STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

January 11, 2017

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street,
#294
Folsom, CA 95630

Ms. Sally Hazzard
South East Area Animal
Control Authority
9777 SEAACA Street
Downey, CA 90241

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: **Proposed Decision**
Animal Adoption, 14-9811-I-03
Civil Code Sections 1834 and 1846; Food and Agriculture Code Sections 31108, 31752, 31752.5, 31753, 32001, and 32003; As Added or Amended by Statutes 1998, Chapter 752 (SB 1785)
Fiscal Years: 2001-2002, 2002-2003, 2006-2007, 2007-2008, and 2008-2009
Southeast Area Animal Control Authority, Claimant

Dear Ms. Chinn, Ms. Hazzard, and Ms. Kanemasu:

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

Hearing

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

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,

Heather Halsey
Executive Director

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Hearing Date: January 27, 2017
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ITEM 8

INCORRECT REDUCTION CLAIM

PROPOSED DECISION

Civil Code Sections 1834 and 1846;
Food and Agriculture Code Sections 31108, 31752, 31752.5, 31753, 32001, and 32003;
As Added or Amended by Statutes 1998, Chapter 752 (SB 1785)

Animal Adoption

Fiscal Years 2001-2002, 2002-2003, 2006-2007, 2007-2008, and 2008-2009

14-9811-I-03

Southeast Area Animal Control Authority, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) addresses reductions made by the State Controller's Office (Controller) to reimbursement claims filed by the Southeast Area Animal Control Authority (claimant) for costs incurred during fiscal years 2001-2002, 2002-2003, 2006-2007, 2007-2008, and 2008-2009 under the *Animal Adoption* program.

The Controller reduced and recalculated the claims because it found that the claimant did not comply with the Parameters and Guidelines when calculating costs under the actual cost method, claimed unallowable costs and ineligible staff, misstated animal census data, overstated the number of eligible animals, understated the number of reimbursable days, did not claim allowable costs, misstated indirect costs, and overstated offsetting revenues.

As indicated below, staff recommends that the Commission on State Mandates (Commission) partially approve this IRC.

The *Animal Adoption* Program

The *Animal Adoption* program arose from amendments to the Civil Code and Food and Agriculture Code made by Statutes 1998, chapter 752 (SB 1785[1]). The purpose of the test claim statute was to carry out the state policy that "*no adoptable animal* should be euthanized if it can be adopted into a suitable home" and "*no treatable animal* should be euthanized."[2] Generally, the program increases the holding period to allow for the adoption and redemption of stray and abandoned dogs, cats, and other specified animals before the local agency can euthanize the animal, and requires:

[1] Sometimes referred to as the Hayden Bill.

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

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

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

1. Providing care and maintenance during the increased holding period for impounded dogs and cats that are ultimately euthanized. The increased holding period shall be measured by calculating the difference between three days from the day of capture and four business days from the day after impoundment, as specified below in 3 (a) and 3 (b), or six business days from the day after impoundment (Food & Agr. Code, §§ 31108, 31752);
2. Providing care and maintenance for four business days from the day after impoundment, as specified below in 3 (a) and 3 (b), or six business days from the day after impoundment, for impounded rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles, or tortoises legally allowed as personal property that are ultimately euthanized (Food & Agr. Code, § 31753);
3. For dogs, cats, and other specified animals held for four business days after the day of impoundment, either:
    (a) Making the animal available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or
    (b) For those local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, establishing a procedure to enable owners to reclaim their animals by appointment at a mutually agreeable time when the agency would otherwise be closed (Food & Agr., Code §§ 31108, 31752, and 31753);
4. Verifying whether a cat is feral or tame by using a standardized protocol (Food & Agr. Code, § 31752.5);
5. Posting lost and found lists (Food & Agr. Code, § 32001);
6. Maintaining records on animals that are not medically treated by a veterinarian, but are either taken up, euthanized after the holding period, or impounded (Food & Agr. Code, § 32003); and
7. Providing "necessary and prompt veterinary care" for abandoned animals, other than injured cats and dogs given emergency treatment, that are ultimately euthanized (Civ.Code, §§ 1834 and 1846).

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

- Acquisition of additional space or construction of new facilities, by purchase or lease, to provide appropriate or adequate shelter necessary to comply with the mandated activities during the increased holding period for impounded stray or abandoned dogs, cats, and other animals;[3] and
- Remodeling/renovating existing facilities to provide appropriate or adequate shelter necessary to comply with the mandated activities during the increased holding period for impounded stray or abandoned dogs, cats, and other animals.[4]

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

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

On January 26, 2006, the Commission adopted the Parameters and Guidelines Amendment, applicable to claims beginning July 1, 2005, to require, among other things, contemporaneous source documents to show the validity of costs claimed and their relationship to the reimbursable activities. The 2006 amendment also amended the formula for determining the reimbursable portion of acquiring or building additional shelter space and clarified the definition of "average daily census" of dogs and cats, for purposes of the formula to calculate care and maintenance; this amendment is clarifying only, and does not affect the methodology used to calculate actual costs for this component.[5]

Procedural History

On January 15, 2003, the claimant signed and dated the reimbursement claim for fiscal year 2001-2002.[6] On January 15, 2004, the claimant signed and dated the reimbursement claim for fiscal year 2002-2003.[7] On January 15, 2008, the claimant signed and dated the reimbursement

[3] Exhibit H, Staff Analysis and Proposed Parameters and Guidelines, Item 4, February 28, 2002, pages 100-101.

[4] Exhibit H, Staff Analysis and Proposed Parameters and Guidelines, Item 4, February 28, 2002, page 102.

[5] Exhibit A, IRC, pages 252-271 (2006 Amended Parameters and Guidelines, pages 1-20).

[6] Exhibit A, IRC, page 546 (Form FAM-27).

[7] Exhibit A, IRC, page 563 (Form FAM-27).

claim for fiscal year 2006-2007.[8] On January 22, 2009, the claimant signed and dated the reimbursement claim for fiscal year 2007-2008.[9] On February 4, 2010, the claimant signed and dated the reimbursement claim for fiscal year 2008-2009.[10]

On August 12, 2010, the Controller dated a letter to the claimant regarding the start of the audit.[11] On May 22, 2012, the Controller issued the Draft Audit Report.[12] On June 4, 2012, the claimant dated and sent a letter in response to the Draft Audit Report.[13] On June 15, 2012, the Controller issued the Final Audit Report.[14]

On June 8, 2015, the claimant filed this IRC.[15] On November 10, 2015, the Controller filed late comments on the IRC.[16] On February 11, 2016, the claimant filed late rebuttal comments.[17] On November 7, 2016, Commission staff issued the Draft Proposed Decision.[18]

On December 5, 2016, the Controller filed comments on the Draft Proposed Decision.[19] On December 6, 2016, the Claimant filed late comments on the Draft Proposed Decision.[20]

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

[8] Exhibit A, IRC, page 593 (Form FAM-27).

[9] Exhibit A, IRC, page 614 (Form FAM-27).

[10] Exhibit A, IRC, page 641 (Form FAM-27).

[11] Exhibit B, Controller's Late Comments on the IRC, page 5 ("A field audit of the claims for fiscal year (FY) 2001-02, FY 2002-03, FY 2006-07, FY 2007-08, and FY 2008-09 started on August 12, 2010 (issuance of the audit start letter) and ended on June 15, 2012 (issuance of the final report)." [Declaration of Jim L. Spano, dated Nov. 10, 2015, paragraph 7]).

[12] Exhibit A, IRC, page 468.

[13] Exhibit A, IRC, pages 524-539 (Letter from Dan Morrison to James Spano, dated June 4, 2012).

[14] Exhibit A, IRC, page 464 (cover letter), pages 463-540 (Final Audit Report).

[15] Exhibit A, IRC, pages 1, 2.

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

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

[18] Exhibit E, Draft Proposed Decision.

[19] Exhibit F, Controller's Comments on the Draft Proposed Decision.

[20] Exhibit G, Claimant's Late Comments on the Draft Proposed Decision.

of the Commission's regulations requires the Commission to send the Decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the Parameters and Guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6, of the California Constitution.[21] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[22]

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.[23]

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.[24] 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.[25]

Claims

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

Issue	Description	Staff Recommendation
Does the claimant, a joint powers authority, have standing to bring this IRC?	Claimant is a joint powers authority composed of member cities and contracting cities.	*Yes* — To the extent that the claimant is acting in a representative capacity for cities, the claimant has

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

[22] *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.

[23] *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.

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

[25] 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.

		standing to bring this IRC. The claimant may not request reimbursement for its own expenses which are separate from those of its constituent or contracting cities.
Whether the Controller correctly reduced costs for claimant's failure to comply with the Parameters and Guidelines when calculating costs for care and maintenance costs.	The Parameters and Guidelines contain a formula to claim costs for the care and maintenance of eligible animals during the increased holding period. By its own admission, the claimant did not abide by the formula in the Parameters and Guidelines. Instead of using the cost to care for animals as the base of the calculation, the claimant used all costs incurred by the shelter operations division, which includes costs that go beyond the scope of the mandate to care and maintain each eligible animal during the increased holding period. In addition, the claimant's formula includes costs for other reimbursable components, which are not reimbursed based on this formula.	*Correct* — The Controller's finding that the claimant failed to abide by the Parameters and Guidelines when calculating reimbursable costs is correct as a matter of law and supported by evidence in the record.
Whether the Controller correctly excluded "ineligible animals" when recalculating allowable costs for care and maintenance (Finding 1) and prompt and necessary veterinary care (Finding 5).	The Parameters and Guidelines authorize local agencies to claim reimbursement for the cost of care and maintenance and prompt and necessary veterinary care for impounded stray or abandoned animals that "die during the increased holding period or are ultimately euthanized." The Controller	*Partially Correct* — The Controller's exclusion of animals that died *after* the increased holding period is consistent with the Parameters and Guidelines, and is therefore correct as a matter of law. The following exclusions of animals are incorrect as a matter of law, and are arbitrary, capricious, or

	excluded from the population of "eligible animals" several categories of animals it claims are not within the scope of the mandated program, which resulted in a reduction of costs. The exclusions include, but are not limited to, the following: • Animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period because they became non-rehabilitatable. • Animals that may have been euthanized during the holding period because of the claimant's misinterpretation of the required holding period in conflict with the Court of Appeal's decision in *Purifoy v. Howell* (2010) 183 Cal.App.4th 166, which held that Saturday is not a "business day" for purposes of calculating the required holding period before an animal can be adopted or euthanized. • Animals that died *after* the increased holding period.	entirely lacking in evidentiary support: • The exclusion of animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period because they became non-rehabilitatable. • Exclusions of "eligible animals" held for the required duration under *Purifoy*, based on the Controller's recalculation of costs using an *average* number of days.
The Controller's remaining findings when recalculating care and maintenance costs (Finding 1).	The actual cost method outlined in the Parameters and Guidelines for calculating the costs for care and maintenance require the claimant to determine the total annual cost of care and maintenance for all dogs and cats impounded at a facility.	*Correct* — the Controller's remaining findings for care and maintenance costs (Finding 1) are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

	Total cost of care and maintenance includes labor and materials costs. The formula also requires the calculation of the yearly census of animals, or the total number of days that all animals are housed in the shelter. Thus, the Controller calculated costs for salary and benefits, materials and supplies, and yearly census of animals based on documentation provided by the claimant. The claimant does not directly address these adjustments to the total annual costs of care and maintenance.	
The Controller's reduction of costs relating to unallowable employee hours for making animals available for adoption or owner redemption (Finding 2).	The claimant requested costs for this component, by adding together expenditures of the shelter division and kennel division and a portion of the expenditures of the administration division and veterinary division. The claimant then divided the total expenditures by the total number of hours the facility was open for operation to arrive at a cost per hour. The cost per hour was multiplied by the additional hours the shelter was open for owner redemption. The Controller determined that the claimant's calculation included costs beyond the scope of the mandated activity to make animals available for owner redemption. The Controller recalculated costs based on	*Correct* — The Controller's attempt to limit reimbursement on Saturdays to those employees that are necessary to make animals available for owner redemption, and to reduce all other costs beyond the scope of this mandated activity, is consistent with the Parameters and Guidelines and the purpose of the test claim statute. Thus, the adjustments are correct as a matter of law. In addition, there is no evidence in the record to support a finding that the Controller's recalculation of costs, based on documentation provided by the claimant, was arbitrary or capricious.

	documentation provided by the claimant identifying the hours of operation for its animal shelter, and the hours the claimant made animals available for owner redemption.	
The Controller's recalculation of costs based on a time study conducted by the claimant during the audit for lost and found lists (Finding 3), maintaining non-medical records (Finding 4), and necessary and prompt veterinary care (Finding 5).	The claimant did not individually claim costs for lost and found lists, maintaining non-medical records, and providing necessary and prompt veterinary care, but included those costs in its overall calculation for care and maintenance. The Controller isolated those reimbursable costs in Findings 3 through 5, in part, by allowing the claimant to conduct a time study during the audit for the time spent performing the activities. In addition, for necessary and prompt veterinary care, the Controller allowed reimbursement for material and supply costs based on the actual cost of vaccines administered to each eligible animal.	*Correct* — There is no evidence that the Controller's recalculation of costs for lost and found lists (Finding 3), maintaining non-medical records (Finding 4), and necessary and prompt veterinary care (Finding 5), is arbitrary, capricious, or entirely lacking in evidentiary support.
The Controller's reduction of indirect costs (Finding 6).	The claimant did not directly claim reimbursement for indirect costs for any fiscal year in the audit period. Instead, the claimant included a portion of its overhead costs in both the care and maintenance (Finding 1) and holding period (Finding 2) cost components. According to the Controller, the claimant calculated indirect costs by assuming that all costs incurred by the animal	*Correct* — The Controller's reduction of indirect costs is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant's original calculation of indirect costs does not comply with the Parameters and Guidelines. Moreover, staff finds that the Controller considered all the facts and documents

	shelter, kennel, and veterinary divisions were direct mandate-related costs, and that all costs incurred within the animal control and license/canvassing divisions were direct non-mandate related costs. Using the two totals, the claimant determined the percentage of direct mandate-related costs and multiplied this percentage by the amount of costs incurred with the administration division. The Controller asserts that this method of calculating indirect costs is not consistent with the Parameters and Guidelines. The Controller also asserts that the claimant's assumption that all costs incurred within the animal shelter, kennel, and veterinary divisions were direct mandate-related costs, and that all costs incurred within the animal control and license/canvassing divisions were direct non-mandate related costs, is also incorrect. Thus, the Controller rejected the claimant's method of determining indirect costs.	maintained by the claimant in support of its reimbursement claims, and considered the claimant's arguments and new proposals for calculating indirect costs. Staff further finds that there is no evidence that the Controller's recalculation of indirect costs is arbitrary or capricious.

Staff Analysis

A. The SEAACA Has Standing to Bring this IRC as a Representative of the Cities Which Compose or Contracted with SEAACA.

The threshold issue is whether the Southeast Area Animal Control Authority (SEAACA), a joint powers authority, has standing to bring this IRC. SEAACA is comprised of eight member cities and six contract cities in southeast Los Angeles County and north Orange County pooling their resources to provide animal control services via a joint powers authority created for this purpose.

Staff finds that, on this record, the claimant may file and maintain an IRC in a representative capacity on behalf of its member and contracting cities.

The purpose of a joint powers arrangement is to allow two or more public entities to jointly exercise a shared power, and, in this case, each of the cities possesses the power to file and maintain an IRC. [26] In an unpublished opinion, the Second District of the California Court of Appeal held that a joint powers authority had standing to file and maintain a test claim before the Commission because the joint powers authority was acting on behalf of its constituent entities (which, in that particular case, were counties).[27] While the Court of Appeal's unpublished opinion is not binding,[28] the Commission should be persuaded by the Court of Appeal's reasoning, particularly in light of the nearly identical factual and legal issues underpinning the standing analysis.

The claimant may *only* seek reimbursement of costs which were incurred by its member or contracting cities; since joint powers authorities are not subject to the tax and spend limitations of the California Constitution and they were deliberately deleted from the Government Code's list of eligible claimants. The claimant may *not* seek reimbursement of costs which were incurred by the claimant separately and apart from its member or contracting cities. Here, the claimant represents that its accounting records for the costs at issue in this IRC are maintained on a city-by-city basis.[29] Additionally, the IRC raises issues which, based on this record, apply to each of the member and contracting cities.

Consequently, the Commission should find that the claimant possesses the standing required to file and maintain this IRC in its capacity as a representative of its member and contracting cities.

B. The Controller's Finding that the Claimant Failed to Abide by the Parameters and Guidelines when Calculating Reimbursable Costs Is Correct as a Matter of Law and Not Arbitrary, Capricious or Entirely Lacking in Evidentiary Support.

The Parameters and Guidelines contain a formula to claim costs for the care and maintenance of eligible animals during the increased holding period. The formula requires the eligible annual cost of care for all animals to be divided by the yearly census of animals to arrive at an average cost per animal per day. The cost per animal per day is then multiplied by the number of eligible animals and the number of increased holding period days.

By its own admission, the claimant did not abide by the Parameters and Guidelines. Instead of using the cost to care for animals as the base of the calculation, the claimant used all costs incurred by the shelter operations division, which includes costs that go beyond the scope of the mandate to care and maintain each eligible animal during the increased holding period. In addition, the claimant's formula includes costs for other reimbursable components, which are not

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[26] Government Code section 17518 ("'Local agency' means any city . . . ."); Government Code section 17551(d) ("The commission . . . shall hear and decide upon a claim by a local agency . . . that the Controller has incorrectly reduced payments to the local agency . . . .").

[27] Exhibit H, *CSAC Excess Insurance Authority v. Commission on State Mandates*, Case No. B188169, 2006 WL 3735551 (Cal. Court of Appeal Dec. 20, 2006) (nonpub. opn.), pages 71, 73-74.

[28] *Farmers Insurance Exchange v Superior Court (Wilson)* (2013) 218 Cal.App.4th 96, 109.

[29] Exhibit A, IRC, page 63.

reimbursed based on this formula but are instead reimbursable under other components as set out in the Parameters and Guidelines.

To receive reimbursement, claimants are required to comply with the Parameters and Guidelines, which are regulatory documents,[30] which means in this case submitting calculations using the formula specified.[31]

Based on the above, the Controller's finding that the claimant failed to abide by the Parameters and Guidelines when calculating reimbursable costs is correct as a matter of law.

