for wholesale distribution. The recyclable material is accumulated for shipment to brokers or recycled content manufacturers, or for export out of state." See CalRecycle, "Landfill Tipping Fees in California" February 2015, page 44.

¹¹¹ Exhibit X, California Department of Resources Recycling and Recovery, "Landfill Tipping Fees in California" February 2015, pages 12-13. MRFs and transfer stations were treated together in the survey. According to the report (page 14):

any costs incurred to divert waste through the MRF, and has not identified the costs avoided if it had not used the MRF and simply disposed of the waste in a landfill.

Accordingly, the Commission finds that the claimant has not filed any evidence to rebut the statutory presumption of cost savings. Therefore, the Controller's reduction of costs is correct as a matter of law.

C. There is no evidence that the Controller's calculations of cost savings are incorrect as a matter of law, or are arbitrary, capricious or without evidentiary support.

The claimant raises several arguments to assert that the Controller's calculation of cost savings is incorrect. These arguments, however, are not supported by the law or evidence in the record.

The claimant first contends that cost savings cannot be realized because the chain of events required by Public Contract Code sections 12167 and 12167.1 did not occur; savings have to be converted to cash, amounts in excess of \$2000 per year must be deposited in the state fund and appropriated back by the Legislature to mitigate the costs.¹¹² The Controller agrees that the claimant did not remit to the state any savings realized from the implementation of the IWM plan as required by the statutes and thus, this fact is not disputed.¹¹³ However, as indicated above, cost savings are presumed by the statutes and the claimant has not filed evidence to rebut that presumption. Thus, based on the evidence in the record, the claimant should have deposited the cost savings into the state's account as required by the test claim statutes, but failed to do so. The claimant's failure to comply with the law does not make the Controller's calculations of cost savings incorrect as a matter of law, or arbitrary or capricious. Since cost savings are presumed by the statutes, the claimant has the burden to show increased costs mandated by the state. As

Transfer stations charge a median fee of \$61 per ton for MSW [municipal solid waste], which is \$16 more per ton than the median that landfills charge for MSW. This higher fee may be a result of transportation costs as well as tipping fees incurred by the transfer station for final disposal at the landfill. The range of transfer station tipping fees, from \$0 to \$178, is higher than all other facility types surveyed. The maximum of the transfer station tipping fee data set is \$50 higher than any other facility. This suggests that transfer stations have additional costs that lead to higher tipping fees.

According to this report: "Most landfills have more than one tipping fee. They usually have a publicly posted fee for individuals or businesses "self-hauling" waste, but they also negotiate rates with solid waste haulers, cities, counties, and other facility operators. This is an important distinction because in California, only about 20 percent of disposal is self-hauled waste. The other 80 percent of disposal is transported to landfills by solid waste haulers and thus would be more likely to be subject to negotiated disposal rates. . . . Disposal tipping fees in California are as complex and varied as the state itself. Tipping fees vary due to the unique circumstances at each landfill, such as location, owner, size, proximity to other landfills, and other operational factors." The range in the report was \$0 to \$125 per ton, with a \$45 per ton median. (*Id.*, page 3).

¹¹² Exhibit A, IRC, page 13.

¹¹³ Exhibit B, Controller's Late Comments on the IRC, page 17.

the court determined, “[r]eimbursement is not available under section 6 and section 17514 to the extent that a local government or school district is able to provide the mandated program or increased level of service without actually incurring increased costs.”¹¹⁴

The claimant next contends that Controller’s formula constitutes an underground regulation.¹¹⁵ The Commission disagrees. Government Code section 11340.5 provides that no state agency shall enforce or attempt to enforce a rule or criterion which is a regulation, as defined in section 11342.600, unless it has been adopted pursuant to the Administrative Procedures Act (APA). As indicated above, however, the formula is consistent with the statutory presumption of cost savings, as interpreted by the court for this program. Interpretations that arise in the course of case-specific adjudication are not regulations.¹¹⁶ Moreover, the Controller states that it provided the claimant with the opportunity to provide an alternate methodology to calculate cost savings, but the claimant declined and simply disagreed with the audit methodology.¹¹⁷

The claimant also contends that using landfill fees in the calculation of offsetting savings is not relevant because “[t]he District did not claim landfill costs, so there are none to be offset.”¹¹⁸

The claimant’s interpretation of the cost savings requirement is not correct. The cost of disposing waste at a landfill is not eligible for reimbursement. Reimbursement is required to *divert* solid waste from the landfill through source reduction, recycling, and composting activities. As explained by the court, when community colleges comply with the mandated diversion requirements, they are likely to experience cost savings in the form of “reduced or avoided costs of landfill disposal.” The reduced or avoided costs are a direct result and an integral part of the mandated IWM plan, which must be offset against all reimbursable costs.¹¹⁹ As the court noted, diversion “means activities which reduce or eliminate the amount of solid waste from solid waste disposal.”¹²⁰

In addition, the claimant argues that the formula assumes facts without evidence in the record. For example, the claimant questions the Controller’s assumption that the diversion percentage achieved in 2007 applies equally to subsequent years, that all diverted waste would have been disposed in a landfill, and that the statewide average cost to dispose of waste at a landfill actually applied to the claimant.¹²¹ There is no evidence in the record, however, that these assumptions are wrong or arbitrary or capricious. The Controller’s audit report indicates that the claimant did not provide documentation to support different numbers.¹²²

¹¹⁴ Exhibit B, Controller’s Late Comments on the IRC, page 108 (Ruling on Submitted Matter).

¹¹⁵ Exhibit A, IRC, page 14.

¹¹⁶ *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.

¹¹⁷ Exhibit B, Controller’s Late Comments on the IRC, pages 121-124.

¹¹⁸ Exhibit A, IRC, page 17.

¹¹⁹ Exhibit B, Controller’s Late Comments on the IRC, page 108.

¹²⁰ Exhibit B, Controller’s Late Comments on the IRC, page 108.

¹²¹ Exhibit A, IRC, pages 15-16.

¹²² Exhibit A, IRC, page 35.

The claimant also points to the Controller's audits of other community college districts, arguing that the costs allowed by the Controller in those cases vary and are arbitrary.¹²³ The Controller's audits of other community college district reimbursement claims are not relevant to the Controller's audit here. Each case depends on the documentation and evidence provided by the claimant to show increased costs mandated by the state.

Accordingly, there is no evidence that the Controller's calculations of cost savings are incorrect as a matter of law, or are arbitrary, capricious or without evidentiary support.

V. Conclusion

Based on the foregoing, the Commission concludes that the Controller's reduction of costs is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

The Commission denies this IRC.

¹²³ Exhibit A, IRC, pages 17-18.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On November 16, 2016, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Integrated Waste Management, 14-0007-I-03
Public Resources Code Sections 40148, 40196.3, 42920-42928;
Public Contract Code Sections 12167 and 12167.1; Statutes 1999, Chapter 764 (AB 75);
Statutes 1992, Chapter 1116 (AB 3521); State Agency Model Integrated Waste
Management Plan (February 2000)
Fiscal Years 1999-2000, 2000-2001, 2003-2004, 2004-2005, 2005-2006, 2006-2007,
2007-2008, 2008-2009, 2009-2010, and 2010-2011
Citrus Community College District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 16, 2016 at Sacramento, California.



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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/27/16

Claim Number: 14-0007-I-03

Matter: Integrated Waste Management

Claimant: Citrus Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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