C. The Controller's Recalculation of Costs Is Partially Correct.

1. The Controller's Exclusions of what It Deems "Ineligible Animals" Are Partially Incorrect as a Matter of Law and Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support, Resulting in Some Incorrect Reductions in Finding 1 (Care and Maintenance Costs) and Finding 5 (Necessary and Prompt Veterinary Care) of the Audit Report.

The Parameters and Guidelines for the *Animal Adoption* program authorize local agencies to claim reimbursement for the costs of care and maintenance during the increased holding period for impounded stray or abandoned animals that "die during the increased holding period or are ultimately euthanized," based on a formula for determining actual costs. The Parameters and Guidelines also authorize reimbursement for providing necessary and prompt veterinary care as specified in the Parameters and Guidelines during the holding period for stray and abandoned animals that "die during the increased holding period or are ultimately euthanized." Claimants are to calculate and claim their costs for these activities in part by determining the number of "stray or abandoned animals that die during the increased holding period or are ultimately euthanized." The Controller calls this factor of the calculation "eligible animals."

The Controller, in its audit and recalculation of allowable costs for care and maintenance and necessary and prompt veterinary care, states that the following animals were excluded from the population of "eligible animals:"

- Dogs, cats, and other animals that were euthanized *during* the holding period. Local agencies are eligible to receive reimbursement for dogs, cats, and other animals that were euthanized after the holding period (day 7 of the holding period and beyond). This includes animals originally determined to be treatable and adoptable, but were euthanized during the increased holding period after becoming non-rehabilitatable, and animals that were euthanized too early because the claimant counted Saturday as a business day.
- Dogs, cats, and other animals that died of natural causes *after* the increased holding period.
- Exclusion of "other animals" *to the extent* the Controller concluded that the animal was "wild."[32]

[30] *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794, 799.

[31] *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794, 799.

[32] Exhibit B, Controller's Late Comments on the IRC, page 136. The Controller's comments on the IRC contain a chart titled "Raw Data — Eligible Other Animals" showing the raw data of

a) *The exclusion of animals deemed treatable upon arrival at the shelter and later euthanized <u>during</u> the increased holding period because they became non-rehabilitatable is incorrect as a matter of law.*

The Controller excludes from reimbursement all costs incurred for the care and maintenance and prompt and necessary veterinary care of dogs, cats, and other animals that were euthanized *during* the increased holding period.

The Commission finds that the Controller's interpretation of the Parameters and Guidelines is not correct. The Parameters and Guidelines provide that local agencies are eligible to receive reimbursement for care and maintenance and prompt and necessary veterinary costs for those animals "that die during the increased holding period or are ultimately euthanized." The plain language of the phrase "animals that die during the increased holding period or are ultimately euthanized" is vague and ambiguous because the word "die" can include both death by natural causes and death by euthanasia. Since the plain language is not clear, it is necessary to review the decisions adopted by the Commission on this issue and the statutory scheme of the test claim statutes.

The phrase "ultimately euthanized" was used in the Test Claim Statement of Decision only to identify those animals whose owners are unknown or are not adopted, meaning that the costs for care, treatment, and veterinary services during the holding period for this group of animals could not be recovered by fee revenue.[33]

In addition, Food and Agriculture Code section 17006 provides that the holding period does not apply to animals that are irremediably suffering from a serious illness or severe injury or to newborn animals that need maternal care and have been impounded without their mothers. A related statute, Food and Agricultural Code section 17005(b), expressly addresses the issue of a "treatable" animal's health changing over the course of impoundment: "It is the policy of the state that no treatable animal should be euthanized. A treatable animal shall include any animal that is not adoptable but that could become adoptable with reasonable efforts."

Section 17005, thus, expressly contemplates an animal's health changing over the course of impoundment. Read together with section 17006, the two statutes require a shelter to hold an animal which is ill or injured — but not an animal which is irremediably suffering — for the relevant holding period on the ground that the animal's health may improve.

Consistent with the statutory scheme, the Parameters and Guidelines expressly contemplate an animal's health changing over the course of impoundment from "treatable" to "adoptable." Section IV. (B)(8) of the Parameters and Guidelines allows reimbursement for the initial physical examination of a stray or abandoned animal to determine the animal's baseline health status and classification as "adoptable, treatable, or non-rehabilitatable." The Parameters and Guidelines further authorize reimbursement for the administration of a wellness vaccine to "treatable" or "adoptable" animals, veterinary care to stabilize and relieve the suffering of a "treatable" animal, and veterinary care intended to remedy any applicable disease, injury, or congenital or hereditary

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eligible other animals held by the claimant for fiscal year 2008-2009, with an auditor note of "wild?" next to the lines for a rabbit, a dove, and ducks.

[33] Exhibit B, Controller's Late Comments on the IRC, pages 66-67 (Test Claim Statement of Decision, pages 29-30 [emphasis added]).

condition that adversely affects the health of a "treatable" animal until the animal becomes "adoptable."

In its comments on the Draft Proposed Decision, the Controller avers that the evidence created and stored by the claimant on its PawTrax database makes it "simply impossible" for the Controller to identify animals which fall into this category.[34]

Accordingly, *to the extent* the Controller's reduction includes costs incurred for the care and maintenance and prompt and necessary veterinary costs of stray or abandoned dogs, cats, and other animals that were initially classified as "adoptable" or "treatable," but became non-rehabilitatable and were euthanized during, the increased holding period, the reduction is incorrect as a matter of law.[35]

> *b) The Commission and the Controller are bound by the Purifoy decision and, thus, the Controller's exclusion of animals that were euthanized too early, and during the holding period, because Saturday was counted as a business day for the required holding period, is correct as a matter of law. However, the Controller's recalculation of costs using an average number of reimbursable days is incorrect as a matter of law to the extent it results in an exclusion of "eligible animals" held for the time required under Purifoy.*

As indicated above, the Controller only included as eligible animals those dogs, cats, and other animals "*euthanized after the holding period*." Animals may have been euthanized *during* the holding period because of claimant's misinterpretation of the required holding period in conflict with the Court of Appeal's decision in *Purifoy*, which held that Saturday is not a "business day" for purposes of calculating the required holding period under the test claim statutes before a stray or abandoned dog can be adopted or euthanized.[36] Before the decision was issued, many local agencies were operating under the assumption that, so long as they were open on Saturday, Saturday was a "business day" that could be counted as part of the holding period, which resulted in the euthanization of some animals too early and *during* the holding period.[37] Pursuant to the *Purifoy* decision, the Controller excluded those animals from the number of "eligible animals that die during the holding period or are ultimately euthanized" for purposes of calculating reimbursable costs for care and maintenance and necessary and prompt veterinary care.

Staff finds that the court's interpretation of "business day" in *Purifoy* is binding, and that the Controller's exclusion of Saturday as a business day when calculating the increased holding

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[34] Exhibit F, Controller's Comments on the Draft Proposed Decision, page 8.

[35] The Controller asserts that it "used the language in the parameters and guidelines as its primary judgment criteria" and applied the language "without exercising subjective interpretations." Exhibit F, Controller's Comments on the Draft Proposed Decision, page 7. Commission staff acknowledges that the Controller's interpretation is a reasonable potential interpretation of the language; but, for the reasons stated herein, determines that a different interpretation is legally correct.

[36] *Purifoy v. Howell* (2010) 183 Cal.App.4th 166.

[37] Exhibit A, IRC, page 494 (Final Audit Report, page 29).

period is correct as a matter of law. Thus, except in the circumstances described below, the Controller's exclusion of animals that were euthanized too early because Saturday was counted as a business day for the required holding period, is also correct as a matter of law.

However, when recalculating the number of reimbursable days pursuant to *Purifoy*, the Controller calculated an *average* increased holding period for all dogs and cats of three days, and the average increased holding period for all other "eligible" animals of six days, and did not determine the actual number of reimbursable days for each eligible animal based on the day of impoundment. Even if the increased holding period averages three days for dogs and cats, or six days for other animals, the Parameters and Guidelines do not provide for reimbursement based on an average number of days. Moreover, the Controller's recalculation may result in the exclusion of eligible animals that are correctly held under the law, but are euthanized during the Controller's defined "average" holding period. For example, if a stray or abandoned dog or cat is impounded on a Monday or Sunday, the actual increased holding period under the law is two *calendar* days, and not three days, and the dog or cat may be euthanized on day three (a day before the Controller's average and, thus, "during the holding period" as defined by the Controller). Similarly, for "other animals," the Controller applied an increased holding period of six days. However, if a stray bird or rabbit is impounded on a Monday, the actual increased holding period under the law is four calendar days, and not six days, and the bird or rabbit may be euthanized on day five (a day before the Controller's average and, thus, "during the holding period" as defined by the Controller). Therefore, the Controller's recalculation and use of the average number of reimbursable days results in an exclusion of "eligible animals" correctly held under the law. Under these circumstances, the Controller's recalculation and use of the average number of reimbursable days is incorrect as a matter of law to the extent it results in an exclusion of "eligible animals" held for the duration required by law.

c) The Controller's exclusion of animals that died <u>after</u> the increased holding period is consistent with the Parameters and Guidelines and is correct as a matter of law.

Staff finds that the Controller's exclusion of animals that died after the increased holding period is consistent with the Parameters and Guidelines and is correct as a matter of law. The Parameters and Guidelines do not authorize reimbursement for animals that continue to be held by the local agency for adoption longer than the holding period and die *thereafter*. Thus, the Controller's interpretation is consistent with the plain language of the Parameters and Guidelines. The Parameters and Guidelines are binding, and no request to amend the Parameters and Guidelines has been filed. Therefore, the Commission finds that the exclusions of animals that died after the holding period is correct as a matter of law.

2. <u>Except as Determined in Section C.1. of this Decision, the Controller's Remaining Findings for Care and Maintenance Costs (Finding 1) Are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.</u>

The actual cost method outlined in the Parameters and Guidelines for calculating the costs for care and maintenance require the claimant to determine the total annual cost of care and maintenance for all dogs and cats impounded at a facility. Total cost of care and maintenance includes labor and materials costs. The formula also requires the calculation of the yearly census of animals, or the total number of days that all animals are housed in the shelter. The Controller made the following findings on these components:

- Salary and benefit costs. During the audit, the claimant provided actual salary and benefit costs for the audit period for three positions (animal care technicians, senior animal care technicians, and lead animal care technicians) that provide care and maintenance to the animals housed at the shelter. However, only a percentage of shelter staff time is devoted to care and maintenance. The claimant estimated that 89 percent of the animal care technician's and senior animal care technician's time and 60 percent of the lead animal care technician's time was devoted to care and maintenance. The Controller determined that the estimated percentages appeared reasonable based on the job descriptions provided.[38] Thus, the Controller multiplied the actual salary and benefit amounts provided by the claimant by the percentage of time spent on mandated care and maintenance activities, resulting in allowable salaries and benefits of $952,445.[39]
- Material and supply costs claimed in the amount of $7,690,644 were overstated by the claimant. The Controller, allowing $288,726 in materials and supplies, determined that the claimant included total costs incurred to operate the shelter (such as shelter, kennel, veterinary, and administrative divisional expenses) instead of claiming costs specifically incurred for care for and maintain the animals. The Controller determined the allowable costs by reviewing the claimant's account #140 (special activities supplies for shelter operations). The claimant indicated that account #140 is specifically for the expenses related to the care and maintenance of animals and includes costs for animal food, cat litter, light bulbs, and cleaning supplies, and does not include expenses that are not eligible for reimbursement (such as euthanasia medication, microchip expenses, and medical supplies).[40]
- The claimant estimated the yearly census by assuming that the animals were held an average of five days in fiscal years 2001-2002 and 2002-2003, an average of seven days in fiscal years 2006-2007 and 2007-2008, and an average of six days in fiscal year 2008-2009. The Controller reviewed the claimant's Paw Trax software system, which detailed the actual total annual census of animals housed in the claimant's animal shelter in fiscal years 2006-2007 through 2008-2009. Since the information was not available for fiscal years 2001-2002 and 2002-2003, the Controller used an average of the information from fiscal years 2006-2007 through 2008-2009 for those earlier years. The Controller's recalculation resulted in an increase of yearly census numbers.[41]

The claimant does not directly address these adjustments to the total annual costs of care and maintenance.

Staff finds that the Controller's recalculations are consistent with the Parameters and Guidelines and are based on the claimant's records.

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[38] Exhibit B, Controller's Late Comments on the IRC, pages 15, 110-120.

[39] Exhibit A, IRC, page 479 (Final Audit Report, page 14).

[40] Exhibit A, IRC, page 480 (Final Audit Report, page 15); Exhibit B, Controller's Late Comments on the IRC, pages 15, 120-125.

[41] Exhibit A, IRC, pages 480-481 (Final Audit Report, pages 15-16); Exhibit B, Controllers' Late Comments on the IRC, pages 15, 126.

Accordingly, except as determined in Section C.1 of this Decision, the remaining calculations for care and maintenance in Finding 1 are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

3. The Controller's Reductions in Finding 2 Relating to Unallowable Employee Hours for Making Animals Available for Adoption or Owner Redemption Are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Parameters and Guidelines provide that an agency desiring to apply the shortened holding period is eligible for reimbursement for making animals available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or, for local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, for establishing a procedure for owners to reclaim their animals by appointment.[42] For dogs and cats, reimbursement for this activity begins July 1, 1999. For "other animals" specified in Food and Agriculture Code section 31753, reimbursement for this activity begins January 1, 1999.[43]

The reimbursement claims included $654,322 in costs for the audit period for this component, by adding together expenditures of the shelter division and kennel division and a portion of the expenditures of the administration division and veterinary division. The claimant then divided the total expenditures by the total number of hours the facility was open for operation to arrive at a cost per hour. The cost per hour was multiplied by the additional hours the shelter was open for owner redemption.[44]

The Controller determined that this calculation was not correct and included costs beyond the scope of the mandated activity. The Controller states that the mandate is limited to keeping the shelter open for purposes of owner redemption. "We believe that other animal services such as animal control officer duties, euthanasia, spay and neutering procedures, implanting microchips, licensing, processing animal adoptions, and certain other animal services do not become temporarily reimbursable activities just because the animal shelter is open for extra hours to make animals available for owner redemption. These activities are not reimbursable under any cost component of the mandated program at any time."[45]

The Controller recalculated costs based on documentation provided by the claimant identifying the hours of operation for its animal shelter, and the hours the claimant made animals available for owner redemption. The Controller applied the allowable hours by each employee's productive hourly and benefit rates and determined that $187,344 was allowable for salary and benefits.[46]

The Controller is correct that the reason to remain open on a Saturday, pursuant to the test claim statutes and the Commission's Decision, is to promote owner redemption. Indeed, the express language of the reimbursable component at issue in Finding 2 is "Making the animal available

[42] Exhibit A, IRC, page 118 (2002 Parameters and Guidelines, page 10).

[43] Exhibit A, IRC, page 118 (2002 Parameters and Guidelines, page 10).

[44] Exhibit A, IRC, page 501 (Final Audit Report, page 36).

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

[46] Exhibit A, IRC, pages 502-503 (Final Audit Report, pages 37-38).

for owner redemption…"[47] Therefore, the Controller's attempt to limit reimbursement on Saturdays to those employees that are necessary to make animals available for owner redemption, and to reduce all other costs beyond the scope of this mandated activity, is consistent with the Parameters and Guidelines and the purpose of the test claim statute. Thus, the adjustments are correct as a matter of law. In addition, there is no evidence in the record to support a finding that the Controller's recalculation of costs, based on documentation provided by the claimant, was arbitrary or capricious.

Based on the foregoing, the Controller's reductions in Finding 2 relating to unallowable costs to make the animal available for owner redemption is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

4. Except as Determined in Section C.1., There Is No Evidence that the Controller's Recalculation of Costs Based on a Time Study Conducted by the Claimant During the Audit for Lost and Found Lists (Finding 3), Maintaining Non-Medical Records (Finding 4), and Necessary and Prompt Veterinary Care (Finding 5), Is Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

As indicated in background, the claimant did not individually claim costs for lost and found lists, maintaining non-medical records, and providing necessary and prompt veterinary care, but included those costs in its overall calculation for care and maintenance. The Controller isolated those reimbursable costs in Findings 3 through 5, in part, by allowing the claimant to conduct a time study during the audit for the time spent performing the activities. In addition, for necessary and prompt veterinary care, the Controller allowed reimbursement for material and supply costs based on the actual cost of vaccines administered to each eligible animal.

Although the claimant requests that all costs reduced be reinstated, the claimant has not provided any argument or evidence in the record to support a finding that the Controller's recalculation of these costs based on the time studies conducted and the actual costs for vaccines, was arbitrary, capricious, or entirely lacking in evidentiary support.

Therefore, except as determined in Section C.1. of this Decision regarding Finding 5, there is no evidence that the Controller's recalculation of costs for lost and found lists (Finding 3), maintaining non-medical records (Finding 4), and necessary and prompt veterinary care (Finding 5), is arbitrary, capricious, or entirely lacking in evidentiary support.

5. The Controller's Reduction of Indirect Costs (Finding 6) Is Correct as a Matter of Law and Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Parameters and Guidelines amended in 2006 state that "Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan." The original set of Parameters and Guidelines contained similar language. Both sets of Parameters and Guidelines further provide claimants with the option of using 10 percent of direct labor, excluding fringe benefits,

[47] Exhibit A, IRC, page 118 (2002 Parameters and Guidelines, page 10).

or preparing an Indirect Cost Rate Proposal (ICRP) pursuant to the Office of Management and Budget (OMB) Circular A-87.[48]

In Finding 6 of the Final Audit Report, the Controller states that the claimant did not properly claim indirect costs of $2,458,387. Specifically, the Controller found that the claimant calculated indirect costs by assuming that all costs incurred by the animal shelter, kennel, and veterinary divisions were direct mandate-related costs, and that all costs incurred within the animal control and license/canvassing divisions were direct non-mandate related costs. Using the two totals, the claimant determined the percentage of direct mandate-related costs and multiplied this percentage by the amount of costs incurred with the administration division. The Controller asserts that this method of calculating indirect costs is not consistent with the Parameters and Guidelines. The Controller also asserts that the claimant's assumption that all costs incurred within the animal shelter, kennel, and veterinary divisions were direct mandate-related costs, and that all costs incurred within the animal control and license/canvassing divisions were direct non-mandate related costs, is also incorrect. Thus, the Controller rejected the claimant's method of determining indirect costs and ultimately allowed $336,205 in such costs, based on an indirect cost rate proposal (ICRP) of 76.38 percent, using allowable salaries and benefits from all the divisions within the claimant's organization.[49]

Staff finds that the Controller's reduction of indirect costs is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant's original calculation of indirect costs does not comply with the Parameters and Guidelines, which provides that if a claimant seeks a reimbursement of indirect costs that is more than 10 percent of the total of direct costs, the claimant may submit an Indirect Cost Rate Proposal (ICRP) created in conformity with federal Office of Management and Budget Circular A-87. There are no provisions in the Parameters and Guidelines that provides a special reimbursement formula be applied to this claimant.

Moreover, the Controller's audit decisions and recalculation of indirect costs is entitled to deference so long as it is correct as a matter of law.[50] Staff finds that the Controller considered all the facts and documents maintained by the claimant in support of its reimbursement claims, and considered the claimant's arguments and new proposals for calculating indirect costs. Staff further finds that there is no evidence that the Controller's recalculation of indirect costs is arbitrary or capricious.

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

Conclusion

Based on the foregoing analysis, staff finds the following reductions are incorrect as a matter of law and arbitrary, capricious and entirely lacking in evidentiary support:

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[48] Exhibit A, IRC, pages 122-123 (2002 Parameters and Guidelines, pages 14-15); Exhibit A, IRC, pages 269-270 (2006 Parameters and Guidelines, pages 18-19).

[49] Exhibit A, IRC, page 516 (Final Audit Report, page 51).

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

- The reduction of costs relating to the exclusion of animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period because they became non-rehabilitatable.
- The reduction of costs relating to the Controller's recalculation of costs following the *Purifoy* decision and its use of an average number of reimbursable days, to the extent the recalculation resulted in an exclusion of "eligible animals" correctly held under the law.

Staff further finds that all other reductions made by the Controller are correct as a matter of law and are not arbitrary, capricious, or entirely lacking in evidentiary support.

Staff Recommendation

Staff therefore recommends that the Commission adopt the Proposed Decision to partially approve the IRC and request, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate costs that relate to the following incorrect reductions to the extent the claimant can provide documentation to support the validity of the costs incurred. Section VI. of the Parameters and Guidelines require claimants to provide source documents that show the evidence of the validity of such costs and their relationship to the mandate. The supporting documentation must be kept on file by the agency during the audit period required by Government Code section 17558.5. In this respect, claimants are required by Food and Agriculture Code section 32003 to maintain records on animals that are taken up, euthanized, or impounded. Such records shall identify the date the animal was taken up, euthanized, or impounded; the circumstances surrounding these events; and the names of the personnel performing these activities.[51]

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

[51] The record in this case shows that the claimant started maintaining records using the Pax Trax system in fiscal years 2006-2007 and 2008-2009, and that no records were available for the earlier fiscal years of 2001-2002 and 2002-2003. The Controller should, on remand, re-assess these years in light of this Decision.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Civil Code Sections 1834 and 1846; Food and Agriculture Code Sections 31108, 31752, 31752.5, 31753, 32001, and 32003; As Added or Amended by Statutes 1998, Chapter 752 (SB 1785) Fiscal Years 2001-2002, 2002-2003; 2006-2007, 2007-2008, and 2008-2009 Southeast Area Animal Control Authority, Claimant	Case No.: 14-9811-I-03 *Animal Adoption* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted 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] this 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 was filed in response to an audit by the State Controller's Office (Controller) of the Southeast Area Animal Control Authority's (claimant's) initial reimbursement claims under the *Animal Adoption* program for fiscal years 2001-2002, 2002-2003, 2006-2007, 2007-2008, and 2008-2009. The Controller reduced and recalculated the claims because it found that the

claimant did not comply with the Parameters and Guidelines when calculating costs under the actual cost method, claimed unallowable costs and ineligible staff, misstated animal census data, overstated the number of eligible animals, understated the number of reimbursable days, did not claim allowable costs, misstated indirect costs, and overstated offsetting revenues.[52]

The Commission partially approves this IRC, and requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission regulations, that the Controller reinstate costs that relate to the following incorrect reductions to the extent the claimant can provide documentation to support the validity of the costs incurred:[53]

- The reduction of costs relating to the exclusion of animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period because they became non-rehabilitatable.
- The reduction of costs relating to the Controller's recalculation of costs following the *Purifoy v. Howell* decision and its use of an average number of reimbursable days, to the extent the recalculation resulted in an exclusion of "eligible animals" correctly held under the law.

The Commission further finds that all other reductions made by the Controller are correct as a matter of law and are not arbitrary, capricious, or entirely lacking in evidentiary support.

I. Chronology

01/15/2003 Claimant signed and dated the reimbursement claim for fiscal year 2001-2002.[54]

01/15/2004 Claimant signed and dated the reimbursement claim for fiscal year 2002-2003.[55]

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[52] See Exhibit A, IRC, page 464 (Cover Letter of Final Audit Report, page 1).

[53] Section VI. of the Parameters and Guidelines require claimants to provide source documents that show the evidence of the validity of such costs and their relationship to the mandate. The supporting documentation must be kept on file by the agency during the audit period required by Government Code section 17558.5. In this respect, claimants are required by Food and Agriculture Code section 32003 to maintain records on animals that are taken up, euthanized, or impounded. Such records shall identify the date the animal was taken up, euthanized, or impounded; the circumstances surrounding these events; and the names of the personnel performing these activities.

The record in this case shows that the claimant started maintaining records using the Paw Trax system in fiscal years 2006-2007 and 2008-2009, and that no records were available for the earlier fiscal years of 2001-2002 and 2002-2003. *See* Exhibit B, Controller's Late Comments on the IRC, page 15 (State Controller's Office Analysis and Response, page 9). The Controller should, on remand and under its audit authority, re-assess fiscal years 2001-2002 and 2002-2003 in conformity with its reassessment of data for 2006-2007 and 2008-2009 for purposes of reinstating costs incorrectly reduced.

[54] Exhibit A, IRC, page 546 (Form FAM-27).

[55] Exhibit A, IRC, page 563 (Form FAM-27).

01/15/2008 Claimant signed and dated the reimbursement claim for fiscal year 2006-2007.[56]

01/22/2009 Claimant signed and dated the reimbursement claim for fiscal year 2007-2008.[57]

02/04/2010 Claimant signed and dated the reimbursement claim for fiscal year 2008-2009.[58]

08/12/2010 Controller dated a letter to claimant regarding the start of the audit.[59]

05/22/2012 Controller dated the Draft Audit Report.[60]

06/04/2012 Claimant signed and dated a letter in response to the Draft Audit Report.[61]

06/15/2012 Controller dated the Final Audit Report.[62]

06/08/2015 Claimant filed this IRC.[63]

11/10/2015 Controller filed late comments on the IRC.[64]

02/11/2016 Claimant filed late rebuttal comments.[65]

11/7/2016 Commission staff issued the Draft Proposed Decision.[66]

12/05/2016 Controller filed comments on the Draft Proposed Decision.[67]

12/06/2016 Claimant filed late comments on the Draft Proposed Decision.[68]

II. Background

The *Animal Adoption* Program

The *Animal Adoption* program arose from amendments to the Civil Code and Food and Agriculture Code made by Statutes 1998, chapter 752 (SB 1785[69]). The purpose of the test claim statute was to carry out the state policy that "no adoptable animal should be euthanized if it can

[56] Exhibit A, IRC, page 593 (Form FAM-27).

[57] Exhibit A, IRC, page 614 (Form FAM-27).

[58] Exhibit A, IRC, page 641 (Form FAM-27).

[59] Exhibit B, Controller's Late Comments on the IRC, page 5.

[60] Exhibit A, IRC, page 468.

[61] Exhibit A, IRC, pages 524-539 (Letter from Dan Morrison to James Spano, dated June 4, 2012, pages 1-16).

[62] Exhibit A, IRC, page 464 (cover letter), pages 463-540 (Final Audit Report).

[63] Exhibit A, IRC, pages 1, 2.

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

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

[66] Exhibit E, Draft Proposed Decision.

[67] Exhibit F, Controller's Comments on the Draft Proposed Decision.

[68] Exhibit G, Claimant's Late Comments on the Draft Proposed Decision.

[69] Sometimes referred to as the Hayden Bill.

be adopted into a suitable home" and "no treatable animal should be euthanized."[70] Generally, the program increases the holding period to allow for the adoption and redemption of stray and abandoned dogs, cats, and other specified animals before the local agency can euthanize the animal, and requires:

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

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

1. Providing care and maintenance during the increased holding period for impounded dogs and cats that are ultimately euthanized. The increased holding period shall be measured by calculating the difference between three days from the day of capture and four business days from the day after impoundment, as specified below in 3 (a) and 3 (b), or six business days from the day after impoundment (Food & Agr. Code, §§ 31108, 31752);
2. Providing care and maintenance for four business days from the day after impoundment, as specified below in 3 (a) and 3 (b), or six business days from the day after impoundment, for impounded rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles, or tortoises legally allowed as personal property that are ultimately euthanized (Food & Agr. Code, § 31753);
3. For dogs, cats, and other specified animals held for four business days after the day of impoundment, either:
    (a) Making the animal available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or
    (b) For those local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, establishing a procedure to enable owners to reclaim their animals by appointment at a mutually agreeable time when the agency would otherwise be closed (Food & Agr., Code §§ 31108, 31752, and 31753);
4. Verifying whether a cat is feral or tame by using a standardized protocol (Food & Agr. Code, § 31752.5);
5. Posting lost and found lists (Food & Agr. Code, § 32001);
6. Maintaining records on animals that are not medically treated by a veterinarian, but are either taken up, euthanized after the holding period, or impounded (Food & Agr. Code, § 32003); and

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

7. Providing "necessary and prompt veterinary care" for abandoned animals, other than injured cats and dogs given emergency treatment, that are ultimately euthanized (Civ. Code, §§ 1834 and 1846).[71]

The Commission first addressed the Parameters and Guidelines for *Animal Adoption* at its August 23, 2001, hearing, but the matter was continued for further public comment and analysis.[72] The Commission adopted the first set of Parameters and Guidelines for this program on February 28, 2002.[73] The Parameters and Guidelines were then re-issued as corrected on March 20, 2002.[74] The 2002 Parameters and Guidelines, in addition to the activities identified in the Test Claim Statement of Decision, provide reimbursement for one-time activities of developing policies and procedures; training; and developing or procuring computer software for maintaining records; as well as:

- Acquiring additional space by purchase or lease and/or construction of new facilities to provide appropriate or adequate shelter necessary to comply with the mandated activities during the increased holding period for impounded stray or abandoned dogs, cats, and other animals.[75]
- Remodeling/renovating existing facilities to provide appropriate or adequate shelter necessary to comply with the mandated activities during the increased holding period for impounded stray or abandoned dogs, cats, and other animals.[76]

Section VI. of the Parameters and Guidelines also require claimants to provide source documents that show the evidence of the validity of such costs and their relationship to the mandate. The supporting documentation must be kept on file by the agency during the audit period required by Government Code section 17558.5. In this respect, claimants are required by Food and Agriculture Code section 32003 to maintain records on animals that are taken up, euthanized, or impounded. Such records shall identify the date the animal was taken up, euthanized, or impounded; the circumstances surrounding these events; and the names of the personnel performing these activities.

On March 12, 2003, the Joint Legislative Audit Committee authorized an audit of the *Animal Adoption* mandate, which was completed by the Bureau of State Audits on October 15, 2003. The audit report recommended that the Legislature direct the Commission to amend the Parameters and Guidelines of the *Animal Adoption* mandate to correct the formula for determining the reimbursable portion of acquiring additional shelter space. In 2004, AB 2224

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[71] Exhibit B, Controller's Late Comments on the IRC, pages 74-75 (Statement of Decision, *Animal Adoption*, adopted Jan. 25, 2001, pages 37-38).

[72] Exhibit H, Staff Analysis and Proposed Parameters and Guidelines, Item 8, August 23, 2001.

[73] Exhibit A, IRC, page 109 (2002 Parameters and Guidelines, page 1).

[74] Exhibit A, IRC, page 109 (2002 Parameters and Guidelines, page 1).

[75] Exhibit A, IRC, page 111 (2002 Parameters and Guidelines, page 3).

[76] Exhibit A, IRC, page 113 (2002 Parameters and Guidelines, page 5).

(Stats. 2004, ch. 313) was enacted to direct the Commission to amend the Parameters and Guidelines for the *Animal Adoption* program to:

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

On January 26, 2006, the Commission adopted the Parameters and Guidelines Amendment, applicable to claims beginning July 1, 2005, in accordance with AB 2224, to require, among other things, contemporaneous source documents to show the validity of costs claimed and their relationship to the reimbursable activities.[77] The 2006 amendment also clarified the definition of "average daily census" of dogs and cats, for purposes of the formula used to calculate care and maintenance costs; this amendment is clarifying only, and does not affect the methodology used to calculate actual costs for this component.[78]

The Controller's Audit and Reduction of Costs

Costs of $2,316,724 for the mandated program were claimed during the audit period (fiscal years 2001-2002, 2002-2003, 2006-2007, 2007-2008, and 2008-2009), which were reduced by $1,556,633.[79]

The Controller determined that the claimant combined and claimed costs for at least four cost components of the program under the cost component of care and maintenance.[80] The claimant calculated costs by adding up the costs incurred in its Animal Shelter Division, Kennel Division, and Veterinary Division, adding in indirect costs, subtracting the cost of euthanasia supplies, and then dividing the total by the average daily census of animals. The claimant's methodology included costs for maintaining lost and found lists, maintaining non-medical records, feral cat review, and necessary and prompt veterinary care. The Controller concluded, however, that the reimbursable costs for the other cost components are not determined in the same manner as the costs for care and maintenance. In addition, the expenditures claimed included activities that are not reimbursable.

Although the Controller originally found that all costs claimed were unallowable because the claimant did not comply with the Parameters and Guidelines, the Controller worked with the claimant's representatives during the course of the audit in order to determine the procedures followed to perform the reimbursable activities. The Controller allowed time studies supporting four different cost components during the course of the audit and calculated allowable costs

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[77] Exhibit A, IRC, pages 252-271 (2006 Parameters and Guidelines, pages 1-20).

[78] Exhibit H, Final Staff Analysis and Proposed Parameters and Guidelines Amendment, Item 11, January 26, 2006.

[79] Exhibit A, IRC, page 471 (Final Audit Report, page 6) (Summary chart).

[80] Exhibit A, IRC, page 475 (Final Audit Report, page 10).

based on agency-provided documentation. In its Final Audit Report, the Controller made the following principal findings:

Finding 1: The claimant overstated care and maintenance costs, resulting in a reduction of $1,760,618.[81]

The Controller found, as described below, that the claimant used the actual cost method for claiming care and maintenance costs, but did not claim allowable salary and benefit costs; claimed unallowable material and supply costs; estimated the yearly census of animals; incorrectly calculated the number of stray dogs, cats, and other eligible animals that died during the increased holding period or were ultimately euthanized; and understated the number of reimbursable days.

- Salary and benefit costs. During the audit, the claimant provided actual salary and benefit costs for the audit period for three positions (animal care technicians, senior animal care technicians, and lead animal care technicians) that provide care and maintenance to the animals housed at the shelter. However, only a percentage of shelter staff time is devoted to care and maintenance. The claimant estimated that 89 percent of the animal care technician's and senior animal care technician's time and 60 percent of the lead animal care technician's time was devoted to care and maintenance. The Controller determined that the estimated percentages appeared reasonable based on the job descriptions provided.[82] Thus, the Controller multiplied the actual salary and benefit amounts provided by the claimant by the percentage of time spent on mandated care and maintenance activities, resulting in allowable salaries and benefits of $952,445.[83]
- Material and supply costs of $7,690,644 were overstated by the claimant. The Controller, allowing $288,726 in materials and supplies, determined that the claimant included total costs incurred to operate the shelter (such as shelter, kennel, veterinary, and administrative divisional expenses) instead of claiming costs specifically incurred to care for and maintain the animals. The Controller determined the allowable costs by reviewing the claimant's account #140 (special activities supplies for shelter operations). The claimant indicated that account #140 is used specifically for the expenses related to the care and maintenance of animals and includes costs for animal food, cat litter, light bulbs, and cleaning supplies, and does not include expenses that are not eligible for

[81] Exhibit A, IRC, pages 476-500 (Final Audit Report, page 11-35).

[82] Exhibit B, Controller's Late Comments on the IRC, pages 15, 109-137 (Controller's Analysis and Response, page 9 and Tab 6). The Controller noted a minor transpositional error (identifying 103 eligible other animals for the Care and Maintenance Cost component in the Final Audit Report when the audit work papers support only 100 such animals in Tab 6). Exhibit F, Controller's Comments on the Draft Proposed Decision, page 13. The Commission trusts that the Controller will reinstate the costs that were incorrectly reduced as a result of this error.

[83] Exhibit A, IRC, page 479 (Final Audit Report, page 14).

reimbursement (such as euthanasia medication, microchip expenses, and medical supplies).[84]

- Yearly animal census refers to the total number of days that all animals are housed in the shelter. The claimant estimated the yearly census by assuming that the animals were held an average of five days in fiscal years 2001-2002 and 2002-2003, an average of seven days in fiscal years 2006-2007 and 2007-2008, and an average of six days in fiscal year 2008-2009. The Controller reviewed the claimant's Paw Trax software system, which detailed the actual total annual census of animals housed in the claimant's animal shelter in fiscal years 2006-2007 through 2008-2009. Since the information was not available for fiscal years 2001-2002 and 2002-2003, the Controller used an average of the information from fiscal years 2006-2007 through 2008-2009 for those earlier years. The Controller's recalculation resulted in an increase of yearly census numbers.[85]

- The Controller found that number of eligible dogs, cats, and other animals that died during the increased holding period or were ultimately euthanized was overstated by the claimant. To verify the eligible animal population claimed for reimbursement of care and maintenance costs, the Controller ran a query from the claimant's Paw Trax system for fiscal years 2006-2007 and 2008-2009, and then applied an average number from that data to the earlier fiscal years for which no data was maintained. The Controller allowed reimbursement for eligible dogs and cats that died during the increased holding period (on days 4, 5, and 6), or were ultimately euthanized on day 7 or later; and "eligible" other animals that died during the increased holding period (on days 2, 3, 4, 5, and 6, or were ultimately euthanized on day 7 or later). The Controller did not count as an eligible animal, animals that died on day 1 because they were most likely irremediably suffering or were too severely injured to move, and it was likely more humane to dispose of the animal than to hold it; animals that were euthanized during the holding period; and animals that died of natural causes after the required holding period.[86]

- Applying the court's decision in *Purifoy v. Howell* (2010) 183 Cal.App.4th 166, which held that Saturday is not a business day for purposes of calculating the number of days in the required holding period, the Controller calculated an *average* increased holding period for all dogs and cats to be three days, and the average increased holding period for all other "eligible" animals to be six days,[87] and found that the claimant understated the number of reimbursable days, resulting in increased reimbursement for the claimant. "We performed an alternate analysis to determine the effect on the agency's allowable costs for care and maintenance had we considered Saturday as a business day. We performed this analysis for FY 2008-2009, the final year of the audit period. The results

[84] Exhibit A, IRC, page 480 (Final Audit Report, page 15); Exhibit B, Controller's Late Comments on the IRC, pages 15, 109-137.

[85] Exhibit A, IRC, pages 480-481 (Final Audit Report, pages 15-16); Exhibit B, Controller's Late Comments on the IRC, pages 15, 109-137.

[86] Exhibit A, IRC, pages 481-482 (Final Audit Report, pages 16-17); Exhibit B, Controller's Late Comments on the IRC, pages 14-16.

[87] Exhibit B, Controller's Late Comments on the IRC, pages 137-138.

of this analysis revealed that allowable costs would decrease by $15,953, from $64,506 to $48,553. This equates to a decrease in allowable costs of 24.7% if we included Saturday as a business day."[88]

Finding 2: The claimant miscalculated holding period costs by including costs that were not related to making animals available for owner redemption, resulting in a reduction of $466,978.[89]

The Parameters and Guidelines provide that an agency desiring to apply the shortened holding period is eligible for reimbursement for making animals available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or, as otherwise specified in the statute. The claimant requested $654,322 costs for the audit period for this component, by adding together expenditures of the shelter division and kennel division and a portion of the expenditures of the administration division and veterinary division. The claimant then divided the total expenditures by the total number of hours the facility was open for operation to arrive at a cost per hour. The cost per hour was multiplied by the additional hours the shelter was open for owner redemption.[90]

The Controller determined that this calculation is not correct and included costs beyond the scope of the mandated activity. The Controller states that the mandate is limited to keeping the shelter open for purposes of owner redemption. "We believe that other animal services such as animal control officer duties, euthanasia, spay and neutering procedures, implanting microchips, licensing, processing animal adoptions, and certain other animal services do not become temporarily reimbursable activities just because the animal shelter is open for extra hours to make animals available for owner redemption. These activities are not reimbursable under any cost component of the mandated program at any time."[91]

The Controller recalculated costs based on documentation provided by the claimant identifying the hours of operation for its animal shelter, and the hours the claimant made animals available for owner redemption. On Saturdays, the claimant's shelter was open from 8:00 a.m. to 5:00 p.m. However, the shelter made the animals available for owner redemption only from 10:00 a.m. to 5:00 p.m., for a total of seven hours per week. Based on information provided by the claimant, the Controller determined the employee classifications and the number of employees on duty specifically to make animals available for owner redemption. The Controller did not include other employees on duty that performed reimbursable activities relating to the other cost components of care and maintenance, lost and found lists, maintaining non-medical records, and necessary and prompt veterinary care. The Controller applied the allowable hours by each employee's productive hourly and benefit rates and determined that $187,344 is allowable for salary and benefits.[92]

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[88] Exhibit A, IRC, pages 494-495 (Final Audit Report, page 29); Exhibit B, Controller's Late Comments on the IRC, pages 137-138, showing an increase in allowable reimbursable days for all fiscal years during the audit period.

[89] Exhibit A, IRC, pages 501-505 (Final Audit Report, pages 36-40).

[90] Exhibit A, IRC, page 501 (Final Audit Report, page 36).

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

[92] Exhibit A, IRC, pages 502-503 (Final Audit Report, pages 37-38).

Finding 3: The claimant did not individually claim costs for lost and found lists since these costs were included in the calculation for care and maintenance; the Controller determined $7,432 is reimbursable.[93]

The costs allowable are based on a time study that the claimant conducted during the course of the audit for the time spent performing the activities.

Finding 4: The claimant did not individually claim costs for maintaining non-medical records since these costs were included in the calculation for care and maintenance; the Controller determined $86,633 is reimbursable.[94]

The costs allowable are based on a time study that the claimant conducted during the course of the audit for the time spent performing the activities.

Finding 5: The claimant did not individually claim costs for prompt and necessary veterinary care since these costs were included in the calculation for care and maintenance; the Controller determined $82,487 is reimbursable.[95]

The costs allowable are based on a time study that the claimant conducted during the course of the audit based on the time taken to perform an initial physical exam and administer a wellness vaccine to "treatable" or "adoptable" animals for each "eligible animal." The allowable material and supply costs are based on the actual costs of wellness vaccines administered to each "eligible" animal. The Controller defined "eligible animals" for this activity consistent with its recalculation for care and maintenance and the holding in the *Purifoy* case. Thus, the Controller allowed reimbursement for the cost of prompt and necessary veterinary care for dogs and cats that died during the increased holding period (on days 4, 5, and 6), or were ultimately euthanized on day 7 or later; and "eligible" other animals that died during the increased holding period (on days 2, 3, 4, 5, and 6, or were ultimately euthanized on day 7 or later. Prompt and necessary veterinary costs were not allowed for animals that died on day 1 because they were most likely irremediably suffering or were too severely injured to move; animals that were euthanized during the holding period; and animals that died of natural causes after the required holding period.

Finding 6: The claimant misstated its indirect costs; the Controller determined that $336,205 was allowable.[96]

The reimbursement claims filed by the claimant included $2,458,387 in overhead costs incurred by its animal shelter, kennel, and veterinary divisions. This amount was then included as part of the request for reimbursement for care and maintenance and increased holding period costs. The claimant's calculation did not include overhead costs from its animal control and licensing/canvassing divisions. The Controller determined that including a component for overhead within a cost component is not an option outlined in the Parameters and Guidelines for claiming indirect costs. Instead, the Parameters and Guidelines state that claimants have the

[93] Exhibit A, IRC, pages 506-507 (Final Audit Report, pages 41-42).

[94] Exhibit A, IRC, pages 508-510 (Final Audit Report, pages 43-45).

[95] Exhibit A, IRC, pages 511-515 (Final Audit Report, pages 46-50).

[96] Exhibit A, IRC, pages 516-520 (Final Audit Report, pages 51-55).

option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) pursuant to the Office of Management and Budget (OMB) Circular A-87.

The Controller recalculated indirect costs by working with the claimant's expenditure information from all six of its divisions during the audit period to develop an indirect cost rate proposal (ICRP) of 76.38 percent based on allowable salaries and benefits from all the divisions within the claimant's organization. The Controller found that indirect costs totaling $336,205 were allowable.[97]

Finding 7: The claimant overstated offsetting revenue by $158,206.[98]

This resulted in increased reimbursement to the claimant.

III. Positions of the Parties

A. Southeast Area Animal Control Agency

The claimant objects to reductions totaling $1,556,633 for fiscal years 2001-2002, 2002-2003, 2006-2007, 2007-2008, and 2008-2009, and seeks reinstatement of the entire amount reduced.

The claimant takes the following principal positions, which are more fully summarized in the analysis:

1. The claimant, a joint powers authority, possesses the standing to bring this IRC as a representative of its member cities and contracting cities.[99]
2. The California Court of Appeal's decision in *Purifoy v. Howell* should be applied prospectively only.[100]
3. The claimant acted reasonably when it utilized a self-created and unauthorized formula to calculate its reimbursable costs.[101] Instead of following the formula contained within the Parameters and Guidelines, the claimant used the costs of its shelter operations as its base in determining care and maintenance costs; from that base, the claimant then deducted unallowable line items (such as the costs of euthanasia) and then added the claimant's administrative costs.[102]
4. The Controller should not have reduced the costs associated with supervisory and other personnel working evening and weekend hours.[103] The claimant states that the Controller allows reimbursement for a "bare bones" level of staffing which includes only the shelter

[97] Exhibit B, Controller's Late Comments on the IRC, page 34.

[98] Exhibit A, IRC, pages 521-522 (Final Audit Report, pages 56-57). The claimant does not object to Finding 7.

[99] Exhibit A, IRC, pages 63-64 (Letter from Sally Hazzard to Heather Halsey, dated July 17, 2015, pages 1-2).

[100] Exhibit A, IRC, pages 19-20 (Written Narrative, pages 4-5).

[101] Exhibit A, IRC, pages 4-18 (Written Narrative, pages 1-3 plus exhibits).

[102] Exhibit A, IRC, pages 4 (Written Narrative, page 1).

[103] Exhibit A, IRC, page 26 (Written Narrative, page 11).

personnel who deal directly with the public or the animals; this policy, the claimant argues, excludes supervisors and other necessary, but not front-line, personnel.[104]

5. The Controller should reinstate the claimant's animal care and maintenance costs incurred for animals which are euthanized *during* the increased holding period.[105]
6. The Controller should reinstate the animal care and maintenance costs incurred for animals which die of natural causes *after* the close of the increased holding period.[106]

The claimant filed comments on the Draft Proposed Decision, reiterating some of the arguments on the IRC and also arguing that:

7. It is "impossible" to comply with the 120-day deadline to submit claims.[107]
8. The claimant made a "good faith effort" to comply with the law.[108]
9. The Commission's standard of deference to the Controller is the equivalent of a "rubber stamp" which allows the Controller to "self-regulate."[109]

B. State Controller's Office

The Controller contends that it acted according to the law when it made reductions totaling $1,556,633 to the claimant's reimbursement claims for fiscal years 2001-2002, 2002-2003, 2006-2007, 2007-2008, and 2008-2009. The Controller filed comments on the Draft Proposed Decision, contending that it applied the language of the Parameters and Guidelines "without exercising subjective interpretations"; the data in the claimant's PawTrax database makes it "impossible" to determine the claimant's reimbursement under the Commission's rule; using an average increased holding period days in the computation of allowable costs was a "reasonable and practical methodology"; and clarifying that, in this case, the Controller identified various other animals (such as ducks, rabbits, and doves) as eligible animals.[110]

The Controller's specific arguments with respect to each finding are summarized in the analysis.

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

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[104] Exhibit A, IRC, page 26 (Written Narrative, page 11).

[105] Exhibit A, IRC, pages 20-24 (Written Narrative, pages 5-9).

[106] Exhibit A, IRC, pages 27-28 (Written Narrative, page 1 and Mandated Costs Animal Adoption Claim Summary).

[107] Exhibit G, Claimant's Late Comments on the Draft Proposed Decision, pages 2-3.

[108] Exhibit G, Claimant's Late Comments on the Draft Proposed Decision, pages 3-5.

[109] Exhibit G, Claimant's Late Comments on the Draft Proposed Decision, pages 5-7.

[110] Exhibit F, Controller's Comments on the Draft Proposed Decision, pages 7-13.

Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the Decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the Parameters and Guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6, of the California Constitution.[111] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[112]

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.[113] Under this standard, the courts have found:

> 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.]' "[114]

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. [115] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by

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

[112] *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.

[113] *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.

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

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

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.[116]

A. Southeast Area Animal Control Authority (SEAACA) Has Standing, as a Representative of the Cities Which Compose or Contracted with It, to Bring this IRC.

The threshold issue before the Commission is whether SEAACA has standing to bring this IRC.[117] The claimant is a joint powers authority "comprised of 8 member cities and 6 contract cities in southeast Los Angeles County and north Orange County pooling their resources to provide animal control services via a joint powers authority created by eight Los Angeles County member cities for this purpose. At the time of the claim, SEAACA was comprised of 8 member cities and 3 contract cities in southeast Los Angeles County."[118]

The Commission has authority to adjudicate an IRC filed "by a local agency or school district."[119] A "local agency" is defined as "any city, county, special district, authority, or other political subdivision of the state."[120] A "special district," in turn, is defined as "any agency of the state that performs governmental or proprietary functions within limited boundaries," a definition which "includes a county service zone, a maintenance district or area, an improvement district or improvement zone, or any other zone or area."[121] "Joint powers authorities" however, are specifically not included within this definition and have a history with regard to state mandate claims.

In 1984, the Legislature added the definition of "special district" for purposes of establishing the mandates process and expressly included "a joint powers agency or authority" as a form of local agency which possessed the standing to bring a test claim.[122] The following year, the Legislature

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[116] 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.

[117] In its late comments on the IRC (Exhibit B), the Controller did not raise the issue of whether the claimant has standing to file and maintain an IRC. The Commission — a quasi-judicial agency with limited jurisdiction — raises the issue sua sponte. (See, e.g., *In re: J.T.* (2011) 195 Cal. App. 4th 707, 710 ["We raised sua sponte the issue of sister's standing to be heard on her claims and ordered supplemental briefing on that issue."].)

[118] Exhibit A, IRC, page 63 [Letter from Sally Hazzard to Heather Halsey, dated July 17, 2015, page 1.]).

[119] Government Code section 17551(d).

[120] Government Code section 17518.

[121] Government Code section 17520.

[122] Statutes 1984, chapter 1459, section 1 (adding Government Code section 17520, which read, "'Special district' means any agency of the state which performs governmental or proprietary functions within limited boundaries. 'Special district' includes a redevelopment agency, a joint powers agency or entity, a county service area, a maintenance district or area, an improvement

created the IRC procedure, allowing local agencies — which included special districts which, in turn, included "a joint powers agency or authority" — to bring an IRC.[123] Consequently, as of January 1, 1985, a joint powers authority had standing to bring an IRC.

Twenty years later, the Legislature removed the phrase "a joint powers agency or authority" from the definition of "special district."[124]

Specifically, Assembly Bill 2856 deleted the text reading "a redevelopment agency, a joint powers agency or entity" from the statutory definition of "special district."[125] The deletion was intentional since the deletion was mentioned at least three times in the subsequent legislative history of the bill.[126] Consequently, as of January 1, 2005, joint powers authorities no longer are a local government with standing to bring an IRC.

The deletion of statutory language and the legislative analyses stating that the deletion removes joint powers agencies from the definition of "special district" for purposes of Government Code section 17520 (mandates law) demonstrates that the Legislature intended to substantively alter the law and remove from the ambit of the state mandates process those classes of persons described in the deleted language. "Where the amendment of a statute consists of the deletion of an express provision, the presumption is that a substantial change in the law was intended."[127] "Where the Legislature has deleted such language, apparently purposefully, the current version of the statute cannot be interpreted to include the rejected requirement. Reading in language that the Legislature chose to remove ... violates basic principles of statutory construction and impermissibly interferes with the legislative function."[128]

The remaining text in the mandates statutes cannot be read to include joint powers authorities because such a reading would reduce the 2004 amendments to null surplusage. "In deference to the Legislature, we assume its acts do not produce meaningless results; therefore, we must construe the amendment as accomplishing something and not as an idle act."[129]

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district or improvement zone, or any other zone or area. 'Special district' does not include a city, a county, a school district, or a community college district.").

[123] Statutes 1985, chapter 179, section 5 (adding Government Code section 17551(c)).

[124] Statutes 2004, chapter 890, section 7 (amending Government Code section 17520).

[125] Exhibit H, AB 2856, as amended in Senate on August 5, 2004 (http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200320040AB2856) as accessed on November 3, 2016.

[126] Exhibit H, Assembly Floor Analysis of AB 2856, as amended August 17, 2004, pages 1-2 ("The Senate amendments. . . . 5. Remove redevelopment agencies and joint powers agencies from the definition of 'special district.' ").

[127] *Subsequent Injuries Fund v. Industrial Accident Commission* (1963) 59 Cal.2d 842, 844.

[128] *Commonwealth v. Porges* (2011) 460 Mass. 525, 530 [952 N.E.2d 917, 921].

[129] *R & P Capital Resources, Inc. v. California State Lottery* (1995) 31 Cal.App.4th 1033, 1038.

Consequently, as of January 1, 2005, joint powers agencies (also known as joint powers authorities) can no longer file or maintain IRCs in their own right.[130] However, a joint powers agency may file and maintain such an IRC in a representative capacity on behalf of its member and contracting cities. The Commission bases its conclusion on the following reasons.

The record reflects that, at the time of the relevant claim, the claimant was composed of eight member cities and also contracted with three cities for animal control services.[131] The purpose of a joint powers arrangement is to allow two or more public entities to jointly exercise a shared power,[132] and, in this case, each of the cities possesses the power to file and maintain an IRC. [133] In an unpublished opinion, the Second District of the California Court of Appeal held that a joint powers authority had standing to file and maintain a test claim before the Commission because the joint powers authority was acting on behalf of its constituent entities (which, in that particular case, were counties).[134] "Given that the joint powers agreement expressly authorized the EIA [Excess Insurance Authority] to exercise all of the powers common to counties in California, to do all acts necessary for the exercise of said powers, and to sue and be sued in its own name, we conclude that the joint powers agreement authorized the EIA to bring the test claims on behalf of its member counties, each of which qualifies as a local agency to bring a test claim under Government Code section 17518."[135] While the Court of Appeal's unpublished opinion is not

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[130] Although the instant IRC includes claims for costs incurred during two fiscal years which pre-dated the 2004 amendment (specifically, fiscal years 2001-2002 and 2002-2003), a joint powers agency or authority would not have standing to maintain an IRC in its own capacity if — as is the case here — the standing law was amended before a final judgment was entered on the claims. "For a lawsuit properly to be allowed to continue, standing must exist at all times until judgment is entered and not just on the date the complaint is filed." *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 232-233. Here, SEAACA lacked standing to bring this IRC in its own capacity even on the day the IRC was filed (June 8, 2015), since the filing date was more than 10 years after the standing statute was amended.

[131] Exhibit A, IRC, page 63.

[132] "If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, including, but not limited to, the authority to levy a fee, assessment, or tax, even though one or more of the contracting agencies may be located outside this state." Government Code section 6502 (first sentence).

[133] Government Code section 17518 ("'Local agency' means any city . . . ."); Government Code section 17551(d) ("The commission . . . shall hear and decide upon a claim by a local agency . . . that the Controller has incorrectly reduced payments to the local agency . . . .").

[134] Exhibit H, *CSAC Excess Insurance Authority v. Commission on State Mandates*, Case No. B188169, 2006 WL 3735551 (Cal. Court of Appeal Dec. 20, 2006) (nonpub. opn.).

[135] Exhibit H, *CSAC Excess Insurance Authority v. Commission on State Mandates*, Case No. B188169, 2006 WL 3735551 (Cal. Court of Appeal Dec. 20, 2006) (nonpub. opn.), page 44.

binding,[136] the Commission is persuaded by the Court of Appeal's reasoning, particularly in light of the nearly identical factual and legal issues underpinning the standing analysis.

The same facts and reasoning apply to this IRC. By the Joint Powers Agreement dated July 1, 1997 (Agreement), the cities of Bell Gardens, Downey, Montebello, Norwalk, Paramount, Pico Rivera, Santa Fe Springs and South El Monte created the current version of claimant SEAACA.[137] The Agreement states that:

- The member cities are "empowered by law to perform animal control services" and that the agreement's purpose is "to exercise such powers jointly."[138]
- SEAACA shall possess "the powers common to the signatory cities" including "the undertaking of such activities as may be necessary in order to provide animal control services within serviced cities."[139]
- SEAACA is "authorized in its own name to do all acts necessary for the exercise of said common powers for said common purpose, including, but not limited to . . . make and enter contracts, . . . and to be sued in its own name."[140]

In addition, SEAACA represents that, at relevant times, additional cities contracted with SEAACA for animal control purposes.[141]

Thus, the claimant may *only* seek reimbursement of costs which were incurred by its member or contracting cities since joint powers authorities are not subject to the tax and spend limitation of the California Constitution and they were deliberately deleted by the Legislature from the statute's list of eligible claimants. The claimant may *not* seek reimbursement of costs which were incurred by the claimant separately and apart from its member or contracting cities. Here, the claimant represents that its accounting records for the costs at issue in this IRC are maintained on a city-by-city basis.[142]

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[136] *Farmers Insurance Exchange v Superior Court (Wilson)* (2013) 218 Cal.App.4th 96, 109 ("nonpublished opinions have no precedential value").

[137] Exhibit D, Claimant's Response to the Request for Additional Information, Joint Exercise of Powers Agreement, dated July 1, 1997.

[138] Exhibit D, Claimant's Response to the Request for Additional Information, Joint Exercise of Powers Agreement, dated July 1, 1997, Recital A and Section 1, pages 17, 19.

[139] Exhibit D, Claimant's Response to the Request for Additional Information, Joint Exercise of Powers Agreement, dated July 1, 1997, Section 4, pages 21-22.

[140] Exhibit D, Claimant's Response to the Request for Additional Information, Joint Exercise of Powers Agreement, dated July 1, 1997, Section 4, pages 21-22.

[141] Exhibit A, IRC, page 63.

[142] Exhibit A, IRC, page 63 ("If the Commission on State Mandates (CSM) and the State Controller's Office (SCO) now wish to divide the costs between 11 separate cities and have us file 11 separate Incorrect Reduction Claims, we can do so as the data is tracked in detail." [Letter from Sally Hazzard to Heather Halsey, dated July 17, 2015, page 1]).

Additionally, the IRC raises issues which, based on this record, apply to each of the member and contracting cities equally.

Consequently, the Commission finds that the claimant possesses the standing required to file and maintain this IRC — but only in its capacity as a representative of its member and contracting cities.

B. The Controller's Finding that the Claimant Failed to Abide by the Parameters and Guidelines when Calculating Reimbursable Costs, Is Correct As a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

Parameters and Guidelines provide instructions for eligible claimants to prepare reimbursement claims for the direct and indirect costs incurred under a state-mandated program.[143] "Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines. . . ."[144] The Parameters and Guidelines are regulatory, in that before their adoption, notice and an opportunity to comment on them are provided, and a full quasi-judicial hearing is held.[145] Once adopted, whether after judicial review or without it, the Parameters and Guidelines are final and binding on the parties. The Parameters and Guidelines may not be amended or set aside by the Commission absent a court order pursuant to Government Code section 17559, or a later request to amend the Parameters and Guidelines pursuant to section 17557, or a request for the adoption of a new test claim decision pursuant to section 17570.[146]

The fundamental fact of this IRC is that the claimant did not abide by the reimbursement formula in the Parameters and Guidelines. In the Final Audit Report, the Controller stated, "The agency used the Actual Cost method, although it did not follow the instruction contained in the parameters and guidelines of how to claim costs using this method."[147] The Controller found that instead of categorizing costs within each of the various claim components recognized by the Parameters and Guidelines, the claimant lumped all costs into the care and maintenance cost component. "The agency used ALL costs incurred in its Animal Shelter Division (Division 2350), Kennel Division (Division 2541), and Veterinary Division (Division 2540), less euthanasia supplies plus indirect costs, under the assumption that all costs incurred in these divisions were totally related to the care and maintenance of animals."[148]

The claimant admitted that it lumped the bulk of its claimed costs into the care and maintenance cost component and did not break out the costs into the various claim components required by the Parameters and Guidelines. "SEAACA's accounting system separates their costs by functional units: Shelter Operations, Field Operations, Licensing, Veterinary Services and Administration. Since the purpose of the Shelter division is to care and maintain the animals, the

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[143] Government Code section 17557; California Code of Regulations, title 2, section 1183.7(e).

[144] Government Code section 17564, as amended by Statutes 1999, chapter 643.

[145] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799, 805, 808.

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

[147] Exhibit A, IRC, page 491 (Final Audit Report, page 26).

[148] Exhibit A, IRC, page 491 (Final Audit Report, page 26).

costs of the Shelter Operations division were taken as the base for calculating total care and maintenance costs. From the total expenditures of that division, unallowable items, such as euthanasia supplies, were deleted and additional agency wide overhead costs from the Administrative division were added."[149]

The claimant argues that this self-created formula is reasonable and that it yields a cost per animal per day which is comparable to that of other animal services agencies.[150] The claimant further asserts, in comments on the Draft Proposed Decision, that the method used was the "actual cost method" because it uses actual salary and benefits, and actual expenditures of the Shelter Operations division.[151]

On this record, the Commission finds that the Controller's conclusion that the claimant failed to abide by the Parameters and Guidelines is correct as a matter of law and is supported by evidence in the record. The Parameters and Guidelines provide for reimbursement of care and maintenance costs for impounded stray or abandoned animals that die during the increased holding period or are ultimately euthanized either by claiming actual costs or by performing a time study.[152] The actual cost method is a formula designed to reimburse a proportion of total care and maintenance costs based on the incremental increase in service (the increased holding period) and the animals for which no fees can be collected (animals that are not adopted, redeemed, or released to a nonprofit animal rescue organization). The Parameters and Guidelines provide that actual costs for dogs and cats shall be calculated as follows:

> Actual Cost Method – Under the actual cost method, actual reimbursable care and maintenance costs per animal per day are computed for an annual claim period.
>
> a) Determine the total annual cost of care and maintenance for all dogs and cats impounded at a facility. Total cost of care and maintenance includes labor, materials, supplies, indirect costs, and contract services.
>
> b) Determine the average daily census of dogs and cats.[153]
>
> c) Multiply the average daily census of dogs and cats by 365 = yearly census of dogs and cats.
>
> d) Divide the total annual cost of care by the yearly census of dogs and cats = cost per animal per day.

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[149] Exhibit A, IRC, page 4. See also Exhibit B, Controller's Late Comments on the IRC, page 14.

[150] Exhibit A, IRC, pages 4-5.

[151] Exhibit G, Claimant's Late Comments on the Draft Proposed Decision, page 1-2.

[152] Exhibit A, IRC, pages 115-118 (2002 Parameters and Guidelines, pages 7-10); Exhibit A, IRC, pages 260-264 (2006 Parameters and Guidelines, pages 9-13).

[153] The quoted language is taken from the 2002 Parameters and Guidelines. (Exhibit A, IRC, page 115.) The 2006 Parameters and Guidelines are substantially the same and clarify that: "For purposes of claiming reimbursement under IV.B.3, average daily census is defined as the average number of all dogs and cats at a facility housed on any given day, in a 365-day period." This amendment is clarifying only, and has no substantive effect on the methodology used to calculate actual costs. (Exhibit A, IRC, page 261 [2006 Parameters and Guidelines, page 10.])

> e) Multiply the cost per animal per day, by the number of impounded stray or abandoned dogs and cats that die during the increased holding period or are ultimately euthanized, by each reimbursable day (the difference between three days from the day of capture, and four or six business days from the day after impoundment).[154]

For "other animals," the actual cost formula is essentially the same, except that the number of reimbursable days is not counted as "the difference between three days … and four or six business days." Because there was no 72-hour holding period required under prior law for "other animals," the "reimbursable days" multiplier is simply "four or six business days."[155]

Thus, the actual cost formula requires the eligible annual cost of care for all animals to be divided by the yearly census of animals to arrive at an average cost per animal per day. The cost per animal per day is then multiplied by the eligible number of animals and the number of increased holding period days. By its own admission, the claimant did not abide by the Parameters and Guidelines. Instead of using the cost to care for animals as the base of the calculation, the claimant used all costs incurred by the shelter operations division, which includes costs that go beyond the scope of the mandate to care and maintain each eligible animal during the increased holding period. In addition, the claimant's formula includes costs for other reimbursable components, which are not reimbursed based on this formula.

If the claimant wishes to be reimbursed under the *Animal Adoption* state mandate reimbursement program, the claimant is required to submit calculations using the formula specified in the Parameters and Guidelines, which are regulatory documents.[156]

Moreover, the cost per animal per day achieved by other animal service agencies is irrelevant and, pursuant to section 1187.5(a) of the Commission's regulations, non-relevant evidence must be excluded as a basis for the Commission's findings.[157] This IRC is about the costs which were claimed and substantiated by this claimant on this record. The Controller states that the actual cost method applied to the claimant was applied no differently than for other local agencies and was based on the actual cost information provided in the expenditure ledgers of the claimant.[158]

The Controller's finding — that the claimant failed to abide by the Parameters and Guidelines — is therefore correct as a matter of law and supported by evidence in the record.[159]

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[154] Exhibit A, IRC, page 115 (2002 Parameters and Guidelines, page 7).

[155] Exhibit A, IRC, pages 116-118 (2002 Parameters and Guidelines, pages 8-10).

[156] *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794, 799.

[157] California Code of Regulations, title 2, sections 1185.1 and 1187.5.

[158] Exhibit A, IRC, page 492 (Final Audit Report, page 27).

[159] In comments on the Draft Proposed Decision, the claimant argues that it is "impossible" for a claimant to comply with the 120-day reimbursement timeframe. (Exhibit G, Claimant's Late Comments on the Draft Proposed Decision, page 2.) The 120-day timeframe is imposed by statute, specifically, Government Code section 17561(d). The Commission, which is an administrative agency, is prohibited from declaring a statute unenforceable or refusing to enforce it. (See Cal. Const. article III, section 3.5.) Moreover, the parties have not requested that the Parameters and Guidelines be amended to change the formula or to adopt some other reasonable

C. The Controller's Recalculation of Costs Is Partially Correct.

1. The Controller's Exclusions of What It Deems "Ineligible Animals" Are Partially Incorrect as a Matter of Law, and Are Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support, Resulting in Some Incorrect Reductions in Findings 1 and 5 of the Audit Report.

The Parameters and Guidelines for the *Animal Adoption* program authorize local agencies to claim reimbursement for the costs of care and maintenance during the increased holding period for impounded stray or abandoned animals that "die during the increased holding period or are ultimately euthanized," based on a formula for determining actual costs. The Parameters and Guidelines also authorize reimbursement for providing necessary and prompt veterinary care as specified in the Parameters and Guidelines during the holding period for stray and abandoned animals that "die during the increased holding period or are ultimately euthanized." Claimants are to calculate and claim their costs for these activities in part by determining the number of "stray or abandoned animals that die during the increased holding period or are ultimately euthanized," multiplied by the costs per animal per day. The Controller determined that the claimant overstated costs for care and maintenance (Finding 1) and necessary and prompt veterinary care (Finding 5) by overstating the number of eligible animals.[160]

"Eligible animals" under the test claim statutes means any stray or abandoned cat, dog, "rabbit, guinea pig, hamster, potbellied pig, bird, lizard, snake, turtle, or tortoise that is legally allowed as personal property."[161] The following animals are excluded from "eligible animals" by statute or because the Commission found there were no increased costs under Government Code section 17556(d) due to fee authority sufficient to cover the costs of the program:

- "Animals that are irremediably suffering from a serious illness or severe injury." [162]
- Animals too severely injured to move or where a veterinarian is not available, in the field, and it would be more humane to dispose of the animal.[163]
- "Newborn animals that need maternal care and have been impounded without their mother."[164]
- Animals for which fees sufficient to cover the costs of the program may be collected including:
    - Owner relinquished animals, and

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reimbursement methodology pursuant to Government Code sections 17518.5 and 17557. The Parameters and Guidelines, as adopted, are final and binding. (*California School Boards Association*, 171 Cal.App.4th 1183, 1201.)

[160] Exhibit B, Controller's Late Comments on the IRC, pages 7, 15.

[161] Food and Agriculture Code sections 31108, 31752 and 31753.

[162] Food and Agriculture Code section 17006.

[163] Penal Code sections 597.1(e) and 597f(d).

[164] Food and Agriculture Code section 17006.

- Animals that are ultimately redeemed, adopted, or released to a nonprofit animal rescue or adoption organization.[165]

The Controller, in its audit and recalculation of allowable costs for care and maintenance and necessary and prompt veterinary care, states that the following animals were excluded from the population of "eligible animals:"

- Dogs, cats, and other animals that were euthanized *during* the holding period. Local agencies are eligible to receive reimbursement for dogs, cats, and other animals that were euthanized after the holding period (day 7 of the holding period and beyond). This includes animals originally determined to be treatable and adoptable, but were euthanized during the increased holding period after becoming non-rehabilitable, and animals that were euthanized too early because the claimant counted Saturday as a business day.
- Dogs, cats, and other animals that died of natural causes *after* the increased holding period. The Parameters and Guidelines authorize reimbursement for care and maintenance and veterinary services only for animals that die during the increased holding period.[166]

    a) *The exclusion of animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period because they became non-rehabilitatable, is incorrect as a matter of law.*

The Controller excludes from reimbursement all costs incurred for the care and maintenance and prompt and necessary veterinary care of dogs, cats, and other animals that were euthanized *during* the increased holding period. The Controller contends that agencies are eligible to receive reimbursement to care for dogs and cats and other animals that were *euthanized after the holding period*. The Controller bases its finding to exclude these animals on the plain language of the Parameters and Guidelines, which provides that local agencies are eligible to receive reimbursement for care and maintenance costs and for necessary and prompt veterinary costs only for those animals "that die during the increased holding period or are ultimately euthanized." The Controller maintains that these costs are only eligible for reimbursement for those animals that die of natural causes during the increased holding period or are euthanized

[165] Exhibit A, IRC, page 116 (2002 Parameters and Guidelines, page 8) and pages 257-266 (2006 Parameters and Guidelines, pages 6-15).

[166] In the Draft Proposed Decision, Commission staff also concluded that the Controller may have incorrectly excluded "other animals" on the ground that the animal was wild. This finding was based on Exhibit B, Controller's Late Comments on the IRC, page 136, which contains a chart prepared by the auditor, titled "Raw Data — Eligible Other Animals," showing the raw data of eligible other animals held by the claimant for fiscal year 2008-2009, with an auditor note of "wild?" next to the lines for a rabbit, a dove, and ducks. In comments to the Draft Proposed Decision, the Controller confirmed that these animals, including all rabbits and birds legally allowed as personal property, were determined to be eligible by the Controller and were not excluded from the population of "eligible animals." (Exhibit F, Controller's Comments on the Draft Proposed Decision, page 13). The claimant has not disputed this assertion. Therefore, there is no issue regarding the exclusion of "wild" animals in this IRC.

after the increased holding period. Thus, the Controller argues, if an animal is euthanized during the increased holding period, then no costs for that animal are eligible for reimbursement.

The Commission finds, as described below, that the Controller's interpretation of the Parameters and Guidelines is not correct.

The Commission's Parameters and Guidelines are regulatory in nature, and must therefore be construed in accordance with the rules of regulatory interpretation.[167] The Commission's mission when construing a regulation is to determine the intended meaning of the regulation:

> The fundamental rule of interpretation is to ascertain the intent of the agency issuing the regulation so as to effectuate the purpose of the law. (Citation.) To determine that intent, we turn first to the words of the regulation, giving effect to the usual meaning of the language used, while avoiding an interpretation which renders any language mere surplusage. (Citation.) When statutory language is clear, we must apply that language without indulging in interpretation.[168]

When a regulation is ambiguous, a tribunal may use extrinsic evidence to construe the regulation and discern its intended meaning.[169]

The Parameters and Guidelines provide that local agencies are eligible to receive reimbursement for care and maintenance and prompt and necessary veterinary costs only for those animals "that die during the increased holding period or are ultimately euthanized." The plain language of the phrase "animals that die during the increased holding period or are ultimately euthanized" is vague and ambiguous because the word "die" can include both death by natural causes and death by euthanasia. Since the plain language is not clear, it is necessary to review the decisions adopted by the Commission on this issue and the statutory scheme of the test claim statutes.

The phrase "ultimately euthanized" was used in the Test Claim Statement of Decision only to identify those animals whose owners are unknown or are not adopted, meaning that the costs for care, treatment, and veterinary services during the holding period for this group of animals could not be recovered by fee revenue. The Statement of Decision states in relevant part:

> Fee Authority – Government Code Section 17556, Subdivision (d). Government Code section 17556, subdivision (d), provides that there shall be no costs mandated by the state if the local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program.
>
> In the present case, local agencies do have the authority, under certain circumstances, to assess fees upon the owner of an impounded animal for the care and maintenance of the animal. For example, pursuant to Civil Code section 2080, any public agency that takes possession of an animal has the authority to charge the owner, *if known*, a reasonable charge for saving and taking care of the animal.

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[167] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal. App. 4th 794, 799.

[168] *Brewer v. Patel* (1993) 20 Cal.App.4th 1017, 1021.

[169] *Von Northdurft v. Steck* (2014) 227 Cal.App.4th 524, 532.

Similarly, Penal Code sections 597f and 597.1 also allow local agencies to pass on the costs of caring for abandoned or seized animals to their owners by providing that "the cost of caring for the animal shall be a lien on the animal until the charges are paid."

Moreover, Penal Code section 597f allows the cost of hospital and emergency veterinary services provided for impounded animals to be passed on to the owner, if known. [Footnote omitted.]

The fee authority granted under the foregoing authorities applies only if the owner is known. Thus, local agencies have the authority to assess a fee to care and provide treatment for animals relinquished by their owners pursuant to Food and Agriculture Code section 31754. Local agencies also have the authority to assess a fee for the care and treatment of impounded animals that are ultimately redeemed by their owners. Under such circumstances, the Commission finds that the fee authority is sufficient to cover the increased costs to care, maintain, and provide necessary veterinary treatment for the animal during the required holding period since the "cost of caring" for the animal can be passed on to the owner.

Accordingly, pursuant to Government Code section 17556, subdivision (d), the Commission finds that there are no costs mandated by the state for the care, maintenance and necessary veterinary treatment of animals relinquished by their owners or redeemed by their owners during the required holding period.

The Commission further finds that there are no costs mandated by the state under Government Code section 17556, subdivision (d), for the care, maintenance, and treatment of impounded animals that are ultimately adopted by a new owner; for the care, maintenance, and treatment of impounded animals that are requested by a nonprofit animal rescue or adoption organization; or for the administrative activities associated with releasing the animal to such organizations.

The test claim legislation gives local agencies the authority to assess a standard adoption fee, in addition to any spay or neuter deposit, upon nonprofit animal rescue or adoption organizations that request the impounded animal prior to the scheduled euthanization of the animal. [Footnote omitted.]

The claimant contends that the "standard adoption fee" is not sufficient to cover the costs for animals adopted or released to nonprofit animal rescue or adoption organizations. However, based on the evidence presented to date, the Commission finds that local agencies are not prohibited by statute from including in their "standard adoption fee" the costs associated with caring for and treating impounded animals that are ultimately adopted by a new owner or released to nonprofit animal rescue or adoption organizations, and the associated administrative costs. Rather, local agencies are only prohibited from charging nonprofit animal rescue or adoption organizations a higher fee than the amount charged to individuals seeking to adopt an animal.

However, the fees recovered by local agencies under the foregoing authorities do *not* reimburse local agencies for the care and maintenance of stray or abandoned

animals, or the veterinary treatment of stray or abandoned animals (other than cats and dogs) during the holding period required by the test claim legislation when:

- The owner is unknown;
- The animal is not adopted or redeemed; or
- The animal is not released to a nonprofit animal rescue or adoption organization.

Thus, the fee authority is not sufficient to cover the increased costs for care, maintenance, and treatment during the required holding period for those animals that are ultimately euthanized. Under such circumstances, the Commission finds that that Government Code section 17556, subdivision (d), does not apply to deny this claim. Rather, local agencies may incur increased costs mandated by the state to care for these animals during the required holding period.[170]

There was no discussion of animals that die during the increased holding period in the Test Claim Statement of Decision.

During the adoption of the Parameters and Guidelines, however, the County of Fresno requested reimbursement for animals that die during the increased holding period while being held pending adoption or euthanization as follows:

> Fresno County recommends that reimbursements that apply to animals that are ultimately euthanized also apply to those animals that die while being held pending adoption or euthanization. If the animal dies pending adoption, obviously no adoption fees can be paid, and thus there is no revenue pertaining to that animal. If the animal dies pending euthanasia, the animal still had to be held until its untimely demise.[171]

The staff analysis adopted for the Parameters and Guidelines agreed with the request as follows:

> If a stray or abandoned animal dies during the time an agency is required to hold that animal, the agency would still be required by the state to incur costs to care and maintain the animal, and to provide "necessary and prompt veterinary care" for the animal before the animal died. The agency cannot recover those costs from the adoptive owner since the animal was never adopted or released to a nonprofit adoption organization. Thus, staff agrees with the County that these costs are eligible for reimbursement.[172]

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[170] Exhibit B, Controller's Late Comments on the IRC, pages 66-67 (Test Claim Statement of Decision, pages 29-30 [emphasis added]).

[171] Exhibit H, Staff Analysis and Proposed Parameters and Guidelines, Item 4, February 28, 2002, page 83.

[172] Exhibit H, Staff Analysis and Proposed Parameters and Guidelines, Item 4, February 28, 2002, page 84.

Thus, the Parameters and Guidelines define the mandated population of animals for purposes of calculating reimbursement for the care and maintenance, and necessary and prompt veterinary care, as those that "die during the holding period or are ultimately euthanized."

However, neither the Parameters and Guidelines, nor the analyses adopted for the Parameters and Guidelines, define what it means to "die" during the holding period. And the decisions do *not* limit reimbursement to animals that die of natural causes during the increased holding period. Such a limitation would be contrary to the statutory scheme.

Food and Agriculture Code section 17006 provides that the holding period does not apply to animals that are irremediably suffering from a serious illness or severe injury or to newborn animals that need maternal care and have been impounded without their mothers. Such animals may be euthanized without being held for owner redemption or adoption. A related statute addresses the issue of a "treatable" animal's health changing over the course of impoundment. Food and Agricultural Code section 17005 reads in its entirety:

> (a) It is the policy of the state that no adoptable animal should be euthanized if it can be adopted into a suitable home. Adoptable animals include only those animals eight weeks of age or older that, at or subsequent to the time the animal is impounded or otherwise taken into possession, have manifested no sign of a behavioral or temperamental defect that could pose a health or safety risk or otherwise make the animal unsuitable for placement as a pet, and have manifested no sign of disease, injury, or congenital or hereditary condition that adversely affects the health of the animal or that is likely to adversely affect the animal's health in the future.
>
> (b) *It is the policy of the state that no treatable animal should be euthanized. A treatable animal shall include any animal that is not adoptable but that could become adoptable with reasonable efforts.* This subdivision, by itself, shall not be the basis of liability for damages regarding euthanasia.[173]

Section 17005, thus, expressly contemplates an animal's health changing over the course of impoundment. Read together with section 17006, the two statutes require a shelter to hold an animal which is ill or injured— but not an animal which is irremediably suffering — for the relevant holding period on the ground that the animal's health may improve. The stated intent of the test claim statute was to require shelters to care for all pets and to shift the focus from euthanasia to owner redemption or adoption:

> According to the author, the purpose of this bill is: (1) to make it clear that animal shelters and private individuals have the same responsibility to animals under their care; (2) to reduce the number of adoptable animals euthanized at shelters by shifting the focus of shelters from killing to owner redemption and adoption; (3) to give owner-relinquished pets the same chance to live as stray animals by providing for uniform holding periods; (4) to establish clearer guidelines for the care and treatment of animals in shelters; and (5) *to require shelters to care for all pets*.

[173] Emphasis added.

> *The author argues that too many adoptable animals are euthanized by shelters and that the proposed changes will decrease the frequency of this tragedy*. Further, the author argues that taxpayers who own legally allowed pets other than cats and dogs should be treated the same as taxpayers who own cats and dogs.[174]

Consistent with the statutory scheme, the Parameters and Guidelines expressly contemplate an animal's health changing over the course of impoundment from "treatable" to "adoptable." Section IV. (B)(8) of the Parameters and Guidelines allows reimbursement for the initial physical examination of a stray or abandoned animal to determine the animal's baseline health status and classification as "adoptable, treatable, or non-rehabilitatable." The Parameters and Guidelines further authorize reimbursement for the administration of a wellness vaccine to "treatable" or "adoptable" animals, veterinary care to stabilize and/or relieve the suffering of a "treatable" animal, and veterinary care intended to remedy any applicable disease, injury, or congenital or hereditary condition that adversely affects the health of a "treatable" animal until the animal becomes "adoptable."

Even with veterinary care, the condition of the animal can change during the increased holding period and the animal can become non-rehabilitatable. If that occurs, the animal is not "adoptable" or "treatable" and may be euthanized under the law. Therefore, to deny reimbursement for the costs incurred during the increased holding period for an animal that becomes non-rehabilitatable and that has to be euthanized during, but before the end of, the increased holding period conflicts with the test claim statute and the Parameters and Guidelines. The Commission finds that reimbursement is required under these circumstances.

Therefore, to the extent the Controller's reduction includes costs incurred for the care and maintenance and prompt and necessary veterinary costs of stray or abandoned dogs, cats, and other animals that were initially classified as "adoptable" or "treatable," but became non-rehabilitatable and were euthanized during, but before the expiration of, the increased holding period, the reduction is incorrect as a matter of law.

In its comments on the Draft Proposed Decision, the Controller avers that the evidence created and stored by the claimant on its PawTrax database makes it "simply impossible" for the Controller to identify animals which fall into this category.[175] The Controller states the following:

> Shelters across the State will delay euthanizing animals prematurely, as required by this mandate. This was evident from reviewing the animal records and statistics during the course of the audits for the Animal Adoption program. However, it is impossible to determine whether the animals euthanized for medical reasons would fit in the hypothetical scenario described in the DPD.[176]

The Controller also admits that the shelters' veterinarian could have records on the issue, but that such a review would be "most-time consuming:"

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[174] Exhibit H, Senate Judiciary Committee, Analysis of SB 1785 [1997-1998 Regular Session] as amended April 14, 1998, pages 118-119, emphasis added.

[175] Exhibit F, Controller's Comments on the Draft Proposed Decision, page 8.

[176] Exhibit F, Controller's Comments on the Draft Proposed Decision, page 8.

> Hypothetically, the shelters' veterinarian could have records with such specific analysis as whether the animal was initially considered treatable and then changed to non-rehabilitatable. However, this task would be most-time consuming, without the potential of leading to any material results. We believe that such an exercise would be impractical and would include subjective bias.[177]

As indicated above, the Controller excluded from reimbursement *all* costs incurred for the care and maintenance and prompt and necessary veterinary care of dogs, cats, and other animals that were euthanized *during* the increased holding period, without determining whether those animals were initially classified as "adoptable" or "treatable," but became non-rehabilitatable and were euthanized during the increased holding period. Thus, the exclusion of all animals that were euthanized during the increased holding period is incorrect as a matter of law and is arbitrary, capricious, and entirely lacking in evidentiary support.

The record, does not identify how many animals were initially classified as "adoptable" or "treatable," but became non-rehabilitatable and were euthanized during the increased holding period. And the Controller's contention that another review of the record to determine the number of animals in this category would not lead to any material results, is not supported by the record and does not correct the Controller's error of law or lack of evidence in the record to support its reduction of these costs.

Nevertheless, reimbursement for the care and maintenance and veterinary costs for these animals is required only if the claimant has documentation to support the validity of the costs incurred for these animals. Section VI. of the Parameters and Guidelines require claimants to provide source documents that show the evidence of the validity of such costs and their relationship to the mandate. The supporting documentation must be kept on file by the agency during the audit period required by Government Code section 17558.5. In this respect, claimants are required by Food and Agriculture Code section 32003 to maintain records on animals that are taken up, euthanized, or impounded. Such records shall identify the date the animal was taken up, euthanized, or impounded; the circumstances surrounding these events; and the names of the personnel performing these activities. The Parameters and Guidelines also expressly authorize reimbursement for the initial physical examination of a stray or abandoned animal to determine the animal's baseline health status and classification as "adoptable, treatable, or non-rehabilitatable." Thus, as the Controller speculates, the claimant should have veterinary records to determine if a stray or abandoned animal was initially classified as adoptable or treatable, and falls within this category of eligible animals. If the claimant has no documentation to support these costs, reimbursement under the Parameters and Guidelines is not required. However, if claimant has such documents, the Controller's office must reinstate the costs incorrectly reduced since claimant is entitled to *all* of its costs mandated by the state.

Accordingly, *to the extent* the Controller's reduction includes costs incurred for the care and maintenance and prompt and necessary veterinary costs of stray or abandoned dogs, cats, and other animals that were initially classified as "adoptable" or "treatable," but became non-rehabilitatable and were euthanized during, the increased holding period, the reduction is incorrect as a matter of law.

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[177] Exhibit F, Controller's Comments on the Draft Proposed Decision, page 8.

b) *The Commission and the Controller are bound by the Purifoy decision and, thus, the Controller's exclusion of animals that were euthanized too early, and during the holding period, because Saturday was counted as a business day for the required holding period, is correct as a matter of law. However, the Controller's recalculation of costs using an average number of reimbursable days is incorrect as a matter of law to the extent it results in an exclusion of "eligible animals" held for the time required under Purifoy.*

As indicated above, the Controller only included as eligible animals those dogs, cats, and other animals "*euthanized after the holding period*."[178] Animals may have been euthanized *during* the holding period because of claimant's misinterpretation of the required holding period in conflict with the Court of Appeal's decision in *Purifoy*, which held that Saturday is not a "business day" for purposes of calculating the required holding period under the test claim statutes before a stray or abandoned dog can be adopted or euthanized.[179] Before the decision was issued, many local agencies were operating under the assumption that, so long as they were open on Saturday, Saturday was a "business day" that could be counted as part of the holding period, which resulted in the euthanization of some animals too early and *during* the holding period.[180] Pursuant to the *Purifoy* decision, the Controller excluded those animals from the number of "eligible animals that die during the holding period or are ultimately euthanized" for purposes of calculating reimbursable costs for care and maintenance and necessary and prompt veterinary care. The Controller describes the effect of its recalculation under *Purifoy* with respect to care and maintenance costs in the Final Audit Report as follows:

> The agency's comments are based on an assumption that allowable costs decreased because we determined that Saturday was not to be treated as a business day at any time during the audit period. We performed an alternate analysis to determine the effect on the agency's allowable costs for care and maintenance had we considered Saturday as a business day. We performed this analysis for FY 2008-09, the final year of the audit period. The results of this analysis revealed that allowable costs would decrease by $15,953, from $64,506 to $48,553. This equates to a decrease in allowable costs of 24.7% if we included Saturday as a business day.
>
> For purposes of this revised calculation, we reinstated all animals that were euthanized on day 6 of the holding period as "eligible animals" and reduced the number of reimbursable days from 6 days to 5 days for "other animals" and from 3 days to 2 days for dogs and cats.
>
> The table below summarizes the differences in allowable care and maintenance costs for FY 2008-09:

[178] Exhibit A, IRC, page 481 (Final Audit Report, page 16).

[179] *Purifoy v. Howell* (2010) 183 Cal.App.4th 166.

[180] Exhibit A, IRC, page 494 (Final Audit Report, page 29).

	Saturday–Not a Business Day			Saturday–A Business Day		
	Salaries & Benefits	Materials & Supplies		Salaries & Benefits	Materials & Supplies	
Dogs and cats:						
Cost per day	$1.21	$0.42		$1.21	$0.42	
Eligible dogs and cats	× 7,273	× 7,273		× 8,209	× 8,209	
Reimbursable days	× 3	× 3		× 2	× 2	
Subtotal	$ 26,401	$ 9,164		$ 19,866	$ 6,896	
Related indirect costs	20,165	6,999		15,174	5,266	
Total, dogs and cats	$ 46,566	$ 16,163	$ 62,729	$ 35,040	$ 12,162	$ 47,202
Other animals:						
Cost per day	$1.21	$ $0.42		$1.21	$ $0.42	
Eligible other animals	× 103	× 103		× 103	× 94	
Reimbursable days	× 6	× 6		× 5	× 5	
Subtotal	748	$ 260		569	$ 197	
Related indirect costs	571	198		434	151	
Total, other animals	$ 1,319	$ 458	1,777	$ 1,003	$ 348	1,351
Total allowable costs			$ 64,506			$ 48,553

> The primary reason that allowable costs would go down is because the agency's animal shelter did not typically euthanize animals on day 6 of the required holding period. This means that the loss of one additional reimbursable day for the remaining population of animals outweighed the reinstatement of the animals euthanized on day 6 of the holding period as "eligible animals."[181]

The claimant does not comment or provide any specific argument to rebut the Controller's finding on the effect of the *Purifoy* decision, but generally protests the application of the decision. The claimant maintains that its calculation of the holding period was based on a reasonable interpretation of the test claim statute and the Parameters and Guidelines, and that the Controller's application of the *Purifoy* holding to recalculate the increased holding period, and the resulting adjustment to the population of eligible animals, is an unfair and unreasonable retroactive application of the law.[182]

Based on the evidence in the record, the Commission finds that the Controller's application of the *Purifoy* holding did not result in a reduction of costs in fiscal year 2008-2009 and, thus, the Commission makes no finding on the Controller's recalculation for that year.[183] In addition, the Controller increased reimbursable days for the holding period (from 5 days to 6 days for other animals, and from 2 days to 3 days for dogs and cats) as a result of the *Purifoy* decision, thereby

[181] Exhibit A, IRC, pages 494-495 (Final Audit Report, pages 29-30).

[182] Exhibit A, IRC, pages 19-20 (Written Narrative, pages 4-5).

[183] Government Code section 17551(d) gives the Commission jurisdiction only over a *reduction* of costs.

increasing costs. However, since the number of eligible animals is used as a multiplier in the calculation of actual costs for both cost components, then a decrease in the number of eligible animals would reduce costs.

As described below, the Commission finds that the court's interpretation of "business day" in *Purifoy* is binding, and that the Controller's exclusion of Saturday as a business day when calculating the increased holding period is correct as a matter of law. Thus, the Controller's exclusion of animals that were euthanized too early because Saturday was counted as a business day for the required holding period, is also correct as a matter of law. However, to the extent the Controller reduced costs for care and maintenance (Finding 1) for fiscal years 2001-2002, 2002-2003, 2006-2007, and 2007-2008, and necessary and prompt veterinary care (Finding 5) in all fiscal years of the audit period, using an average number of reimbursable days that results in an exclusion of "eligible animals" held for the time required under *Purifoy,* the recalculation and reduction of costs is not consistent with the Parameters and Guidelines and is, therefore, incorrect as a matter of law.

1) *The court's interpretation of "business day" in Purifoy is binding and, thus, the Controller's exclusion of Saturday as a business day when calculating the increased holding period is correct as a matter of law. Therefore, the exclusion of animals that were euthanized too early because Saturday was counted as a business day for the required holding period, is also correct as a matter of law.*

The court in *Purifoy* held that Saturday is not a "business day" for purposes of calculating the required holding period. In that case, Plaintiff Veena Purifoy's dog Duke was impounded on a Thursday, and adopted the following Wednesday by a new owner (Duke was returned to Purifoy). The shelter, Contra Costa County Animal Services, counted the required holding period for Duke under section 31108 beginning Friday (the day after impoundment), Saturday (day 2), Tuesday (day 3), and Wednesday (day 4). The shelter was closed on Sunday and Monday, and did not count those as business days, by its own admission.[184] The court examined the meaning of "business days" elsewhere in state law and in case law, and found that sometimes "business day" includes Saturdays, but sometimes it does not. The court reasoned that the purpose of the statute was to promote a longer holding period for animal adoption and redemption, and that excluding Saturday as a business day would generally mean extending the holding period by one day. Thus, the court held "in light of our obligation to choose a construction that most closely comports with the Legislature's intent and promotes, rather than defeats, the statute's general purposes, we conclude that 'business days' in section 31108(a) means Monday through Friday, the meaning most commonly used in ordinary discourse."[185] The court applied this interpretation to the case of Duke, and concluded that the shelter in question had not held the animal for the required number of business days before permitting his adoption to a new owner.[186]

[184] *Purifoy v. Howell* (2010) 183 Cal.App.4th 166, 171-172.

[185] *Purifoy v. Howell* (2010) 183 Cal.App.4th 166, 182.

[186] *Purifoy v. Howell* (2010) 183 Cal.App.4th 166.

Thus, based on the *Purifoy* holding, a dog impounded on a Thursday, in a shelter that stays open weekend hours, would be subject to a four day holding period beginning on Friday, excluding Saturday and Sunday, and through the close of business on Wednesday; if the shelter counted Saturday as a business day, the holding period for the same dog would end a day earlier. The Controller maintains that application of the *Purifoy* decision is appropriate because the decision clarified the legal definition of a business day "as of the date that the applicable statute was enacted in 1998."[187]

The claimant strenuously protests the Controller's application of the *Purifoy* holding. The claimant maintains that its calculation of the holding period was based on a reasonable interpretation of the test claim statute and the Parameters and Guidelines, and that the Controller's application of the *Purifoy* holding to recalculate the increased holding period, and the resulting adjustment to the population of eligible animals, is an unfair and unreasonable retroactive application of the law.[188]

The court's interpretation of "business day" is binding. The interpretation of a statute is an exercise of the judicial power the Constitution assigned to the courts, and constitutes the authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.[189] This is why judicial decisions are normally said to have retroactive effect, because the court is interpreting the law, rather than making new law.[190] Moreover, where a judicial decision is limited to prospective effect, the court will exercise equitable authority and, based on the facts of a particular case, will so state that its decision operates prospectively only. Indeed, in the principal case cited by the claimants discussing retroactivity, the court explains that "[a] *court* may decline to follow the standard rule when retroactive application of a decision would raise substantial concerns about the effects of the new rule on the general administration of justice, or would unfairly undermine the reasonable reliance of parties on the previously existing state of the law."[191] "In other words," the Court continued, "*courts* have looked to the 'hardships' imposed on parties by full retroactivity, permitting an exception only when the circumstances of a case draw it apart from the usual run of cases."[192] Unlike the courts, the Commission's jurisdiction is limited, as a quasi-judicial agency created by statute, and the Commission has no authority to do equity.[193] Absent a statement by the court that *Purifoy* should be limited in its application, the Commission and the Controller are bound to apply the court's definition of "business day" for purposes of the test claim statute particularly where, as here, it does not conflict with the Parameters and Guidelines. Under the doctrine of

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

[188] Exhibit A, IRC, pages 19-20.

[189] *McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 473; *Carter v. California Department of Veteran Affairs* (2006) 38 Cal.4th 914, 922.

[190] See *Newman v. Emerson Radio Corp*., (1989) 48 Cal.3d 973, 978 ("The general rule that judicial decisions are given retroactive effect is basic in our legal tradition.").

[191] *Newman v. Emerson Radio Corp*., (1989) 48, Cal.3d 973, 983, emphasis added.

[192] *Newman v. Emerson Radio Corp*., (1989) 48 Cal.3d 973, 98, emphasis added.

[193] *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

stare decisis, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction.[194]

Furthermore, even though *Purifoy* only directly and expressly defines "business day" for purposes of section 31108 (the holding period for dogs), the court's analysis and conclusion apply with equal force to sections 31752 and 31753 (holding periods for cats and for "other animals," respectively). The California Supreme Court has declared that "[a] statute that is modeled on another, and that shares the same legislative purpose is in *pari materia* with the other, and should be interpreted consistently to effectuate congressional intent."[195] Accordingly, Food and Agriculture sections 31752 and 31753 should be interpreted consistently with section 31108, because all three code sections provide for the same holding period for different animals, and all three were enacted within the test claim statute.

Moreover, even though the Legislature amended the code after the decision in *Purifoy* was issued to state that any day that a shelter is open for four or more hours is a "business day," this later amendment by the Legislature cannot be interpreted as the Legislature's declaration of the original existing law. When the court "'finally and definitively' interprets a statute, the Legislature does not have the power to then state that a later amendment merely declared existing law."[196] The later amendment goes into effect only when the statute is operative and effective, in this case on January 1, 2012, many years after the fiscal years at issue in this IRC.

Accordingly, the Controller's exclusion of Saturday as a business day when calculating the increased holding period is correct as a matter of law. Thus, to the extent that the Controller excluded from the population of "eligible animals" those animals that were euthanized too early because Saturday was counted as a business day for the required holding period, the exclusion is also correct as a matter of law.

2) *However, the Controller's recalculation of costs for care and maintenance (Finding 1), and necessary and prompt veterinary care (Finding 8) using an average number of reimbursable days is incorrect as a matter of law to the extent it results in an exclusion of "eligible animals" held for the duration required under Purifoy.*

The Parameters and Guidelines provide for a formula for reimbursement of care and maintenance that requires multiplying the cost per animal per day by the number of "eligible animals," and by "each reimbursable day." But the actual number of calendar days of the holding period is not a constant, as it depends on the day of impoundment. The Parameters and Guidelines state that for dogs and cats the reimbursable holding period "shall be measured by calculating the difference between three days from the day of capture, and four or six business days from the day after impoundment" (four business days for shelters that choose to make animals available for owner redemption on a weekend day or weekday evening). For "other

[194] *Auto Equity Sales, Inc. v. Superior Court (Hesenflow)* (1962) 57 Cal.2d. 450, 454.

[195] *American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1129.

[196] *McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 473; *Carter v. California Department of Veteran Affairs* (2006) 38 Cal.4th 914, 922.

animals," the reimbursable holding period is four or six business days from the day after impoundment, because prior law did not define a specific holding period.[197]

Assuming a local agency, like the claimant, makes dogs and cats available for owner redemption on a weekend day or weekday evening and is thus subject to only the four business day holding period for dogs and cats, the increased holding period operates as follows (the 72 hour holding period for dogs and cats under prior law is shaded in each case, and the day of impoundment is indicated by "Imp"):

Mon	Tues	Wed	Thurs	Fri	Sat	Sun	Mon	Tues	Wed	Thurs
Imp	One	Two	Three	Four						
	Imp	One	Two	Three			Four			
		Imp	One	Two			Three	Four		
			Imp	One			Two	Three	Four	
				Imp			One	Two	Three	Four
					Imp		One	Two	Three	Four
						Imp	One	Two	Three	Four

The chart does not count Saturday as a business day, in accordance with *Purifoy*.[198] As it plainly appears, the *increased* holding period for dogs and cats ranges from two to four calendar days, depending on the day of the week that an animal is first impounded. An animal impounded on a Monday or Sunday would be subject to a two day increased holding period, while an animal impounded on a Thursday or a Friday would be subject to a four day increased holding period, because Saturday and Sunday cannot be counted.

For a local agency subject to the shortened four day holding period for "other animals," the number of "reimbursable days" is as follows:

Mon	Tues	Wed	Thurs	Fri	Sat	Sun	Mon	Tues	Wed	Thurs	Fri
Imp	One	Two	Three	Four							
	Imp	One	Two	Three			Four				
		Imp	One	Two			Three	Four			
			Imp	One			Two	Three	Four		
				Imp			One	Two	Three	Four	
					Imp		One	Two	Three	Four	
						Imp	One	Two	Three	Four	

Again, this chart does not count Saturday and Sunday as business days, consistently with *Purifoy*. If the animal is impounded on a Monday, the reimbursable increased holding period is four calendar days. If the animal is impounded on a Saturday, the reimbursable increased holding period is five calendar days because Sunday cannot be counted. If the animal is impounded on a Tuesday, the reimbursable increased holding period is seven calendar days because Saturday and Sunday cannot be counted.

When recalculating the number of reimbursable days pursuant to *Purifoy*, the Controller calculated an *average* increased holding period for all dogs and cats of three days, and the

[197] Exhibit A, IRC, page 114 (2002 Parameters and Guidelines, page 6).

[198] *Purifoy v. Howell* (2010) 183 Cal.App.4th 166.

average increased holding period for all other "eligible" animals of six days, and did not determine the actual number of reimbursable days for each eligible animal based on the day of impoundment.[199]

However, even if the increased holding period averages three days for dogs and cats, or six days for other animals, the Parameters and Guidelines do not provide for reimbursement based on an average number of days. The Controller's recalculation may also result in the exclusion of animals that are euthanized during the Controller's defined "average" holding period, but the animals may have been held for the period required by law as set out in *Purifoy*. For example, as explained above, the Controller applied an increased holding period for dogs and cats of three days, after which the animal may be euthanized. However, if a stray or abandoned dog or cat is impounded on a Monday or Sunday, the actual increased holding period under the law is two calendar days, and not three days, and the dog or cat may be euthanized on day three (a day before the Controller's average and, thus, as "during the holding period" as defined by the Controller). Similarly, for "other animals," the Controller applied an increased holding period of six days. However, if a stray bird or rabbit is impounded on a Monday, the actual increased holding period under the law is four calendar days, and not six days, and the bird or rabbit may be euthanized on day five (a day before the Controller's average and, thus, "during the holding period" as defined by the Controller). Similarly for "other animals," an animal impounded on a Saturday has an increased holding period of five days under *Purifoy* and may be euthanized on day six, a Friday consistent with the mandated program.

Therefore, without taking into account the day of the week a stray or abandoned animal is impounded and calculating the actual number of days in the increased holding period for that animal, the Controller's recalculation and use of the average number of reimbursable days results in an exclusion of "eligible animals" correctly held under the law.

In comments on the Draft Proposed Decision, the Controller agrees that the methodology excludes some eligible animals, but argues that a mathematical average provides the most reasonable and cost-effective way to analyze large quantities of data:

> The Commission suggested that using an *average* reimbursable days potentially excludes a marginal amount of "eligible animals." We concur. However, we believe that it is equally possible that the use of this *average* also included an equal number of non-eligible animals as well. The use of a mathematical average assumes some outliers. But in this case, it provides the most reasonable and cost-effective way to analyze unusually large quantities of animal data. In fact, the

[199] Exhibit A, IRC, page 482 ("The agency claimed two increased holding days for dogs and cats and four increased holding days for other animals. In addition, the agency claimed three increased holding days for cats they determined to be feral in FY2006-07 and forward. We averaged the holding period claimed for FY 2006-07 and forward to fit the schedule. Refer to Schedule 2 for detail.") (Final Audit Report, page 17). The aforementioned Schedule 2 can be found at Exhibit A, IRC, pages 472-474 (Final Audit Report, pages 7-9).

> large size of the animal population (as previously noted) makes the use of an average value statistically more accurate and decreases the probability of error.[200]

The Controller does not express how much more accurate the use of an average number of days might be, but does explain that "claimant's animal data averaged between 18,000 and 25,000 line items per fiscal year."[201] The Controller continues: "In order to compute the *actual* increased holding period days for every animal on an individual basis, we would need to know what day of the week the animal was impounded. The auditor would then need to evaluate, based on the calendar of the specific week and year, the actual number of days in the increased holding period. Once the animal's eligibility was established, the auditor would need to compute each animal's allowable costs using the applicable number of reimbursable days. This task would be impractical and most likely would not produce results materially different from using an *average* calculation."[202]

However, the Controller's beliefs do not demonstrate as a matter of law that no animals were incorrectly excluded, nor does the Controller assert that the day of the week that an animal was impounded cannot be determined based on the claimant's records (which include the dates of impoundment and death, euthanization or adoption). Accordingly, the Controller's reductions based on an averaging method are incorrect as a matter of law and arbitrary, capricious, and entirely lacking in evidentiary support. The Commission acknowledges that the evidentiary requirements for claimant to support its costs and for the Controller to support its reductions are burdensome in this case, however, neither party has proposed an RRM, unit cost, or averaging method for inclusion in the Parameters and Guidelines. The Parameters and Guidelines, which are final and binding on the parties,[203] do not provide for reimbursement based on an average number of days in the increased holding period, but require the determination of the actual increased holding period for each animal. And based on the *Purifoy* decision, the increased holding period must be calculated from the day of the week the animal was impounded to ensure that Saturday and Sunday are not counted as business days. As the Controller acknowledges, "In order to compute the *actual* increased holding period days for every animal on an individual basis, we would need to know what day of the week the animal was impounded" via the method described above. As indicated, the Controller's methodology results in an exclusion of any "eligible animal" properly held under the law but euthanized during the Controller's average holding period. To the extent the Controller reduced costs for care and maintenance and necessary and prompt veterinary care because the Controller incorrectly excluded an animal under these circumstances, the reduction is incorrect as a matter of law.

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[200] Exhibit F, Controller's Comments on the Draft Proposed Decision, pages 9-10 (emphases in original).

[201] Exhibit F, Controller's Comments on the Draft Proposed Decision, page 9.

[202] Exhibit F, Controller's Comments on the Draft Proposed Decision, page 9 (emphasis in original).

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

The Controller further argues that it is "equally *possible* that the use of this average also included an equal number of non-eligible animals," which makes the methodology "reasonable."[204] In addition, the Controller contends that the use of an average increased holding period benefits the claimant. To demonstrate this proposition, the Controller contends that it ran a "query" for the *first week* of fiscal years 2006-2007, 2007-2008, and 2008-2009, and found that the number of dogs, cats, and other animals impounded Tuesday through Friday (resulting in a holding period of less than the three or six day average provided by the Controller) far exceeded the number of dogs and cats impounded Sunday and Monday.[205]

There is no evidence in the record, however, that the Controller's three- or six-day average number of reimbursable days accurately reflects or is representative of the actual increased holding period for all stray or abandoned animals held by the claimant *during the audit period*, or representative of the mandated costs incurred by the claimant. Government Code section 17559 and section 1187.5 of the Commission's regulations require that all assertions of fact be based on substantial evidence in the record. Substantial evidence has been defined by the courts as follows:

> "Substantial" is a term that clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with "any" evidence. It must be reasonable in nature, credible, and of solid value; it must actually be "substantial proof" of the essentials which the law requires in a particular case.[206]

And a "possibility" of a fact does not constitute substantial evidence in the record.

Accordingly, the Commission finds that the Controller's recalculation of the increased holding period using an average number of reimbursable days is incorrect as a matter of law, and is arbitrary, capricious, and entirely lacking in evidentiary support, to the extent the recalculation results in an exclusion of "eligible animals" properly held for the duration required under *Purifoy*.

c) The Controller's exclusion of animals that died <u>after</u> the increased holding period is consistent with the Parameters and Guidelines and is correct as a matter of law.

The Commission finds that the Controller's exclusion of animals that died after the increased holding period is consistent with the Parameters and Guidelines and is correct as a matter of law. The Parameters and Guidelines provide for reimbursement for dogs and cats, and other animals, that died during the increased holding period or were ultimately euthanized after the increased holding period.[207] Reimbursement is limited to: stray or abandoned dogs and cats and other animals are subject to reimbursement because their owners are not known, and cannot have fees levied against them; animals that are not adopted during the holding period, but are "ultimately

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[204] Exhibit F, Controller's Comments on the Draft Proposed Decision, pages 9-10 (emphasis added).

[205] Exhibit F, Controller's Comments on the Draft Proposed Decision, pages 9-12.

[206] *People v. Olmsted* (2000) 84 Cal.App.4th 270, 277.

[207] Exhibit A, IRC, pages 114, 116 (2002 Parameters and Guidelines, pages 6, 8).

euthanized" when the holding period expires, are subject to reimbursement on the theory that there is no new owner or redeemed owner from whom fees could be exacted; both of these situations were contemplated in the Test Claim Statement of Decision; and animals that die *during* the increased holding period.[208] And with respect to animals that die during the increased holding period, this issue arose during the consideration of Parameters and Guidelines, when the County of Fresno filed comments requesting reimbursement for the care and maintenance of stray or abandoned animals that die while being held pending adoption or euthanasia. As discussed above, the County requested reimbursement for animals that "die while being held pending adoption or euthanization [sic]."[209]

The Commission approved the request, clarifying that increased costs for the care and maintenance of animals that die during the increased holding period are eligible for reimbursement as follows:

> [S]taff has inserted language in Sections IV (B) (1), (2), (3), (4), and (9) of the proposed Parameters and Guidelines clarifying that increased costs for the care and maintenance of animals that die during the increased holding period, and for providing "necessary and prompt veterinary care" to animals that die during the holding period are eligible for reimbursement.[210]

The Parameters and Guidelines, however, do not authorize reimbursement for animals that continue to be held by the local agency for adoption longer than the holding period and die *thereafter*. The Parameters and Guidelines are binding,[211] and no requests to amend the Parameters and Guidelines have been filed. Thus, the Controller's interpretation is consistent with the plain language of the Parameters and Guidelines. Based on the foregoing, the Commission finds that this reduction of eligible animals on these grounds is correct as a matter of law.

2. Except as Determined in Section C.1. of this Decision, the Controller's Remaining Findings for Care and Maintenance Costs (Finding 1) are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The actual cost method outlined in the Parameters and Guidelines for calculating the costs for care and maintenance require the claimant to determine the total annual cost of care and maintenance for all dogs and cats impounded at a facility. Total cost of care and maintenance includes labor and materials costs. The formula also requires the calculation of the yearly census of animals, or the total number of days that all animals are housed in the shelter. The Controller made the following findings on these components:

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[208] Exhibit B, Controller's Late Comments on the IRC, pages 56-57, 67-68 (Test Claim Statement of Decision, pages 19-20, 30-31) (emphasis added)).

[209] Exhibit H, Staff Analysis and Proposed Parameters and Guidelines, Item 4, February 28, 2002, page 83.

[210] Exhibit H, Staff Analysis and Proposed Parameters and Guidelines, Item 4, February 28, 2002, page 84-85.

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

- Salary and benefit costs. During the audit, the claimant provided actual salary and benefit costs for the audit period for three positions (animal care technicians, senior animal care technicians, and lead animal care technicians) that provide care and maintenance to the animals housed at the shelter. However, only a percentage of shelter staff time is devoted to care and maintenance. The claimant estimated that 89 percent of the animal care technician's and senior animal care technician's time and 60 percent of the lead animal care technician's time was devoted to care and maintenance. The Controller determined that the estimated percentages appeared reasonable based on the job descriptions provided.[212] Thus, the Controller multiplied the actual salary and benefit amounts provided by the claimant by the percentage of time spent on mandated care and maintenance activities, resulting in allowable salaries and benefits of $952,445.[213]
- Material and supply costs claimed in the amount of $7,690,644 were overstated by the claimant. The Controller, allowing $288,726 in materials and supplies, determined that the claimant included total costs incurred to operate the shelter (such as shelter, kennel, veterinary, and administrative divisional expenses) instead of claiming costs specifically incurred for care for and maintain the animals. The Controller determined the allowable costs by reviewing the claimant's account #140 (special activities supplies for shelter operations). The claimant indicated that account #140 is specifically for the expenses related to the care and maintenance of animals and includes costs for animal food, cat litter, light bulbs, and cleaning supplies, and does not include expenses that are not eligible for reimbursement (such as euthanasia medication, microchip expenses, and medical supplies).[214]
- The claimant estimated the yearly census by assuming that the animals were held an average of five days in fiscal years 2001-2002 and 2002-2003, an average of seven days in fiscal years 2006-2007 and 2007-2008, and an average of six days in fiscal year 2008-2009. The Controller reviewed the claimant's Paw Trax software system, which detailed the actual total annual census of animals housed in the claimant's animal shelter in fiscal years 2006-2007 through 2008-2009. Since the information was not available for fiscal years 2001-2002 and 2002-2003, the Controller used an average of the information from fiscal years 2006-2007 through 2008-2009 for those earlier years. The Controller's recalculation resulted in an increase of yearly census numbers.[215]

The claimant does not directly address these adjustments to the total annual costs of care and maintenance.

The Commission finds that the Controller's recalculations are consistent with the Parameters and Guidelines and are based on the claimant's records. While the Parameters and Guidelines use inclusive language to describe costs for this component ("total cost of care and maintenance

[212] Exhibit B, Controller's Late Comments on the IRC, pages 15, 110-120.

[213] Exhibit A, IRC, page 479 (Final Audit Report, page 14).

[214] Exhibit A, IRC, page 480 (Final Audit Report, page 15); Exhibit B, Controller's Late Comments on the IRC, pages 15, 120-125.

[215] Exhibit A, IRC, pages 480-481 (Final Audit Report, pages 15-16); Exhibit B, Controller's Late Comments on the IRC, pages 15, 126.

includes labor, materials, supplies…") the care and maintenance costs cannot be interpreted beyond the reasonable scope of the approved activity, which is to provide care and maintenance during the increased holding period for impounded stray or abandoned animals that die during the increased holding period or are ultimately euthanized. General expenses of the animal shelter are beyond the scope of the mandated activity, and therefore reduction on this basis is correct as a matter of law. Moreover, the claimant agreed with the Controller that only a portion of salaries and benefits for the animal care technician and senior animal care technician should be reimbursable, and the claimant proposed the proportional reimbursable share for these classifications, which the Controller accepted. The Controller's reduction on this basis is therefore not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller found that the claimant estimated the yearly census of animals, which does not comply with the Parameters and Guidelines. The Parameters and Guidelines require the claimant to identify the actual yearly census of animals. The Controller determined that number based on the claimant's Paw Trax software system, which detailed the actual total annual census of animals housed in the claimant's animal shelter in fiscal years 2006-2007 through 2008-2009. However, based on the formula in the Parameters and Guidelines for determining the costs for care and maintenance during the increased holding period, in which total annual costs are *divided* by the yearly animal census to arrive at a cost per animal per day, which is in turn multiplied by the remaining factors of eligible animals and reimbursable days, the adjustments made to the yearly animal census data did not in fact result in any reduction. Because total annual costs are *divided* by the yearly animal census, any decrease in the animal census data would result in a corresponding increase in the cost per animal per day, which would then be multiplied by the remaining factors. Thus, the adjustment to the yearly animal census factor is in the claimant's favor.

Accordingly, except as determined in Section C.1 of this Decision, the remaining calculations for care and maintenance in Finding 1 are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

3. <u>The Controller's Reductions in Finding 2 Relating to Unallowable Employee Hours for Making Animals Available for Adoption or Owner Redemption are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.</u>

The Parameters and Guidelines provide that an agency desiring to apply the shortened holding period is eligible for reimbursement for making animals available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or, for local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, for establishing a procedure for owners to reclaim their animals by appointment.[216] For dogs and cats, reimbursement for this activity begins July 1, 1999. For "other animals" specified in Food and Agriculture Code section 31753, reimbursement for this activity begins January 1, 1999.[217]

[216] Exhibit A, IRC, page 118 (2002 Parameters and Guidelines, page 10), and pages 265-266 (2006 Parameters and Guidelines, pages 13-14).

[217] Exhibit A, IRC, page 118 (2002 Parameters and Guidelines, page 10).

The reimbursement claims included $654,322 in costs for the audit period for this component, by adding together expenditures of the shelter division and kennel division and a portion of the expenditures of the administration division and veterinary division. The claimant then divided the total expenditures by the total number of hours the facility was open for operation to arrive at a cost per hour. The cost per hour was multiplied by the additional hours the shelter was open for owner redemption.[218]

The Controller determined that this calculation was not correct and included costs beyond the scope of the mandated activity. The Controller states that the mandate is limited to keeping the shelter open for purposes of owner redemption. "We believe that other animal services such as animal control officer duties, euthanasia, spay and neutering procedures, implanting microchips, licensing, processing animal adoptions, and certain other animal services do not become temporarily reimbursable activities just because the animal shelter is open for extra hours to make animals available for owner redemption. These activities are not reimbursable under any cost component of the mandated program at any time."[219]

The Controller recalculated costs based on documentation provided by the claimant identifying the hours of operation for its animal shelter, and the hours the claimant made animals available for owner redemption. On Saturdays, the claimant's shelter was open from 8:00 a.m. to 5:00 p.m. However, the shelter made the animals available for owner redemption only from 10:00 a.m. to 5:00 p.m., for a total of seven hours per week. Based on information provided by the claimant, the Controller determined the employee classifications and the number of employees on duty specifically to make animals available for owner redemption. The Controller did not include other employees on duty that performed reimbursable activities relating to the other cost components of care and maintenance, lost and found lists, maintaining non-medical records, and necessary and prompt veterinary care. The Controller applied the allowable hours by each employee's productive hourly and benefit rates and determined that $187,344 was allowable for salary and benefits.[220]

The Controller is correct that the reason to remain open on a Saturday, pursuant to the test claim statutes and the Commission's Decision, is to promote owner redemption. Indeed, the express language of the reimbursable component at issue in Finding 2 is "Making the animal available for owner redemption…"[221] Therefore, the Controller's attempt to limit reimbursement on Saturdays to those employees that are necessary to make animals available for owner redemption, and to reduce all other costs beyond the scope of this mandated activity, is consistent with the Parameters and Guidelines and the purpose of the test claim statute. Thus, the adjustments are correct as a matter of law. In addition, there is no evidence in the record to support a finding that the Controller's recalculation of costs, based on documentation provided by the claimant, was arbitrary or capricious.

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[218] Exhibit A, IRC, page 501 (Final Audit Report, page 36).

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

[220] Exhibit A, IRC, pages 502-503 (Final Audit Report, pages 37-38).

[221] Exhibit A, IRC, page 118 (2002 Parameters and Guidelines, page 10), and pages 265-266 (2006 Parameters and Guidelines, pages 13-14).

Based on the foregoing, the Controller's reductions in Finding 2 relating to unallowable costs to make the animal available for owner redemption is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

4. Except as Determined in Section C.1, There Is No Evidence that the Controller's Recalculation of Costs Based on a Time Study Conducted by the Claimant During the Audit for Lost and Found Lists (Finding 3), Maintaining Non-Medical Records (Finding 4), and Necessary and Prompt Veterinary Care, is Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

As indicated in the background, the claimant did not individually claim costs for lost and found lists, maintaining non-medical records, and providing necessary and prompt veterinary care, but included those costs in its overall calculation for care and maintenance. The Controller isolated those reimbursable costs in Findings 3 through 5, in part, by allowing the claimant to conduct a time study during the audit for the time spent performing the activities. In addition, for necessary and prompt veterinary care, the Controller allowed reimbursement for material and supply costs based on the actual cost of vaccines administered to each eligible animal.

Although the claimant requests that all costs reduced be reinstated, the claimant has not provided any argument or evidence in the record to support a finding that the Controller's recalculation of these costs based on the time studies conducted and the actual costs for vaccines, was arbitrary, capricious, or entirely lacking in evidentiary support.

Therefore, except as determined in Section C.1. of this Decision regarding Finding 5, there is no evidence that the Controller's recalculation of costs for lost and found lists (Finding 3), maintaining non-medical records (Finding 4), and necessary and prompt veterinary care (Finding 5), is arbitrary, capricious, or entirely lacking in evidentiary support.

5. The Controller's Reduction of Indirect Costs (Finding 6) Is Correct as a Matter of Law and Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Parameters and Guidelines amended in 2006 state that "Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan." The original 2002 set of Parameters and Guidelines contained similar language. Both sets of Parameters and Guidelines further provide claimants with the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) pursuant to the Office of Management and Budget (OMB) Circular A-87.[222]

In Finding 6 of the Final Audit Report, the Controller states that, while the claimant did not properly claim indirect costs of $2,458,387, the Controller ultimately allowed $336,205 in such

[222] Exhibit A, IRC, pages 122-123 (2002 Parameters and Guidelines, pages 14-15); Exhibit A, IRC, pages 269-270 (2006 Parameters and Guidelines, pages 18-19).

costs, based on an indirect cost rate proposal (ICRP) of 76.38 percent, using allowable salaries and benefits from all the divisions within the claimant's organization.[223]

The Controller states that the agency did not directly claim reimbursement for indirect costs for any fiscal year in the audit period. Instead, the agency included a portion of its overhead costs in both the care and maintenance (Finding 1) and holding period (Finding 2) cost components. According to the Controller, the claimant calculated indirect costs by assuming that all costs incurred by the animal shelter, kennel, and veterinary divisions were direct mandate-related costs, and that all costs incurred within the animal control and license/canvassing divisions were direct non-mandate related costs. Using the two totals, the claimant determined the percentage of direct mandate-related costs and multiplied this percentage by the amount of costs incurred with the administration division. The Controller asserts that this method of calculating indirect costs is not consistent with the Parameters and Guidelines. The Controller also asserts that the claimant's assumption that all costs incurred within the animal shelter, kennel, and veterinary divisions were direct mandate-related costs, and that all costs incurred within the animal control and license/canvassing divisions were direct non-mandate related costs, is also incorrect. Thus, the Controller rejected the claimant's method of determining indirect costs.

During the audit, the Controller worked with the claimant to obtain necessary information for the development of an indirect cost rate proposal. The Controller included the following costs in the proposal, which the Controller states is consistent with OMB A-87:

- All costs included with the claimant's administrative support division.
- All utility expenditures in the shelter division recorded within accounts 550 through 579.
- All office supplies expenditures recorded within account 130 in the animal shelter and veterinary divisions.
- All small tools and implements expenditures recorded within account 290 in the animal shelter and veterinary divisions.
- All building rental costs recorded within account 361 in the animal shelter division.
- All building and computer maintenance costs incurred within accounts 360 and 410 in the animal shelter division.
- All staff development costs incurred within account 480, and costs incurred within the administrative support division.
- Ninety-nine percent of the salary and benefit costs for the front office supervisory position in the animal shelter.

The Controller further states that the other line item costs for services and supplies within divisions other than administrative support that are not mentioned above were direct costs to operate the claimant's core business to provide animal control services to its contracting partners.

Since the indirect cost rates were based on direct salaries and benefits, the Controller calculated direct salaries and benefits by adding up all salary and benefit costs incurred within all divisions, other than the administrative support division and the front office supervisory position in the

[223] Exhibit A, IRC, page 516 (Final Audit Report, page 51).

animal shelter division. Although the claimant requested that the Controller include other supervisory and support positions within the animal shelter as partially indirect, the Controller asserts that claimant did not provide any actual cost data or documentation to base such a determination.[224] The claimant now seeks in its IRC to have indirect costs recalculated and increased to include wages of animal care takers whose wages are not treated as direct costs, the wages of shelter clerical support staff, and all office equipment and uniforms.[225] In addition, the claimant "now wishes to revise the indirect cost rates based on costs incurred only within its Animal Shelter Division rather than use rates based on the Authority as a whole."[226] The claimant argues that "since 99% of the allowable costs are incurred in the Shelter Department, it is appropriate to calculate a rate specific to that department," rather than to calculate an agency-wide indirect cost rate proposal that dilutes costs.[227]

The Controller responds to the claimant's argument, that indirect cost rates should be based only on the costs incurred by the animal shelter division, as follows:

> In its IRC response, the Authority is suggesting that its indirect cost rates be prepared using only the expenditures within the Animal Shelter Division. The Authority provided a sample of what such a calculation would look like for FY 2008-09, which results in an indirect cost rate of 150.83% for that year instead of the 76.38% indirect cost rate that was allowable during the audit. However, we believe that the Authority's request is flawed.
>
> Establishing indirect cost rates based only the Animal Shelter Division is an incorrect methodology. What the Authority is proposing is the development of a departmental rate that applies only to this Division. That would be appropriate if the Animal Shelter Division was the only department within the Authority in which mandated costs were incurred. For example, animal shelters that are operated by cities and counties function as a department within the context of the respective government as a whole. The main purpose of the respective government is to provide services to its citizens, of which animal control services is only a part. Therefore, these shelters operate as separate departments within those governments and are accounted for within their own budget units. Rather than prepare an indirect cost rate based on the entire government as a whole, it is more correct to prepare indirect cost rates based only on costs incurred within the animal shelter department.
>
> In contrast, the Southeast Area Animal Control Authority has six Divisions. All six Divisions of the Authority work towards a common purpose, which is to provide animal control services for its participating cities. Allowable mandated costs were incurred within multiple Divisions of the Authority. The indirect cost rates that are identified as allowable in the audit report are based on the Authority as a whole. It would not be appropriate to prepare and allocate an indirect cost

[224] Exhibit B, Controller's Late Comments on the IRC, page 33.

[225] Exhibit C, Claimant's Late Rebuttal Comments, pages 1-4.

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

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

> rate based on one Division to allowable salaries and benefits costs incurred within other Divisions, which is what the Authority is proposing.[228]

The Controller further asserts that the claimant's proposal is incorrect as follows:

> There is another flaw in the Authority's request. The Authority appears to believe that any mandate-related activities that an employee performs are direct costs, while time spent on activities that are not reimbursable are indirect costs. That is not consistent with the provisions of OMB A-87. Many of the activities performed by the employee classifications identified in the Authority's example for FY 2008-09 perform functions that are directly related to the Authority's common purpose of providing animal shelter services to the public. As identified in the parameters and guidelines section V.B-Indirect Costs, "Indirect costs are those that have incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved." For example, the Authority identifies Dispatchers and Clerks as being partially or entirely indirect. However, these employee classifications perform functions unique to their particular Divisions, not the Authority as a whole. The Authority has an entire Division (Administrative Services – Division 2510) that provides the common purpose activities as defined in the parameters and guidelines.[229]

The Commission finds that the Controller's reduction of indirect costs is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant's original calculation of indirect costs does not comply with the Parameters and Guidelines, which provides that if a claimant seeks a reimbursement of indirect costs that is more than 10 percent of the total of direct costs, the claimant may submit an Indirect Cost Rate Proposal (ICRP) created in conformity with federal Office of Management and Budget Circular A-87. There are no provisions in the Parameters and Guidelines that provides a special reimbursement formula be applied to this claimant.

Moreover, the Controller's audit decisions and recalculation of indirect costs, so long as it is correct as a matter of law, is entitled to deference:

> 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

[228] Exhibit B, Controller's Late Comments on the IRC, page 34.

[229] Exhibit B, Controller's Late Comments on the IRC, page 34.

between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[230]

The Commission finds that the Controller considered all the facts and documents maintained by the claimant in support of its reimbursement claims, and considered the claimant's arguments and new proposals for calculating indirect costs. The Commission further finds that there is no evidence that the Controller's recalculation of indirect costs is arbitrary or capricious.

The claimant argues that the Commission's deference to the Controller on this issue is "simply rubber stamping SCO actions and denying local agencies to [*sic*] a complete and fair review."[231] The law provides, however, that the Controller's Office is expert at the art and science of governmental audits and that its institutional expertise will be deferred to except when the Controller's Office acts in a manner which is contrary to law or is arbitrary, capricious, and entirely lacking in evidentiary support. The claimant — who bears the burden of submitting a persuasive claim with sufficient evidentiary foundation — has failed to establish on this issue that the Controller is not entitled to deference. While the claimant submits a series of questions in its comments on the Draft Proposed Decision,[232] the burden lies on the claimant to show, with evidence in the record, how the Controller's recalculation is wrong, or is arbitrary, capricious, or entirely lacking in evidentiary support, and, on this subject, the claimant has failed to do so.

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

V. Conclusion

Based on the foregoing analysis, the Commission partially approves this IRC, and requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate costs that relate to the following incorrect reductions to the extent the claimant can provide documentation to support the validity of the costs incurred. Section VI. of the Parameters and Guidelines require claimants to provide source documents that show the evidence of the validity of such costs and their relationship to the mandate. The supporting documentation must be kept on file by the agency during the audit period required by Government Code section 17558.5. In this respect, claimants are required by Food and Agriculture Code section 32003 to maintain records on animals that are taken up, euthanized, or impounded. Such records shall identify the date the animal was taken up, euthanized, or impounded; the circumstances surrounding these events; and the names of the personnel performing these activities.[233]

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

[231] Exhibit G, Claimant's Late Comments on the Draft Proposed Decision, pages 6.

[232] Exhibit G, Claimant's Late Comments on the Draft Proposed Decision, pages 6.

[233] The record in this case shows that the claimant started maintaining records using the Pax Trax system in fiscal years 2006-2007 and 2008-2009, and that no records were available for the earlier fiscal years of 2001-2002 and 2002-2003. On remand, under its audit authority, the Controller should re-assess fiscal years 2001-2002 and 2002-2003 in conformity with its

- The reduction of costs relating to the exclusion of animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period because they became non-rehabilitatable.
- The reduction of costs relating to the Controller's recalculation of costs following the *Purifoy* decision and its use of an average number of reimbursable days, to the extent the recalculation resulted in an exclusion of "eligible animals" correctly held under the law.

The Commission further finds that all other reductions made by the Controller are correct as a matter of law and are not arbitrary, capricious, or entirely lacking in evidentiary support.

reassessment of data for 2006-2007 and 2008-2009 for purposes of reinstating costs incorrectly reduced.

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 January 11, 2017, I served the:

Proposed Decision
Animal Adoption, 14-9811-I-03
Civil Code Sections 1834 and 1846; Food and Agriculture Code sections 31108, 31752, 31752.5, 31753, 32001, and 32003;
Statutes 1998, Chapter 752 and Statutes 2004, Chapter 313
Fiscal Years: 2001-2002, 2002-2003, 2006-2007, 2007-2008, and 2008-2009
South East Area Animal Control Authority (SEAACA), 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 January 11, 2017 at Sacramento, California.

Jill Magee

Jill L. Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/27/16

Claim Number: 14-9811-I-03

Matter: Animal Adoption

Claimant: Southeast Area Animal Control Authority

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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